ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC028582
Case Name	Miguel Cardenas Fragoso v. Batavia Container, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0420
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Damian Flores
Respondent Attorney	Brian Rudd

DATE FILED: 9/3/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MIGUEL CARDENAS FRAGOSO,

Petitioner,

vs. NO: 21 WC 28582

BATAVIA CONTAINER, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition is causally related to the undisputed September 21, 2021 work accident, average weekly wage calculation, entitlement to Temporary Total Disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below, 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).

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibit 3. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

CONCLUSIONS OF LAW

I. Average Weekly Wage

The Arbitrator concluded Petitioner's overtime was not includable in Petitioner's average weekly wage ("AWW"), which he found to be $635.53. In denying the inclusion of overtime hours, the Arbitrator found the testimony of both Petitioner and Claudia Donahue "establish that any overtime worked by Petitioner was completely voluntary" and therefore, under *Airborne Express, Inc. v. Illinois Workers' Compensation Commission*, 372 Ill. App. 3d 549 (1st Dist. 2007), the voluntary hours are not to be included. Arb.'s Dec., p. 3.

In challenging the exclusion of his overtime hours, Petitioner highlights his testimony that he "consistently worked more than eight hours per day and that his employer would not even ask him to stay because it was simply expected of him." Petitioner's Statement of Exceptions, p. 4. Respondent, in turn, claims overtime was properly excluded because it is "undisputed" that overtime was voluntary and Petitioner failed to provide supporting evidence that overtime was expected. The Commission finds neither party's position fully comports with the facts and the law.

Our analysis begins with a review of the relevant legal standard. Under *Airborne Express*, overtime "includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week." *Airborne Express, Inc.,* 372 Ill. App. at 554 (Emphasis added).

As to whether Petitioner consistently worked overtime beyond the regular 40-hour workweek, Petitioner testified he worked 12 hours per day, six days a week. T. 14. The Commission observes that such a schedule, if established by the preponderance of the credible evidence, would qualify as "a set number of hours consistently worked each week" and those hours would therefore be includable under *Airborne Express*. As such, we consider the wage statement in light of Petitioner's testimony. The Commission notes that if Petitioner worked 12-hour days, six days a week, the wage statement should reflect Petitioner consistently worked 72 hours per week. It does not. Rather, the Commission observes Petitioner's gross hours per week varied widely. Therefore, the Commission finds the evidence does not support a finding that Petitioner worked "a set number of hours consistently" each week as a condition of his employment. This does not end our analysis, though, for while the Decision states, and Respondent argues, the record establishes "any overtime" was "completely voluntary," this is contradicted by Respondent's evidence. Respondent's witness, Claudia Donahue, testified Respondent has "a big event" each year and requires all its employees to work a mandatory Saturday; Ms. Donahue further testified she reviewed Petitioner's pre-accident wage records and "the week of March the 27th was our mandatory overtime." T. 84. The wage statement demonstrates Petitioner worked 14 hours of overtime during the March 27, 2021 pay period. The Commission finds those 14 overtime hours were mandatory and are to be included in Petitioner's average weekly wage.

The Commission's review of the evidence reveals Petitioner was employed at Respondent for 29 weeks prior to the accident. The wage statement shows that over those 29 weeks, Petitioner

worked 1060 regular hours; as such, the Commission finds Petitioner's "number of weeks and parts thereof" is 26.5 (1060 / 40 = 26.5). The Commission further finds Petitioner's applicable AWW earnings total $17,476.80 ($17,252.80 in regular pay + $224.00 (14 overtime hours x $16.00 straight time rate) = $17,476.80). The Commission calculates Petitioner's average weekly wage as $659.50 ($17,476.80 / 26.5 = $659.50).

II. Temporary Disability

Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from April 1, 2022 through April 6, 2022 as well as July 2, 2022 through April 26, 2023. ArbX1. The Arbitrator found Respondent failed to provide work within Petitioner's restrictions during the initial period and awarded TTD benefits for April 1, 2022 through April 6, 2022. The Arbitrator denied the second period, finding Petitioner refused to attempt the job breaking down boxes and instead abandoned his job.

Both parties challenge the TTD award on Review. Respondent argues Petitioner refused to do the painting assignment, which was within his restrictions; therefore, because he abandoned a valid accommodated job, Petitioner is not entitled to any TTD benefits at all. Petitioner, in turn, argues he is entitled to benefits from July 2, 2022 through April 26, 2023 because the task he was assigned violated his restrictions.

A. April 1, 2022 through April 6, 2022

Respondent claims Petitioner is not entitled to TTD benefits for this period because Petitioner refused to perform an accommodated job that was within Petitioner's restrictions. The Commission disagrees. At the outset, the Commission observes having Petitioner paint appears to be make-work and therefore not a bona fide accommodated job. Furthermore, even if we accept that painting the interior of the facility was a bona fide accommodation, we do not believe it can be reasonably argued that requiring Petitioner to tape off the baseboards was within his restrictions. Even Ms. Donahue conceded Petitioner should not have been asked to do that. T. 102. While Respondent asserts the April 7, 2022 Human Resources letter shows Petitioner refused to do the job and simply went home, the Commission observes the letter is contradicted by Petitioner's testimony that he painted all day on March 31, 2022; he further testified he told his supervisor that painting was hurting his back, and Raul got mad, gave him more paint, and told him he had to finish. T. 41-42. The Commission finds Petitioner's testimony as to the events of March 31, 2022 to be credible.

The Commission finds Respondent failed to provide accommodated work from April 1, 2022 through April 6, 2022. However, because the period is less than 14 days, TTD benefits do not commence until the fourth day – April 4, 2022. *820 ILCS 305/8(b)* ("If the period of temporary total incapacity for work lasts more than 3 working days, weekly compensation as hereinafter provided shall be paid beginning on the 4th day of such temporary total incapacity and continuing as long as the total temporary incapacity lasts.") The Commission finds Petitioner established entitlement to 3/7 weeks of TTD benefits, representing April 4, 2022 through April 6, 2022.

B. July 1, 2022 through April 26, 2023

Petitioner argues he is entitled to TTD benefits as of July 1, 2022 because Respondent directed him to perform a task that violated his restrictions. Petitioner claims the task required "repeated bending and further required the [*sic*] he reach and pull items," which Ms. Donahue acknowledged was in violation of Petitioner's restrictions. Petitioner's Statement of Exceptions, p. 5. The Commission disagrees.

The Commission first observes Petitioner's suggestion that he was restricted from reaching is incorrect. To be clear, Dr. Pelinkovic has consistently imposed the same restrictions: "No pushing, pulling, or lifting more than five pounds. No bending, squatting, climbing, or kneeling." PX3. Moreover, Ms. Donahue did not testify the box-breakdown job violated Petitioner's restrictions; rather, she agreed there would be reaching and explained the job did not require bending because the boxes were on a conveyor that could be electronically raised or lowered as needed and Petitioner was given a stool and could choose whether to sit or stand. T. 92-93, 103. As to pulling, Ms. Donahue testified the boxes were unsealed and no ripping or tearing was required; instead, breaking down the boxes involved essentially unfolding them. T. 115-116. The Commission finds this job was within the restrictions imposed by Dr. Pelinkovic. Significantly, and unlike in March, the record reflects Petitioner did not even attempt this job but instead walked out. The Commission finds Petitioner refused a bona fide accommodated job and is therefore not entitled to TTD benefits from July 1, 2022 through April 26, 2023.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 23, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage is $659.50.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $439.67 per week for a period of 3/7 weeks, representing April 4, 2022 through April 6, 2022, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $26,857.51 for reasonable and necessary medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the treatment recommended by Dr. Pelinkovic, 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 $27,200.00. 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.

September 3, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 7/10/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC028582
Case Name	Miguel Cardenas Fragoso v. Batavia Container, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	Brian Rudd

DATE FILED: 6/23/2023

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

/s/Gerald Granada, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Miguel Cardenas Fragoso
Employee/Petitioner

v.

Batavia Container, Inc.
Employer/Respondent

Case # **21** WC **028582**

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Geneva**, on **April 26, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **9/21/21**, 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 $**18,435.40**; the average weekly wage was $**635.53**.

On the date of accident, Petitioner was **61** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay reasonable and necessary medical services, subject to the medical fee schedule, of $26,857.51 as set forth in Petitioner's exhibits, pursuant to Sections 8(a) and 8.2 of the Act.

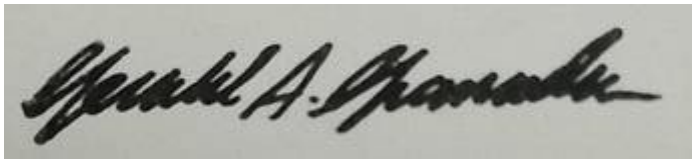
Respondent shall pay Petitioner temporary total disability benefits of $423.68/week for 6/7 weeks, commencing 4/1/22 through 4/6/22, as provided in Section 8(b) of the Act. Petitioner's claim for TTD or TPD benefits from 7/2/22 to the date of hearing are denied.

Respondent shall authorize the prospective medical care as prescribed by Dr. Pelinkovic, including the proposed lumbar surgery.

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.



June 23, 2023

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Miguel Cardenas Fragoso, who alleges to have sustained injuries while working for Respondent Batavia Container, Inc. on September 21, 2021. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) earnings; 3) medical expenses; 4) prospective medical care; and 5) TTD. Petitioner testified via a Spanish interpreter.

Petitioner worked for Respondent as a machine operator since March, 2021. Respondent is a cardboard manufacturing company. Petitioner's job entailed feeding cardboard into a machine. At his work station, Petitioner stood between a machine and a large stack of cardboard. He would grab cardboard from the stack and feed the cardboard into a machine. On September 21, 2021, Petitioner was performing his normal job duties when he was struck from behind by a falling stack of cardboard. The stack of cardboard pinned Petitioner's lower body against the machine. Petitioner's description of the incident was corroborated by the video offered into evidence by Respondent. (RX 6)

On September 22, 2021, Petitioner sought medical treatment at Dreyer Medical Clinic, where he was initially diagnosed with a low back strain, provided with Advil, and sent back to work with restrictions. Upon his return to work, Petitioner noted increased back pain aggravated by his work activities. He returned to Dreyer Medical Clinic on September 29, 2021 and was subsequently returned to work with restrictions. (PX 1)

On October 4, 2021, Petitioner sought treatment with Dr. Gabriel Rivera at RNS Physical Therapy. (PX 2) Dr. Rivera diagnosed a lumber sprain with radiculopathy in the lower extremity, and prescribed physical therapy along with a 5 pound lifting restriction. Petitioner continued working and subsequently underwent a lumbar MRI on October 29, 2021, which revealed an L3-4 diffuse left asymmetric bulge resulting in moderate left and mild right neural foraminal narrowing with markedly severe spinal canal stenosis; a L4-5 diffuse disc bulge resulting in moderate left and mild right neural foraminal narrowing with moderate spinal canal stenosis; and moderate L5-S1 left facet arthropathy. (PX 2 at 220). On November 9, 2021, Dr. Rivera documented constant low back pain rated 6/10 and referred Petitioner to see Dr. Dalip Pelinkovic for a surgical consultation.

On November 10, 2021, Petitioner saw Dr. Pelinkovic. Dr. Pelinkovic testified via evidence deposition on December 16, 2022. (PX 9) Upon examining Petitioner and reviewing his lumbar MRI scan, Dr. Pelinkovic diagnosed Petitioner with L3-4 & L4-5 disc bulges and spinal stenosis, for which he recommended ongoing therapy, work restrictions and a lumbar epidural steroid injection at the L5 level (PX 3 at 3; PX 9 at 18). Dr. Pelinkovic opined the diagnosis was causally related to the work accident and that the traumatic event of September 21, 2021 caused the Petitioner's degenerative spinal condition to progress beyond the natural progression. (PX 9 at 22-23) Dr. Pelinkovic reviewed the Petitioner's October 29, 2021 MRI and noted that there was clearly a disc protrusion that contributed to Petitioner's spinal stenosis and that the protrusions are from an acute injury and not chronic. Because of his ongoing pain complaints, Dr. Pelinkovic recommended an L3-4 and L4-5 laminectomy. (PX 3 at 25) Pending approval of the surgery, Petitioner was sent back to work with restrictions of no pushing, pulling and lifting of more than 5 pounds; no bending, squatting, climbing or kneeling. (PX 3 at 84). Dr. Pelinkovic continued to see Petitioner monthly through March 9, 2023 and referred Petitioner to Dr. Chundri for pain management.

On December 2, 2021, Dr. Chundri saw Petitioner and diagnosed him with lumbar spondylosis with

stenosis and radiculitis. He administered steroid injections to Petitioner on December 2, 2021 and January 27, 2022 – both of which provided temporary pain relief. Dr. Chundri's records indicate that he reviewed the Dr. Colman IME report and disagreed with Dr. Colman's assessment. Dr. Chundri commented that the IME diagnosis of contusion failed to explain Petitioner's right lower extremity symptoms.

On December 17, 2021, Dr. Matthew Colman examined Petitioner at Respondent's request pursuant to Section 12. Dr. Matthew Colman testified via deposition on July 5, 2022. (RX 2) Dr. Colman reviewed the lumbar MRI scan and noted degenerative spinal stenosis at L3-4 and L4-5 with no acute findings (RX 2 at 10). Dr. Colman opined that Petitioner showed symptoms related to degenerative spinal stenosis and not related to the September 21, 2021 work accident. (RX 2 at 13) He further opined that the accident in question did not render the preexisting condition symptomatic. (RX 2 at 14) Dr. Colman diagnosed Petitioner with a simple back contusion for which he was at MMI, without work restrictions, as of December 21, 2021. (RX 2 at 11 & 15)

Petitioner testified that he continued to work light duty per his doctor's recommendations, but he did not finish his workday on March 31, 2022 because he was asked to perform work that he believed was beyond the restrictions placed on him by Dr. Pelinkovic. On that day, Petitioner was asked to paint a white border on the floor. Petitioner testified that this painting job required him to bend and kneel to place tape on the floor to complete the painting job. Petitioner informed his supervisor that his back was hurting and left the job when his supervisor responded by telling Petitioner to complete the job. Petitioner returned to work for Respondent on April 7, 2022, and he continued to work until July 1, 2022. On July 1, 2022, Petitioner was assigned to a new position which required that he disassemble cardboard boxes which arrived at his work station via rollers. He was provided a rolling stool to sit on while performing this job. Petitioner testified that this job required him to bend over in violation of his restrictions, so he refused to perform the job and went home. He has not returned to work for Respondent since July 1, 2022, nor has he worked anywhere else.

Claudia Donahue, testified on behalf of Respondent. She works for Respondent as the HR manager. Ms. Donahue testified that Respondent's company policy did not make overtime mandatory and that any overtime worked by employees would be voluntary, unless there was a specific event that would trigger a mandatory overtime. Such events were few and far between. Ms. Donahue testified about March 31, 2022 and noted that one of her employees sent an e-mail stating that Petitioner was asked to do some painting and that he refused to perform the task and walked off the job. Ms. Donahue testified that an employee will sign off on any restrictions and there is a conversation to ensure everyone understands what the restrictions are, so that everyone is in compliance with the doctor's orders. On April 7, 2022, Ms. Donahue met with the plant manager Andrew Hamilton, Zach Mitchell, and the Petitioner to discuss the events of March 31, 2022. The purpose of this meeting was to ensure that Petitioner understood that he is not allowed to walk off the job if he disagrees with whether the restrictions are being accommodated. The company had work for Petitioner within the restrictions and that if he were to walk off the job again, they would consider it to be job abandonment. Petitioner responded that he understood and admitted that he should not have left the premises abruptly in protest on March 31, 2022. Ms. Donahue testified that on July 1, 2022, Petitioner was asked to do a box disassembly job, which he refused and responded that he would walk off the premises again. Petitioner was specifically told that if he walks off the job that it would be considered job abandonment. Petitioner then walked off the job. Ms. Donahue authored a letter sent to Petitioner confirming Petitioner's job abandonment. (RX 4)

Petitioner has not returned to work for Respondent since July 1, 2022, nor has he worked or looked for work anywhere else. Petitioner testified he is always suffering from pain rated 5/10 and that he wants to proceed with surgery because he does not want to continue having constant pain for the rest of his life. He noted increased pain when bending over to shower and further noted his injury affects his ability to sit for long extended periods of time because of numbness in his legs. He testified that he did not experience these symptoms prior to the work accident.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's testimony and the preponderance of the medical evidence – all of which show Petitioner sustained an injury to his back following the undisputed September 21, 2021 work accident. Although Respondent relies on the opinion of its IME, Dr. Colman, who opined that Petitioner sustained a contusion of his back following the work accident, and that his ongoing complaints are related to a degenerative condition, the Arbitrator finds persuasive the evidence set forth in the treating records and opinions of Dr. Chundri and Dr. Pelinkovic. Petitioner testified that he did not experience his current back symptoms prior to the September 21, 2021 work accident. The records show that he sustained disc protrusions that contribute to his spinal stenosis – which Dr. Pelinkovic opined was due to an acute injury and not chronic in nature. Furthermore, the Arbitrator finds persuasive the opinions of Dr. Chundri, who indicated that the IME's diagnosis does not explain the Petitioner's ongoing symptoms such as the lower extremity complaints. Dr. Pelinkovic provided a reasonable explanation that the lower extremity complaints were indicators of a spinal canal compromise. There was no evidence that Petitioner had any back or lower extremity complaints prior to the accident date, nor was there any evidence of any intervening incidents involving Petitioner's lower back or lower extremity. Accordingly, the Arbitrator concludes that the Petitioner's current condition of ill-being in his lower back is causally connected to his September 21, 2021 work accident.

2. Regarding the issue of earnings, the Arbitrator finds that the Petitioner's average weekly wage is $635.53. Petitioner is claiming a higher average weekly wage based on his overtime. However, the testimony of both Petitioner and Respondent's HR Manager Claudia Donahue establish that any overtime worked by Petitioner was completely voluntary. Ms. Donahue explained that except for rare, specific events, the Respondent's company policy did not make overtime work mandatory. Consistent with the Appellate Court's decision in Airborne Express Inc. vs. Illinois Workers' Compensation Commission, 372 Ill.App.3d 549, the Arbitrator concludes that the Petitioner's overtime hours were voluntary and therefore not included in the calculation of his earnings.

3. Regarding the issue of medical expenses and consistent with the Arbitrator's findings above, the Arbitrator further finds that Petitioner's medical treatment has been reasonable and necessary. Other than the IME opinion of Dr. Colman limiting Petitioner's injury to a contusion and recommending conservative care for 3 months post-accident, there were no utilization reviews offered to deny the necessity of any of the care rendered by Petitioner's treaters. As such, the Arbitrator awards the Petitioner the related medical expenses subject to the Fee Schedule that include: RNS Physical Therapy ($14,615.94); Suburban Orthopedics ($2,144.03); and Illinois Orthopedic Network ($10,097.54) for a total of $26,857.51.

4. Regarding the issue of prospective medical care and consistent with the findings above, the Arbitrator further finds the that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing his work-related back condition stemming from his September 21, 2021 work

accident. Accordingly, Respondent shall authorize and pay for the surgery and any related treatment, as recommended by Petitioner's treating physicians, subject to the Fee Schedule and in accordance with the provisions of Section 8 and 8.2 of the Act.

5. Regarding the issue of TTD, the Arbitrator finds the Petitioner was temporarily totally disabled from April 1, 2022 through April 6, 2022. The evidence shows that Petitioner was given restrictions for that time period and Respondent did not offer any work to Petitioner during that time period within those restrictions. The Arbitrator further finds that the Petitioner's claim for TTD from July 2, 2022 onward is denied. This finding is supported by the testimony of Petitioner and Ms. Donahue. Petitioner was working with restrictions accommodated by Respondent from April 7, 2022 through July 1, 2022. On July 1, 2022, Petitioner was asked to perform the job of disassembling cardboard boxes. Ms. Donahue testified that the job was within the Petitioner's job restrictions. The evidence shows that Petitioner did not attempt to do this job and instead walked off the job site. Contrary to Petitioner's claim that he believed the disassembling job violated his restrictions, Ms. Donahue's written account of what transpired with Petitioner shows that Petitioner was frustrated because he believed he was being manipulated either by his co-workers or by management. As such, Respondent should not be responsible for paying Petitioner TTD benefits because he walked off the job and refused to even try to do the light duty work offered to him. For these reasons, Petitioner's claim for TTD or TPD benefits from July 1, 2022 to the date of hearing are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC003439
Case Name	Guadalupe Gutierrez v. HMS Host
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0421
Number of Pages of Decision	10
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Keith Herman

DATE FILED: 9/3/2024

/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

GUADALUPE GUTIERREZ,

Petitioner,

vs. NO: 22 WC 3439

HMS HOST,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the 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 January 31, 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 $26,100.00. 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.

September 3, 2024

CAH/tdm
d: 8/29/24
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

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Case Name	Guadalupe Gutierrez v. HMS Host
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Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Keith Herman

DATE FILED: 1/31/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 30, 2024 4.98%

/s/Elaine Llerena, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Guadalupe Gutierrez
Employee/Petitioner
v.
HMS Host
Employer/Respondent

Case # **22** WC **003439**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **August 31, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ 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 **January 2, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**20,726.79**; the average weekly wage was $**767.66**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **0** dependent children.

Respondent shall be given a credit of $**13,456.70** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**13,456.70**.

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

ORDER

Respondent shall pay all reasonable and necessary medical services Petitioner underwent for treatment of her left leg following the January 2, 2022, work accident, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $460.60 per week for 75.250 weeks, because the injuries sustained caused the 35% loss of the left leg, as provided in Section 8(e)(12) 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.

Elaine Llerena

Signature of Arbitrator

JANUARY 31, 2024

FINDINGS OF FACT

This matter proceeded to hearing on August 31, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Respondent's Request for Hearing. The issues in dispute were medical expenses and permanency. Arbitrator's Exhibit 1 (AX1).

Testimony

Petitioner

Petitioner works for Respondent at O'Hare. She is a Tournant Chef at the Frontera Grill restaurant. She is a line cook, and her job duties require her to fill in as needed in the food service area.

On January 2, 2022, Petitioner slipped and fell on ice in the parking lot at O'Hare while on her way into work for Respondent and injured her left knee. Following the accident, Petitioner underwent treatment, including surgery, and was ultimately returned to work full duty.

Elijah Rodriguez, Respondent's Witness

Mr. Rodriguez is an Assistant General Manager for Respondent at the Frontera Restaurant at O'Hare Airport. Mr. Rodriguez testified that prior to working in this position, he worked as a Shift Manager at the same location. His current job duties include managing the restaurant operations, including guest service, food preparation, and overseeing and managing the employees. Mr. Rodriguez testified that he normally works four shifts per week with the Petitioner.

Mr. Rodriguez testified that he is familiar with Petitioner's job duties as a Tournant Chef. Mr. Rodriguez explained that her job duties include work as a line cook and she fills in as needed in the food preparation process. Mr. Rodriguez testified that since she returned from her work injury, she is back to performing all of her pre-injury job duties. Petitioner's hourly rate of pay has increased, and she has not sustained any reduction in work hours due to her work accident.

Mr. Rodriguez testified that Petitioner shows no signs of difficulty or limitations due to her work injury. Further, Mr. Rodriguez testified that Petitioner has not approached him about having any difficulty performing her job duties due to the effects of her knee injury. He testified that Petitioner occasionally complains of being tired.

Prior Medical Condition

Petitioner had no pain or problems with her left knee before January 2, 2022. There is no evidence of any prior medical condition involving the left leg or knee in the medical records.

Summary of Medical Records

Petitioner initially treated at Adventist Bolingbrook Hospital's emergency department on January 2, 2022. (PX2, pgs. 59-62) She reported an injury to her left knee earlier in the day as the result of a slip and fall on ice. Petitioner was diagnosed as having suffered a left knee sprain and her left knee was placed in an immobilizer. Petitioner was to follow up with her primary care doctor or an occupational health clinic.

Petitioner began treating at Concentra Clinic on January 13, 2022, with Dr. Lulu Husain. (PX1, pgs. 326-353) Petitioner reported left knee pain secondary to a slip and fall. Dr. Husain diagnosed Petitioner with a left knee strain, ordered physical therapy, a knee sleeve, and prescribed medication. Petitioner began physical therapy that the same day and continued through February 3, 2022. (PX1)

On January 27, 2022, Petitioner underwent a left knee MRI that revealed a horizontal tear of posterior horn of the medial meniscus extending into its body, marrow edema in the lateral and medial tibial condyles and the lateral femoral condyle, and joint effusion extending to the suprapatellar bursa. (PX4, pg.29) On February 1, 2022, Dr. Husain diagnosed Petitioner as having an acute medial meniscus tear of the left knee and referred Petitioner to an orthopedic specialist. (PX1, pg. 264)

On February 8, 2022, Petitioner started treating with Dr. Kevin Tu. (PX1, pgs. 255-258) Dr. Tu examined Petitioner, reviewed the MRI, diagnosed Petitioner as having a left knee anterior cruciate disruption and medial meniscus tear and found that the diagnosis was causally related to the January 2, 2022, work accident. Dr. Tu recommended a left knee surgery.

On March 4, 2022, Dr. Tu performed an ACL reconstruction with tibialis allograft, partial medial meniscectomy, and synovectomy. (PX3, pg.28).

Petitioner continued to follow up with Dr. Tu and underwent post-operative physical therapy. (PX1 & PX4) On April 19, 2022, Dr. Tu released Petitioner to light duty work. (PX1, pg. 146) On July 6, 2022, Dr. Tu noted that Petitioner's symptoms had improved significantly and that she did not complain of instability. (PX1, pgs. 22-30) Dr. Tu released Petitioner to return to her normal work activities without restrictions and scheduled a follow-up visit in 4 weeks for a final evaluation. On August 2, 2022, Petitioner complained of continued pain at the anterior aspect of the left knee. (PX1, pgs. 18-21) Dr. Tu continued Petitioner's home exercise program. On October 4, 2022, Petitioner reported calf pain and swelling over the last 2-3 weeks. (PX1, pgs. 14-17) Dr. Tu took Petitioner off work and sent her to the emergency room to rule out a deep vein thrombosis. Petitioner went to Adventist Bolingbrook Hospital where she underwent an ultrasound that identified no deep vein thrombosis. (PX2, pgs. 12-14) Petitioner's final visit with Dr. Tu was on October 11, 2022. (PX1, pgs. 10-13) Dr. Tu noted that Petitioner complained of some anterior numbness over the left shin. Dr. Tu released Petitioner to return to work without restrictions and released her from care.

Petitioner's Current Condition

Petitioner has returned to work full duty without restrictions. Since her treatment discharge from Dr. Tu, Petitioner has noticed that she moves slower than she did before the accident and that she experiences discomfort in the left knee when she moves laterally, which is what she does in her line cook position. She has continued numbness in the anterior part of the left shin, which bothers her, and her left leg feels like it is gives out on occasions. Petitioner is not taking any medications for her knee. Petitioner testified that she has complained to the manager about her condition. Petitioner testified that she is doing all of the job duties she performed prior to the work accident, and that she is making as much or more than she was making before the 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:

Based on the above, the Arbitrator finds that Petitioner's medical treatment was reasonable and necessary. The Arbitrator notes that Respondent submitted a report outlining the payments it has made toward Petitioner's medical bills. (RX1) Additionally, the parties stipulated that Respondent has paid or agrees to pay the medical bills in PX1 and PX2 pursuant to Sections 8(a) and 8.2 of the Act. The Arbitrator further notes that Respondent provided a letter dated August 22, 2023, indicating that the Illinois Department of Healthcare and Family Services has not paid any medical and/or financial expenses on behalf of Petitioner. (RX4)

Respondent shall pay for the medical treatment Petitioner underwent to her left leg following the January 2, 2022, work accident pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Pursuant to Section 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.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives this factor no weight.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Tournant Chef at the time of the accident and that she was able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor considerable weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 33years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there is no evidence of loss of earnings capacity. The Arbitrator gives this factor significant weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner underwent surgery both to the ACL, with hardware inserted, and to the posterior horn of the medial meniscus. Petitioner has been released to return to work without restrictions, but she continues to have numbness in the anterior part of the left shin and her left leg feels like it is gives out on occasions. Petitioner also moves slower than she did prior to the work accident as a result of the left knee injury. The Arbitrator gives this factor significant weight.

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 35% loss of use of the left leg pursuant to Section 8(e)(12) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021069
Case Name	Kurt Lieberman v. Channahon Fire Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0422
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Nicole Breslau

DATE FILED: 9/3/2024

/s/Christopher Harris, 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

KURT LIEBERMAN,

Petitioner,

vs. NO: 22 WC 21069

CHANNAHON FIRE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed 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 receive a credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

September 3, 2024

CAH/pm
O: 8/29/24
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	22WC021069
Case Name	Kurt Lieberman v. Channahon Fire Department
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Jeffrey Rusin

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 **WILL**)

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

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

KURT LIEBERMAN Case # **22** WC **21069**
Employee/Petitioner
v.
CHANNAHON FIRE DEPARTMENT
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, on **October 20, 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 4, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**88,833.16**; the average weekly wage was $**1,708.33**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **4** 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 $**27,277.64** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**27,277.64**.

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

ORDER

The Arbitrator finds that the Petitioner's lumbar condition of ill-being is causally related to the August 4, 2022 accident.

Respondent shall pay Petitioner temporary total disability benefits of $1,138.89 per week for 63-17 weeks, commencing August 5, 2022 through October 20, 2023, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $27.277.64 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical expenses contained in Petitioner's Exhibit 2, as provided in Sections 8(a) and 8.2 of the Act.

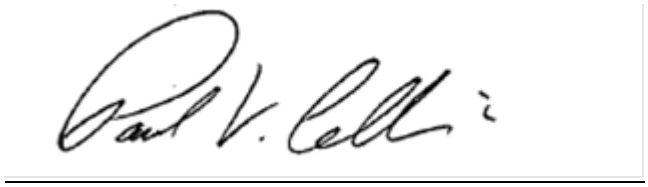
Respondent shall be given a credit for awarded medical expenses that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize the lumbar L5/S1 fusion surgery recommended by Dr. Sampat.

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

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

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



Signature of Arbitrator

DECEMBER 18, 2023

STATEMENT OF FACTS

Petitioner worked for Respondent as a Lieutenant firefighter/EMT. He began working full-time in March 2014, which required working 24 hours on, 48 hours off. As a Lieutenant, Petitioner testified his responsibilities included both working as a firefighter/EMT, but also directing other personnel. Given he must assist with lifts, facility cleaning, lifting, and starting/testing power tools, and daily training, Petitioner described the job as heavy and active in his opinion. He underwent yearly physicals as part of his position. He testified he also played baseball and softball and coached wrestling and baseball. He had been involved with CrossFit training but was not doing this in August 2022.

Petitioner denied having any work restrictions or physical limitations prior to coming to work on 8/4/22. On that date, he was performing deadlifts (weightlifting) at the fire station with station-provided equipment when he felt sharp pain in his low back, hips, and left leg, dropping him to his knees. Petitioner testified that he and other firefighters often lift weights at the firehouse and that it is encouraged by Respondent. After trying ice and heat, Petitioner reported the injury to his supervisor, Captain Randich, as well as his station co-worker, Dan Grubicsh. The Department Chief ultimately picked him up and brought him to Morris Hospital.

On 8/4/22, Morris Hospital noted complaints of low back pain radiating into the left leg with tingling after lifting a 200 plus pound deadlift. The report also states: "He has a history of back problems in the past, was told that he needed spinal fusion but has not had it done." Petitioner was advised to stay off work that day and to return to light duty the next day, and he was referred to an orthopedist. Hydrocodone and Ketorolac were prescribed. While hydrocodone was clearly prescribed at this visit, the note also states: "Patient is to continue with Baclofen, KlonoPIN, Hydrocodone-Acetaminophen", and indicates the last dose of Baclofen was in 2019. (Px5). It is unclear what these medications had previously been prescribed for.

As to the 8/4/22 ER note referencing prior back pain, Petitioner acknowledged having prior low back treatment in 2015, including a lumbar MRI and possibly some injections. He could not recall what triggered the pain at that time, indicating it wasn't significant enough to really remember. He said it did not result in any lost time from work and he was released to unrestricted work duties. He again treated for his low back in 2021 following a motor vehicle accident. H believed he had low back and hip pain then, and possibly a "tiny bit" of pain down his left leg, though he couldn't recall for sure or what he told his doctors (Dr. Xia and Dr. Sampat) at that time. Injections provided temporary improvement, and he had a lumbar MRI, but he did not recall having any physical therapy. He last treated at that time with Dr. Xia on 7/21/21, testifying he had very little back pain by then and that he was released to and returned to full duty as a firefighter/EMT. Petitioner testified that Dr. Sampat on 5/16/22 reviewed the 2021 lumbar MRI, showed him some things he said were not a concern at that

time, but that could be in the future and could involve surgery. Petitioner testified Dr. Sampat told him he "wouldn't operate on anyone with this MRI." Petitioner was working full duty and lifting weights in May 2022 and continued to do so into August 2022. Asked if he had any low back pain in that time, Petitioner testified: "Maybe in the morning when I woke up but that could be from multiple reasons." He performed all of his regular job duties between May 2022 and 8/4/22.

Pain physician Dr. Xia noted on 4/23/21 that Petitioner reported being rear ended while at a stop by another driver going approximately 35 miles per hour, pushing him into the car in front of him. While initially treated for concussion with loss of consciousness, Petitioner also complained of neck and back pain radiating down the right leg to the calf at an 8 out of 10 (8/10) level. The report also states: "Patient had previous back problems starting in 2006, patient was diagnosed with degenerative disc disease, stenosis, arthritis, spina bifida, fractured facets." The report notes Petitioner previously took Percocet, had injections, and therapy, but had been off Percocet with under control back pain for two years. Dr. Xia diagnosed lumbago with sciatica and obtained a lumbar x-ray which showed degenerative space changes at L5/S1 accompanying slight ventral slippage and spina bifida occulta. On 4/27/21, Petitioner reported his back pain was so bad again that he was taking up to 10 Norco per day. Dr. Xia prescribed extensive therapy and MRIs for the back and neck. On 5/7/21, Dr. Xia noted Petitioner's back pain "goes to legs." Petitioner's primary provider had requested the lumbar MRI. On 5/14/21, Petitioner reported therapy increased his neck and back pain, while the main treatment by Dr. Xia at this point involved cranial nerve injections for the head and headache complaints. On 5/19/21, Petitioner reported therapy was now helping his neck and back. On 6/11/21, Petitioner's still had 6/10 back pain into "both legs, hip and buttock" but was working full duty. He showed Dr. Xia the MRI report, the results of which the doctor doesn't specifically reference, but he diagnosed "pain maybe due to L4/5 disc tear, L5/S1 spondylolisthesis may also be aggravated." Bilateral epidurals were planned at L4/5, and Dr. Xia wanted the MRI films to compare to 2015 films. Dr. Xia performed the lumbar epidural on 6/22/21, noting diagnoses of lumbar disc herniation and radiculitis. On 7/2/21, Petitioner reported very little back pain: "Patient is doing very well, he is actually back to work full time and full duty", and he was discharged. (Px7).

On 2/21/22, Petitioner reported the 4/8/21 car accident to orthopedic surgeon Dr. Sampat with chief complaints of neck and mid back pain and worsening low back pain. Dr. Sampat noted Petitioner had a "dual impact with a whiplash type of motion" to his entire spine due to the impact from behind and then with the car in front of him. Dr. Sampat states: "Prior to this accident, he used to have some low back pain requiring injection therapy but the pain became much worse" after the 4/8/21 accident, while the neck and mid back pain was new. Petitioner reported injections and therapy were providing temporary relief, and he was using hydrocodone for pain relief. Petitioner reported problems with mechanical bending, lifting, and twisting. Neurological exam was normal. On 5/16/22, Dr. Sampat noted Petitioner wanted to review the MRI and x-ray films previously obtained. Petitioner followed up on 5/16/22, noting he used to do CrossFit prior to the 4/8/21 accident and was now unable to do so. Lumbar MRI showed L5/S1 spondylolisthesis and L4/5 annular tear with disc protrusion, with normal spinal cord signal. Dr. Sampat stated: "I advised careful observation at this point. Eventually he may require surgical intervention with fusion at L5/S1. He appears to be markedly worse now after the accident compared to before the accident." Petitioner was to continue working full duty with continued observation. (Px8).

Following the 8/4/22 ER visit, 8/11/22 lumbar x-rays showed no acute fracture, grade I L5 over S1 anterolisthesis with associated facet joint arthropathy, and no evidence of instability. Degenerative disc disease was noted at L4/5 and L5/S1. Petitioner's 8/11/22 lumbar MRI showed Grade I (6 mm) anterolisthesis of L5 on S1 secondary to bilateral spondylosis that was increased versus 7/13/16 films. Moderate type II (fatty and chronic) endplate degenerative changes at L5/S1 and loss of disc height had also progressed since the last film and contributed to severe bilateral L5/S1 foraminal stenosis. Also noted was a central protrusion and annular tear at L4/5 mildly enlarged since 7/13/16 contributing to mild to moderate bilateral L4/5 foraminal stenosis. (Px3).

Petitioner testified he initially followed up with "this guy" at St. Joseph's Medical Center, didn't like him, and sought treatment with Dr. Sampat. On 8/22/22, Dr. Sampat noted he had seen Petitioner for low back pain on 5/16/22 but "then it had gotten better" and he had returned to full duty with no difficulty. Petitioner reported he was deadlifting over 200 pounds at work on 8/4/22 and developed the most severe low back pain he'd ever experienced with a new symptom of severe pain down the left leg to the foot with numbness and tingling. This caused difficulty with walking and standing. He had not worked since the injury, was unable to take NSAIDs due to an unrelated medical problem and had only mild improvement with Norco and Flexeril. Following his review of the MRI and exam, Dr. Sampat opined Petitioner had a work related exacerbation and worsening of his L4/5 and L5/S1 stenosis with left-sided radiculopathy. He did not have any sensory or motor loss and ongoing therapy and an epidural injection were recommended. Petitioner was also held off work. (Px4). Petitioner testified he had never had pain down his left leg to the foot before the 8/4/22 accident.

On 10/4/22, Dr. Sampat noted Petitioner had a history of L5/S1 spondylolisthesis and L4/5 disc protrusion with stenosis and radicular symptoms. He had not improved with 6 weeks of therapy, and epidural, which he noted was to try to avoid surgery, was not authorized pending a Section 12 exam requested by Respondent. Petitioner was neurologically intact but had positive left straight leg raise test. (Px4). Petitioner testified he was receiving workers' compensation benefits, but Respondent would not cover injections, so he paid for them out of pocket. He testified that the therapy and injections only provided temporary relief.

Petitioner was examined by orthopedic surgeon Dr. Singh on 10/6/22 at Respondent's request pursuant to Section 12 of the Act. Petitioner testified that "he barely touched me" in the 5 minutes he spent with Dr. Singh. Dr. Singh notes the April 2021 vehicular accident and that Petitioner reported a current injury doing deadlifts. The doctor reviewed the 6/13/15 and 8/11/22 lumbar MRIs and the 8/11/22 lumbar x-ray films. Neurologic exam was within normal limits. Dr. Singh opined that Petitioner had preexisting L5/S1 isthmic spondylolisthesis that was unrelated to the work accident and had sustained a soft tissue injury on 8/4/22 that had resolved. He notes Petitioner reported multiple lumbar injuries and that he "has chronic pain management service where he receives treatment and medication" for the spondylolisthesis, which is chronic and was symptomatic prior to the 8/4/22 incident. In Dr. Singh's opinion, there was no radiographic progression of the L5/S1 spondylolisthesis when compared to the 6/13/15 films. He did believe that an L5/S1 fusion was reasonable to address the preexisting condition but would not be related to the work accident. He opined that Petitioner could return to full unrestricted work duties. (Rx2).

On 11/7/22, Petitioner advised Dr. Sampat he had been working full duty, taking no narcotics, sleeping well, and participating in his hobbies (hunting, fishing, coaching sports) prior to 8/4/22, while after the 8/4/22 injury he was markedly worse, was unable to do any of these activities, and was taking intermittent narcotics. Petitioner reported that two injections with Dr. See provided only temporary relief. He also reported the April 2021 motor vehicle accident did not impact his function or ability to work. Dr Sampat at this point recommended L5/S1 spinal fusion surgery, a surgery with which Dr. Singh agreed. He disagreed with Dr. Singh as to causation, opining that while the L5/S1 spondylolisthesis was preexisting, there were markedly worsening symptoms that were causally related to the 8/4/22 accident, resulting in the need for surgery. A work note indicates Petitioner could work light office duties ("workplace rehabilitator"). (Px4).

On 12/19/22 and 5/22/23, Dr. Sampat noted Petitioner's symptoms had not abated and he continued to recommend the L5/S1 fusion surgery and off work status due to the physical nature of his job as a firefighter and the fact light duty was not available to Petitioner. (Px4).

A 5/16/23 addendum from Dr. Singh was issued after reviewing Petitioner's updated medical records. He noted the normal neurologic exam, the preexisting spondylolisthesis documented back to 2015, and "physical therapy

notes from 2019 to present with continued symptomatology." None of his opinions changed. He believed Petitioner reached maximum medical improvement as to the 8/4/22 lumbar strain approximately four weeks after the date of injury. (Rx2).

Dr. Sampat was deposed by the parties on 8/14/23. He reiterated what was contained in his 2/21/22 and 5/16/22 reports, noting he did not see or hear from Petitioner between 5/16/22 and 8/22/22. Petitioner reported he improved after the 5/16/22 visit and went back to full duty, functioning without difficulty, until the 8/4/22 deadlift incident. He also reported the pain and numbness down the left leg was new and had never occurred prior to 8/4/22. Dr. Sampat testified Petitioner had no complaints of pain going down his legs on 2/21/22 or 5/16/22. He opined that comparing the 5/7/21 and 8/11/22 lumbar MRIs showed worsening findings at L4 to S1, noting the radiologist actually saw a worsening of the L5/S1 spondylolisthesis and L4/5 herniation findings between the 8/11/22 film and the 2016 films. Dr. Sampat did not himself review the 2016 MRI films. He opined the 8/11/22 film findings correlated with Petitioner's subjective symptoms, with the radicular symptoms down the left leg mainly correlated with L5/S1. (Px6).

Dr. Sampat's 8/22/22 exam showed abnormal gait (favoring the left leg), significant low back pain with flexion/extension, and severely positive left straight leg raise. Petitioner was otherwise neurologically normal. Based on the increased low back pain and new onset of left leg symptoms, Dr. Sampat opined the 8/4/22 accident exacerbated Petitioner's preexisting low back condition. Petitioner weighed about 160 pounds and was deadlifting 200 pounds, which involved bending down and lifting the weight up, a mechanism that can worsen his back conditions due to increased stress on the low back. Dr. Sampat recommended observation on 5/16/22 based on Petitioner having only back pain and no radicular symptoms, in which case surgery is not advised as it would involve an unpredictable result: "If somebody has radiculopathy then the treatments are markedly different." He noted in May 2021 that Petitioner might need a future fusion due to the spondylolisthesis if there was an onset of radicular or neurologic symptoms. Because he had a normal neurologic exam on 8/22/22, Dr. Sampat advised therapy, and epidurals as well due to the severe straight leg raise findings and Petitioner's inability to tolerate NSAIDs due to his GI condition. Petitioner was also held off work. Petitioner had no improvement with therapy (6 weeks) as of 10/4/22, and by 11/7/22, he had undergone two epidurals with only short term relief. Testifying these results support L4 to S1 as the pain generator, Dr. Sampat then prescribed L5/S1 fusion surgery. Dr. Sampat disagreed with Dr. Singh's lumbar strain diagnosis, noting a strain wouldn't lead to the onset of radicular symptoms and no reduction or resolution of back pain. He opined that Dr. Singh's opinion that there is no clinical correlation to the L5/S1 spondylolisthesis findings is inaccurate, as Petitioner had pain radiating in an L5 nerve distribution and positive left straight leg raise. Given the failure of conservative treatment, Dr. Sampat prescribed the surgery – decompression at L4 to S1 and L5/S1 fusion. Fusion wasn't recommended at L4/5 as there is no instability at that level. Petitioner's exam was unchanged and he was allowed to work light office duties at that time. Dr. Sampat's recommendations were unchanged on 12/19/22. Again noting the marked change in symptoms and Petitioner's physical abilities between 5/16/22 and 8/22/22, Dr. Sampat reiterated his opinion that Petitioner's current lumbar condition is causally related to the 8/4/22 accident. Given Petitioner's work duties as a fireman/EMT, Petitioner remains off work. (Px6).

On cross-examination, Dr. Sampat testified that Petitioner's August 2022 symptoms were "markedly worse than anything he had had before is what he told me and then the lower extremity pain was new." He agreed Petitioner was still having significant difficulty in May of 2022, but opined the injury at that time was a lumbar strain, or whiplash injury, because it was temporary and thereafter improved. He agreed his knowledge that Petitioner improved after May 2022 was based on Petitioner saying he improved. Dr. Sampat agreed Petitioner told him after the motor vehicle accident that he had been unable to do his hobbies and CrossFit. He agreed that it was after his review of the May 2022 MRI that he advised Petitioner he might need a fusion, meaning if he developed radicular symptoms, and that the current recommendation is the same fusion. On further cross, Dr. Sampat agreed the 8/11/22 radiologist compared those films to 2016 films, noting the progression of

spondylolisthesis, but did not compare the 2021 films. As to whether he would have expected a natural progression of Petitioner's condition to the extent seen in that 5 plus year gap, Dr. Sampat testified it was hard to say: "sometimes it does, and sometimes it doesn't. There's no typical pattern with isthmic spondylolisthesis." He agreed the Petitioner's motor vehicle accident happened during that gap period. Dr. Sampat agreed the radiologist's impressions in the 5/7/21 and 8/11/22 MRIs were the same in terms of the indicated findings. Asked if there was any indication that the work accident worsened the Petitioner's spondylolisthesis condition based on a comparison of the MRI 2021 and 2022 films alone, Dr. Sampat initially testified he didn't know that it mattered, then actually measured the abnormality on the films on his computer, testifying the spondylolisthesis was 5.5 millimeters on 5/7/21 and 6.9 mm on 8/11/22, while the L4/5 herniation went from 5.3mm to 5.8 mm: "So it appears radiographically slightly worse at both levels on 8/11/22 compared to May of 2021." Asked about the radiologist measuring the spondylolisthesis as 6 mm on 8/11/22, Dr. Sampat testified that his own software was very accurate with regard to these measurements. Dr. Sampat testified he could not ever say with certainty that the 8/4/22 accident directly caused the size change, noting that "his symptoms are what matter here", and even if the spondylolisthesis was 10mm, he still wouldn't be recommending surgery now if there were no radicular symptoms. The radicular symptoms are mainly what changed the course of recommended treatment, along with the worsened back pain. Petitioner was not symptom free in May 2022, but Dr Sampat released him with instructions on what to keep an eye on, and he was functional, neurologically intact, and working full duty. Dr. Sampat has not reviewed the records of Dr. See, including the epidurals Petitioner had before May 2022, noting obtaining records from Dr. See's facility is difficult. Petitioner's ability to perform his activities of daily living came from Petitioner's subjective statements. Dr. Sampat has not prescribed narcotics for Petitioner, indicating they must have come from a pain physician, but that it was reasonable to prescribe them on a short term basis given Petitioner's stated symptoms. (Px6).

Petitioner has not returned to work since the accident date. He testified that his symptoms have worsened in this time, he can't sleep, and that he feels depressed since he is unable to do his normal activities with his kids (aged 10, 7, 7, and 5). He received weekly workers compensation benefits through 1/29/23, after which he started to use his employee (PTO, sick, vacation) time. Dr. Singh initially prescribed surgery on 11/7/22, which he wants to undergo, but this has not been approved by Respondent. Petitioner testified he no longer is able to do his hobbies, like hunting and fishing, which he was able to do prior to 8/4/22, and he has lost a lot of weight. The back pain he had before 8/4/22 did not prevent him from his activities "a hundred percent." His symptoms currently include depression, low back pain that now radiates into both legs, and he sometimes can't feel his toes. He uses a TENS unit but sometimes can't feel the electrodes on some parts of his low back. In May 2022 he testified his back symptoms were at a 1/10 to 2/10 level. Advised Dr. Sampat's May 2022 report noted significant back pain, Petitioner testified that this had resolved. After the 8/4/22 accident, his symptoms have only worsened. The single injection he paid for with Dr. See did not help. He has applied for his duty disability with Respondent due to the back pain.

On cross-exam, Petitioner testified he does still fish, but cannot do so for long periods or all day like he used to. He has boated on the DuPage River. He can't stay in the boat long or carry things a long way. His pain has worsened despite not working. He mostly lies in bed and sells baseball cards. He hasn't tested how far he can walk before he needs to stop. He is not comfortable sitting, so he lies on his side or on his back with feet up, though he can sit for a long time in a comfortable chair, like for a football game, and he generally has no problem arising from a seated position. He acknowledged he still plays pool and darts, but not really much else. He can walk normally unless it's a day he is really hurting. He doesn't drink alcohol anymore, acknowledging 2014 and January 2023 DUI arrests that remain in litigation.

Petitioner reiterated he could not recall what started his back symptoms in 2015, and that it wasn't significant enough to remember. He did have back treatment, including injections and an MRI in 2015 and/or 2016. After the 2021 car accident his treatment mainly involved his head. Asked about whether he had injections and treated

with Dr. Sampat from 2021 into May 2022, Petitioner testified he did not recall but such surgery but would agree if supported by the medical records. He denied a lumbar fusion being prescribed by Dr. Sampat on 5/16/22, rather that he said it wasn't currently necessary but that he might need one as he got older, as degeneration comes with aging. He couldn't say for sure that the surgery now being recommended is the same as what he said might be needed in the future.

Dr. Sampat prescribed physical therapy on 8/22/22 following the MRI, which Petitioner attended for 4 weeks ending in September 2022, and he's had no formal therapy since. On 11/7/22, he did say he was unable to bend, lift or twist, adding he meant "heavy" bending, lifting, and twisting, and that he meant movement that was "fast or unexpected." He indicated he couldn't coach sports but didn't say he couldn't hunt or fish – he asked Dr. Sampat if he would be able to do these activities and was told as tolerated. As of now he feels he could lift about a case of pop.

Petitioner was taking narcotics in November 2022, Oxycodone and morphine, testifying he could not work as a firefighter if he had taken narcotics within 8 hours prior to his shift. Sampat again prescribed a fusion in December 2022, with Petitioner reporting increasing symptoms, despite being off work for 4 months. Petitioner did not recall seeking further low back treatment until returning to Dr. Sampat in May 2023. He would keep his shift captain, Captain Randich, in the loop after each visit with Dr. Sampat, while he provided the off work notes, with Sampat taking him off work until surgery, to the Respondent. He provided Dr. Sampat's May 2023 note as well, noting he otherwise has been waiting to have his workers' compensation hearing. He hasn't seen Dr. Sampat since May.

Respondent's counsel then questioned Petitioner regarding his social media accounts, confirming he was active on Facebook and TikTok. He agreed that he attempted to take part in a 30 hour fishing challenge in July 2023 for charity, which he did from the bank of a subdivision pond but was only able to do it for 5 or 6 hours sitting in a lawn chair on the shore. As to TikTok, he was asked about a 6/9/23 post of boating with his kids and testified "that is an old video." Petitioner confirmed he was depicted in another video he posted on 6/23/23, catching and fighting with a large fish for several minutes. Petitioner acknowledged he was the person depicted in another video posted on 6/30/23.

Following his Section 12 exam with Dr. Singh, Petitioner testified his workers' compensation benefits were terminated and he then used his personal time (sick, vacation, other) through May 2023, receiving his last check on 5/19/23. He agreed he received his full salary via PEDA benefits from August 2022 to January 2023.

Respondent indicated the credit they seek of $27,277 is based on a TTD reimbursement made to Respondent related to the PEDA benefits that had been paid.

Petitioner filed for a duty disability pension in May 2023, testifying that if this fails, there is an alternative application made for a different non-duty disability benefit. He has not undergone any independent exams related to these filings or had any hearings to date.

Petitioner then recalled that he had seen a doctor in Morris, Illinois at some point who referred him to a pain specialist at UIC Clinic in Orland Park, but that the doctor he saw there indicated if he had already undergone "injections and everything", there wasn't much he could do for Petitioner. He agreed the records of this visit were not presented to Respondent as they had denied further care and stopped paying him. Petitioner currently takes anti-depressants and an occasional muscle relaxer. He still has a couple of narcotic pills left, noting he only takes this if he doesn't sleep for two or more days.

On redirect, Petitioner testified that the videos he posted on 6/9/23 and 6/23/23 both predated his work injury, with the video of him fighting with a fish on his line coming from a March 2022 vacation in Oklahoma, which involved a 70 pound paddle fish. He said he had nothing to do and posted some prior videos to TikTok. He acknowledged that the third video, posted 6/30/23, did take place post-injury. He reiterated that after the accident date, his symptoms never went away. He does still fish now but cannot do it for very long like he used to due to pain. Dr. Sampat advised him he could perform activities so long as tolerated. Petitioner testified he has undergone alcohol treatment and that he hasn't had a drink in 253 days. On recross he again testified that Dr. Sampat has not released him to go back to work, and that if he undergoes the fusion surgery, he will no longer be able to work as a firefighter.

Respondent's Fire Chief, John Petrakis, testified that he administers the Department's day to day operations. To his recall, Petitioner became a full-time firefighter in March 2012. Respondent's policy with regard to work accidents is that they must be reported to the immediate supervisor in a reasonable amount of time, after which paperwork is completed and an investigation started if needed. Petitioner did provide proper notice of his injury to his immediate supervisor, the Shift Captain. Petitioner's initial work status letter from his physician was received shortly after the 8/4/22 accident. Respondent last received a work status report he believes in May of 2023, after asking Petitioner for a more recent updated work note from his treater, as his prior August 2022 note was old and no longer valid. To his recall, the only other time Petitioner was held off work was when he was undergoing alcohol treatment, at which time he was off work on FMLA leave. He had spoken with Petitioner by phone a few times and is aware Petitioner has filed applications for both duty and non-duty disability pensions, noting he has not spoken to Petitioner since those filings. The original off work note for Petitioner was from Respondent's occupational health clinic in August 2022, then the note from his treater in August 2022, and then no further notes were provided until one was requested by Respondent in May of 2023.

On cross-exam, Chief Petrakis testified that the Respondent does encourage physical fitness and was aware Petitioner did weightlifting at the Department. He is aware that Petitioner has been held off work since the accident date due to the back injury based on the documentation he's received. He confirmed Petitioner was working full duty as of 8/4/22 and he had no knowledge of Petitioner having any restrictions prior to that with regard to his back. He was carrying out all of his job duties prior to 8/4/22 and no one ever indicated to him that Petitioner had been unable to carry out his job duties.

The Arbitrator inquired further into the timeline of off work notes being provided to Respondent, and the Chief testified the initial off work note was from occupational health, and then from Petitioner's treating physician, in August 2022. Following the visit with Dr. Singh, where the doctor opined that Petitioner's ongoing back condition was preexisting and no longer related to the work accident, the Respondent wanted Petitioner to be reexamined by occupational health before returning to work. When the occupational health facility reviewed Petitioner's treating records, it was learned that he was being prescribed narcotics. He therefore remained off work at that time because of the narcotics. Petitioner then was in rehabilitation for 90 days, after which he went to a treatment facility in California for 60 days, during which time Respondent could not communicate with him. When he completed rehab, Respondent had no work status on Petitioner and requested information, at which time Petitioner presented his August 2022 note and was advised this was not valid and he needed an updated note, which he obtained and provided in May 2023. To the Chief's knowledge, occupational health never released Petitioner to return to work, and while the narcotic use was an issue, he also testified that occupational health generally would not go against the treating physician's opinion. Now that the pension applications have been submitted, the Chief indicates he really is no longer involved with Petitioner's work status.

CONCLUSIONS OF LAW

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

There is no dispute Petitioner suffered an injury to his lumbar spine while performing a weightlifting deadlifting at work on 8/4/22. There also is no dispute that the Petitioner underwent treatment for his lumbar spine in April and May of 2022. Petitioner's argument is that the 8/4/22 incident aggravated and accelerated his preexisting lumbar condition. Respondent's position is that this was only a sprain type of injury, limited to a temporary exacerbation, and that the 8/4/22 accident plays no role in Petitioner's current condition of ill-being and surgical recommendation.

In order to obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuring injuries. *Land and Lakes Co. v. Industrial Commission*, 359 Ill. App. 3d 582, 592 (2005). 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 Commission*, 207 Ill. 2d 193, 205 (2003).

The Arbitrator finds that the preponderance of the evidence supports the finding that it is more likely than not that the 8/4/22 accident is a contributing factor in Petitioner's current lumbar condition of ill-being and the need for the recommended surgery.

As noted, there is no dispute Petitioner had lumbar back pain and treatment preceding his work accident, both remotely and very recently. In fact, the closeness in time of the most recent treatment, 5/16/22, certainly gives the Arbitrator pause in making the causation finding in Petitioner's favor. However, the following facts indicate to the Arbitrator that it is likely that the 8/4/22 accident accelerated the Petitioner's lumbar condition to the point that he has since been unable to work and a surgery that had been contemplated as a possibility previously is now being specifically recommended by Petitioner's treating surgeon.

The Arbitrator first notes that Dr. Sampat, prior to 8/4/22, did in fact discuss a lumbar fusion surgery with Petitioner, but never actually prescribed the surgery. At the last visit of 5/16/22, he opined that surgery was not yet appropriate but that Petitioner should be observed. His specific statement was: "I advised careful observation at this point. Eventually he may require surgical intervention with fusion at L5/S1. He appears to be markedly worse now after the accident compared to before the accident." The accident referred to here was a prior 2021 motor vehicle accident.

Secondly, the mechanism of injury itself was quite significant in the Arbitrator's view. This was not a simple twisting incident or lifting of for example 25 pounds. This injury involved lifting approximately 200 pounds. Not only is the mechanism significant to the Arbitrator, so is the fact that Petitioner had been performing such lifting leading up to 8/4/22. He also had been performing full work duties in what the evidence indicates is a fairly heavy job. The Arbitrator does acknowledge that testimony was not produced in terms of how often the Petitioner may have had to fight a fire between 5/16/22 and 8/4/22.

Dr. Sampat testified Petitioner's current condition of ill-being was L5/S1 spondylolisthesis and an L4/L5 disc protrusion with left lower extremity radiculopathy. He indicated Petitioner had been able to return to work with relatively mild pain without radicular symptoms in May 2022, then he had the heavy lifting episode, which he testified was a competent mechanism of injury for lumbar radiculopathy. During his deposition on cross-examination, while Dr. Sampat agreed that Petitioner had flare up of his lower back symptoms, he was basing his opinions on Petitioner's condition being "markedly worse" after the work accident and that, previously they had resolved whereas currently they have not. Chief Petrakas confirmed that prior to 8/4/22, Petitioner had no

work restrictions and was carrying out all of his job duties with no reports from Petitioner's supervisors that he had any physical issues carrying out his job.

Dr. Singh noted a normal neurologic exam and opined that Petitioner had preexisting L5/S1 spondylolisthesis with chronic pain and had sustained a soft tissue injury on 8/4/22 that was resolved. He also opined there was no radiographic progression of the L5/S1 spondylolisthesis when compared to 6/13/15 films. He agreed with the need for surgery, he just believed it wasn't related to the work accident. Dr. Sampat opined, on the other hand, that the post-accident MRI films showed an advancement of the radiographic findings versus 2021 films and measured the differences during his deposition. Dr. Sampat also indicated he disagreed with Dr. Singh's opinion that the MRI findings of an L5/S1 spondylolisthesis did not clinically correlate to Petitioner's symptoms, opining Petitioner's pain was radiating in an L5 nerve distribution, which was exactly where the radicular symptoms go with an L5/S1 spondylolisthesis. Relevantly, Dr. Singh did not testify in this matter and was not subject to cross examination.

Respondent also offered three TikTok videos the Petitioner had posted as evidence of activities beyond what he was subjectively claiming he was able to do. However, the Petitioner credibly testified that two of the videos had actually been taken prior to the work accident. This is particularly relevant in terms of the video showing the Petitioner catching and landing a very large fish in a heavy fight, as the Petitioner testified this occurred on a trip to Oklahoma well prior to the work accident. The only video Petitioner acknowledges was taken after his accident was sliding into a river while on an excursion with his children.

Overall, the Arbitrator understands the Respondent's defense in this matter given Petitioner's long-standing lumbar condition and treatment occurring less than three months prior to the 8/4/22 accident. However, the key question the Arbitrator must take into account in Illinois is whether the work accident was a factor, a contributor, to the current condition, and the greater weight of the evidence indicates that while Petitioner ultimately may have needed a lumbar fusion even if the accident hadn't occurred, the accident where he was performing extremely heavy lifting with an immediate onset of pain that has since not resolved appears to have accelerated any need for surgery. The evidence supports that the accident at issue here was a contributor to the current condition and surgical prescription.

Based on the greater weight of the evidence, the Arbitrator finds that Petitioner's current lumbar condition of ill-being is causally related to his 8/4/22, 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:

Based on the Arbitrator's finding regarding causation, the Arbitrator finds that Respondent is liable for the medical expenses contained in Petitioner's Exhibit 2. Dr. Sampat's testimony supports that the treatment to date has been reasonable and necessary for Petitioner's lumbar condition of ill-being. Dr. Singh's opinions did not rebut this finding.

Petitioner is awarded the medical expenses in Px1 pursuant to Sections 8(a) and 8.2 of the Act. The Respondent is entitled to credit for awarded medical expenses that have been paid by Respondent prior to the hearing date, and Respondent shall hold Petitioner harmless with regard to such credited expenses.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Given the Arbitrator's finding of causation, the Arbitrator finds that Respondent is liable for the L5/S1 fusion surgery prescribed by Dr. Sampat. While he did not agree as to causation, Respondent's Section 12 examiner Dr. Singh agreed that this recommended treatment would be reasonable and necessary for Petitioner's lumbar condition. Based on the preponderance of the evidence, the Arbitrator awards Petitioner's L5/S1 fusion surgery with Dr. Sampat.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Given the Arbitrator's finding regarding causation, the Arbitrator further finds that Petitioner is entitled to TTD from 8/5/22 through 10/20/23, the date of hearing.

Petitioner has been held off of work by Morris Hospital, Dr. Sampat and Dr. Xia following the 8/4/22 accident. Dr. Sampat explained that Petitioner is unable to perform heavy work as a firefighter, and that the Respondent had no light duty available.

While Respondent argues that the Petitioner did not provide notice of his off work status between January and May of 2023, Chief Petrakas testified unequivocally that he was aware that Petitioner was held off work from the date of accident to the date of hearing. While Dr Singh opined that Petitioner was able to return to work, Chief Petrakas testified that Respondent's occupational health facility indicated Petitioner could not return to work since he was taking narcotic medication and his treating physician had not released him to do so. The treatment recommended by Dr. Sampat also has not been authorized by Respondent, and it is unclear what other treatment he would have been expected to obtain in 2023.

The Arbitrator finds Petitioner is entitled to TTD from 8/5/22 through the date of hearing, 10/20/23.

Respondent is entitled to credit totaling $27,277.64 against the TTD award. This is the amount that was paid to reimburse the provider of PEDA benefits received by Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001086
Case Name	Vaughn Caldwell v. Collinsville Unit 10 School District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0423
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Matthew Terry

DATE FILED: 9/3/2024

/s/ Raychel Wesley, Commissioner

Signature

24IWCC0423

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 Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VAUGHN CALDWELL,

Petitioner,

vs. NO: 22 WC 01086

COLLINSVILLE UNIT 10 SCHOOL DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner sustained an accidental injury on December 3, 2021, whether Petitioner's left shoulder condition is causally related to the work accident, 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, modifies the Decision of the Arbitrator as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Causal Connection

The Arbitrator found Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on December 3, 2021, and his current left shoulder condition is causally related to the accident. Our review of the evidence yields the same result, however, we write separately to clarify our causal connection analysis and address Respondent's chain of events argument on Review.

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 Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist.

2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). With this standard in mind, we consider the competing causation opinions of Dr. W. Christopher Kostman and Dr. Gregory Simmons.

Respondent's expert, Dr. Kostman, diagnosed Petitioner with a chronic rotator cuff tear and degenerative joint disease, neither of which were affected by the work accident. In his February 24, 2022 §12 report, Dr. Kostman acknowledged Petitioner had increased pain after the December 3, 2021 fall but opined Petitioner's presentation was consistent with a "longstanding chronic left shoulder rotator cuff tear." RX3, DepX2. During his deposition, Dr. Kostman testified he reviewed the January 27, 2022 MRI images and noted chronic findings:

> …number one, it's a large rotator cuff tear. Fatty atrophy involving both the supraspinatus and subscapularis indicates that both of those have been torn for a while to develop fatty atrophy within the muscle belly. And also humeral head migration is a finding that indicates a longstanding rotator cuff tear because the cuff has to tear from its attachment point, it has to retract a certain distance, you know, to, for instance, the glenoid surface, and then over time that muscle, because it's not being used, loses its normal consistency and becomes more fatty and that's a progressive thing, and then also the humeral head then moves from its normal position and alignment with the glenoid to develop some superior migration and, in fact, goes through the defect of the rotator cuff kind of like two spoons becoming out of alignment or sync with each other, and that takes a period of time, as well, so there's several findings on this MRI scan indicating longstanding cuff tear. RX2, p. 12.

Dr. Kostman further testified he reviewed the accident video and did not believe falling as Petitioner did would cause bruising on the front of the shoulder, nor did he believe it would cause the pathology identified on the MRI: "I do not believe his mechanism of injury is consistent with those findings, and those findings on MRI scan all appear chronic." RX2, p. 20-21.

Dr. Simmons, in turn, concluded Petitioner's condition is causally related to the accident. During his deposition, Dr. Simmons, who is Petitioner's longtime physician and performed his two prior left shoulder surgeries, testified that from 2017 through November 2021, Petitioner was on a three-month cycle of cortisone injection therapy for his shoulder impingement, and those injections continued to be beneficial; Dr. Simmons confirmed Petitioner had not had recurrent weakness (PX8, p. 14), and he explained that although the injection visits were handled by his physician's assistant, there is nothing in the records to suggest PA Sullivan's physical examinations of Petitioner revealed anything worrisome for a recurrent rotator cuff tear or suggestive of worsening symptoms to warrant further workup:

> Most of our notes still state impingement as the treatment for his left shoulder. I don't think we noted any concern like we did with our December 8th visit that - - there was some sort of change in him over time that would warrant further workup to look for rotator cuff tear, like an MRI. (PX8, p. 27)
>
> * * *
>
> Because usually when we give injection therapies, we can't charge for the visit. So we usually just make really short notes and charge for the injection. If you notice,

> some of his exams are kind of the same. And that really - - when that happens though, that tells me that Michael didn't see any change in his work habits, his overall symptoms, reports of any new traumas, or anything like that. PX8, p. 41 (Emphasis added).

Dr. Simmons further explained there was a notable change in Petitioner's condition at the December 8, 2021 visit. Dr. Simmons testified Petitioner reported significant pain and weakness in the shoulder, and his physical examination findings were significant for tenderness to palpation across the shoulder, especially anteriorly, as well as bruising "from where the rotator cuff occurs from the distal clavicle all the way down through the proximal arm," decreased range of motion, and weakness with external rotation. PX8, p. 11. Dr. Simmons concluded the mechanism of injury and symptoms warranted further evaluation for a recurrent tear of the rotator cuff tendons: "…I'd seen the patient for many years. He really showed me no symptoms of increasing weakness. He had a trauma. Physical exam showed increasing weakness. So I wanted an MRI of his shoulder." PX8, p. 13-14. Dr. Simmons testified the subsequent MRI revealed a traumatic re-tear of the supraspinatus, infraspinatus, and subscapularis tendons; the basis of the diagnosis was "the patient's presentation and change in presentation after his injury" as well as the physical exam findings, MRI images, and intraoperative findings. PX8, p. 23. Dr. Simmons addressed Dr. Kostman's contrary interpretation of the MRI and disagreed with Dr. Kostman's belief that Petitioner had a chronic, longstanding rotator cuff tear:

> …being his treating physician, and always seeing the patient get treated, go back to work, never had any issues with his shoulder. But when I visited with him, I saw a noticeable injury on him, bruising. Noticeable increase in weakness on his exam. And he had an identifiable cause of rotator cuff tear, which is trauma. PX8, p. 30.

Dr. Simmons further explained he reviewed the accident video and the mechanism of injury shown is a competent cause of Petitioner's symptoms, exam findings, as well as the pathology noted on the MRI and intraoperatively, and he opined the fall "caused the tear or exacerbated his recurrent condition to worsen the tear of his left shoulder." PX8, p. 25.

The Commission finds Dr. Simmons' conclusions are credible, persuasive, and consistent with the medical evidence, and we adopt same. We also note Dr. Simmons' assessment of the accident video is in keeping with our own. We have reviewed the video and observe Petitioner's fall resulted in a jarring impact of the left upper body/side into the bleacher bench, such that Petitioner remains prone on the bleacher aisle and a co-worker hurries to his aid.

We now turn to Respondent's argument that reliance on chain of events principles is "grossly misplaced" because Petitioner "failed to prove a previous condition of good health." Respondent's Statement of Exceptions, p. 17. The Commission disagrees and emphasizes Respondent's position is contrary to law. To be clear, there is decades-old appellate precedent establishing the applicability of the chain of events theory to claims involving pre-existing conditions. *See Price v. Industrial Commission*, 278 Ill. App. 3d 848, 854 (1996) ("The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury.") (Emphasis added). As the Appellate Court more recently held in *Schroeder v. Illinois Workers'*

Compensation Commission, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 28.

Therefore, while our causal connection determination is predicated primarily on the direct evidence (the expert medical opinions), we note our determination is further corroborated by the circumstantial evidence (chain of events). The Commission finds Petitioner's left shoulder condition is causally connected to the December 3, 2021 accident.

II. Correction

The Commission observes the Arbitrator correctly calculated the Temporary Total Disability ("TTD") benefit period as 52 3/7 weeks, however we correct the Decision to reflect the end date is December 5, 2022. Petitioner's stipulated average weekly wage of $791.71 yields a TTD rate of $527.81. The Commission finds Petitioner is entitled to TTD benefits of $527.81 per week for 52 3/7 weeks, representing December 4, 2021 through December 5, 2022. Per the parties' stipulation, Respondent is entitled to credit for prior IMRF payments. T. 7-8, ArbX1, RX9.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 17, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $527.81 per week for a period of 52 3/7 weeks, representing December 4, 2021 through December 5, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act. Per the parties' stipulation, Respondent is entitled to credit for prior IMRF payments.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses detailed in Petitioner's Exhibit 7, as provided in §8(a), subject to §8.2. 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 pay to Petitioner the sum of $475.02 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 25% loss of use of the person as a whole.

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

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

Under §19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 3, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 7/24/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001086
Case Name	Vaughn Caldwell v. Collinsville Unit 10 School District
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Matthew Terry

DATE FILED: 4/17/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 11, 2023 4.79%

/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

VAUGHN CALDWELL
Employee/Petitioner

v.

COLLINSVILLE UNIT 10 SCHOOL DISTRICT
Employer/Respondent

Case # **22** WC **1086**

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 **03/29/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/03/21,** 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 $**41,168.71**; the average weekly wage was $**791.71**.

On the dates of accident, Petitioner was **61** 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 $**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 $**any paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services for his left shoulder as identified in Petitioner's Exhibit 7, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule and shall receive a credit if any medical bills were paid through its group plan for which credit may be allowed under Section 8(j) of the Act. The Respondent shall hold Petitioner harmless for medical expenses paid.

Respondent shall pay Petitioner temporary total disability benefits from 12/04/21 thru 12/08/22, a total of 52 3/7 weeks. Respondent is entitled to no credit because it did not pay TTD, TPD, maintenance, nonoccupational indemnity disability benefits, or other benefits for which credit may be allowed under Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $475.02/week for 125 weeks because the injuries sustained caused 25% loss of use of the body as a whole, as provided in Section 8(d)2 of the Act since the injuries partially incapacitate Petitioner from pursuing the duties of usual and customary line of employment.

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_____ **APRIL 17, 2023**

Signature of Arbitrator

ICArbDec

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on December 3, 2021. According to the Application, Petitioner sustained a work-related accident when Petitioner "tripped and fell while setting up bleachers up in the gym" and sustained an "acute injury to head, neck, low back, MAW & other body parts" (Arbitrator's Exhibit 2). This case was tried on March 29, 2023 in Collinsville, Illinois. The parties stipulated to AWW, notice, Respondent's Section 8(j) credit, and Petitioner not seeking future medical treatment at the time of hearing. The issues in dispute are accident, Respondent's liability for unpaid medical bills, unpaid TTD, and nature and extent. Respondent also disputes liability based on causal relationship (Arbitrator's Exhibit 1).

On the date of trial, Petitioner was 63 years old. (T. 8) He is married and has been for 42 years. (T. 8) They live in Caseyville, Illinois. (T. 9) Petitioner is a Collinsville high-school graduate. (T. 9) After high school he worked as a welder and belonged to Local 27, out of St. Louis. (T. 9) He worked in the welding field for 22 years. (T. 9-10) He also has some computer training. (T. 10) He is right-hand dominant. (T. 10)

In December 2021, Petitioner was employed full-time by the Respondent. (T. 10) He began working for the Respondent in September 2004. (T. 10) His job title was custodian. (T. 10) Initially, he was required to clean rooms and mop floors. In December 2021, his job title was light maintenance. (T. 11) He took care of the building, fixed any cracks in the walls, and replaced toilet seats and light fixtures. (T. 11) The job involved anything that had to do with light general maintenance. (T. 11) Before working for the Respondent, he took and passed a pre-employment physical. (T. 11-12)

Petitioner testified about treatment he received to his left shoulder prior to the December 2021 injury. (T. 12) He underwent two left shoulder surgeries by Dr. Simmons on 11/24/15 and 11/15/17. (T. 12) After the second surgery, he received periodic left shoulder cortisone injections. (T. 12-13)

Petitioner testified, in the year prior to December 3, 2021, he had not suffered any injuries specifically to his left shoulder. (T. 13) He was not given and was not under any physical restrictions by a physician for his left shoulder. (T. 13) He worked full duty doing light maintenance. (T. 13) He did not at any time refuse to perform any duties asked of him due to left shoulder symptoms. (T. 13) In the year prior to the date of the work-related injury, he did not undergo a left shoulder MRI and no physician had recommended a third left shoulder surgery. (T. 15)

Prior to December 2021 Petitioner did experience some left shoulder soreness. (T. 13-14) The periodic cortisone injections did provide relief from the left shoulder soreness. (T. 14) Before the date of his work-related injury, he received a left shoulder cortisone injection in early November 2021. (T. 14) He had also received cortisone injections to his left shoulder in April and in August 2021. (T. 14) Regarding the appointment at Dr.

Simmons' office on 11/05/21, he remembers the appointment, seeing Dr. Simmons' physician's assistant, undergoing a physical exam of his left shoulder, and receiving the left shoulder cortisone injection. (T. 14-15)

On December 3, 2021, Petitioner was setting up bleachers in the gym. (T. 16) The bleachers have backs that have to be raised up and put into position. (T. 16) As he was doing this, his feet got tangled up with one another, and he fell to his left side and hit his shoulder. (T. 16) He fell sideways on his left side. (T. 16) The first part of his body to hit the bleacher was probably his hip. (T. 16) His left shoulder also struck the ground. (T. 16) Immediately following the fall, he experienced extreme left shoulder pain. (T. 16) He had been told by the Respondent to do the job activity he was performing when he was injured. (T. 17) He immediately notified a supervisor Josh Dewitt about the injury. (T. 17)

Petitioner testified he reviewed two video clips (RX 1) several times, including the morning before the hearing. (T. 18) Petitioner testified he was the person in the videos. (T. 18)

Petitioner reviewed a group of photographs marked as PX9. (T. 19) Petitioner testified he recognized the photos, and he was the person in the photos. (T. 19) His wife took the photos. (T. 19) The photos showed bruising of his left shoulder. (T. 19) Petitioner testified the bruising shown in the photos was not present in the days before 12/03/21 and he did not notice the bruising being present prior to 12/03/21. (T. 19-23)

Petitioner testified, when he fell, the backside of his left shoulder struck the bleacher. (T. 23) He gave a recorded statement to the Respondent's workers' compensation carrier after he had been released from the emergency room and given pain medication, including morphine. (T. 24) He doesn't recall what he may have said when he gave the statement. (T. 24) He was very tired, out of it, like he was on cloud 9. (T. 24)

Petitioner testified, after the fall, he was taken by ambulance to St. Elizabeth's Hospital. (T. 25) When his was picked up by the ambulance, he was experiencing severe left shoulder pain. (T. 25) On the way to the hospital, the EMS personnel administered morphine. (T. 25)

Petitioner testified Dr. Simmons saw him on 12/08/21. (T. 24). During the time of the fall until his saw Dr. Simmons, he had difficulty and pain in his left shoulder when raising his left arm. (T. 25) He did not have this kind of problem in the days and weeks prior to the fall. (T. 25) After the fall he felt a tugging and pulling sensation in his left shoulder when using his left arm. (T. 26) He did not experience this sensation in the days and weeks before 12/03/21. (T. 26-27) After the fall, he experienced left shoulder weakness and struggled to lift items. (T. 27)

Petitioner testified Dr. Simmons performed left shoulder surgery on 03/01/22 and he underwent post-surgery physical therapy. (T. 27) Dr. Simmons found Petitioner had reached maximum medical improvement on 12/05/22. (T. 27) Dr. Simmons also gave permanent restrictions. (T. 27-28) Petitioner notified his employer about the permanent

restrictions. (T. 28) He notified Josh Dewitt. (T. 28) The Respondent did not accommodate these restrictions. (T. 28) He has not worked anywhere since the date of injury. (T. 28) He is still an employee of the Respondent. (T. 28)

Petitioner testified he currently has difficulty picking up a glass or trying to pour a pitcher of tea. (T. 29) He has difficulty tying his shoes. (T. 29) The pulling and tugging in the left shoulder and its range of motion make it difficult. (T. 29) For his current left shoulder symptoms, he takes Meloxicam and Hydrocortisone for pain if he sleeps wrong on his left shoulder. (T. 29) He testified the most recent surgery took the pain out of his shoulder quite a bit. (T. 30) He believed the fall in the bleachers made his left shoulder worse. (T. 30) He testified if the Respondent told him it could accommodate his restrictions, he would attempt to return to work. (T. 30-31)

On cross-examination, Petitioner testified he'd received treatment for his left shoulder since at least 2005. (T. 31) He agreed that after the November 2015 surgery but before the November 2017 injury he received at least six left shoulder injections. (T. 31) He agreed after the November 2017 surgery through 11/05/21 he had received at least 13 left shoulder injections. (T. 31-32) He agreed he received a left shoulder injection on 11/05/21. (T. 32) Petitioner testified, prior to 12/03/21, whenever he saw Dr. Simmons' office and saw the physician's assistant, he always underwent an examination. (T. 33-34) The physical exam by the physician's assistant before 12/03/21 was very similar to the one performed by Dr. Simmons on 12/08/21. (T. 34) When he would go in for an injection, the physician's assistant would normally spend around 15 to 20 minutes with Petitioner. (T. 34-25) He would not dispute if the records indicated 12/29/17 was the last time he saw Dr. Simmons and through 11/05/21 he only saw the physician's assistant. (T. 35-36) He agreed his was actively treating for left shoulder issues before 12/03/21. (T. 36) He agreed the injection he received on 11/05/21 was the same as the injection he received on 12/08/21. (T. 36) He agreed when the EMS personnel came to the school, he told them he got his feet tangled and fell from standing onto the bleaches at the same level he had been standing. (T. 37) He agreed on 12/08/21 he told Dr. Simmons he lost his balance. (T. 38) He agreed what he told Section 12 examiner Dr. Kostman, that he tripped over his own feet, was consistent with testimony. (T. 39) He agreed what he told Dr. Kostman, that he fell from third tier to the second tier directly onto his left shoulder and denied falling on his buttocks or back when he fell, was not true. (T. 39) When asked why he told Dr. Simmons and Dr. Kostman he fell forward when he didn't fall forward, Petitioner testified, in his mind's eye, he had finished doing that tier of bleachers and was getting ready to go down to the next tier, so that how he thought he went down. (T. 39-40) In his mind's eye, he felt as though he went forward. (T. 40) He testified he did not fall off a ladder on or around his visit with Dr. Simmons on 12/31/22. (T. 41) He never told Dr. Simmons he fell off a ladder. (T. 41) Petitioner testified the photo (PX9, 579), taken on 12/07/23, showed a little indentation where he had his previous left shoulder incision. (T. 43-44) Petitioner testified the photo (PX9, 582), taken on 12/16/21, also showed the incision. (T. 44) Petitioner testified he took the photos (PX9) for documentation of proof of injury. (T. 44) He did not show the photos to Dr. Simmons because he found doing so to be unnecessary, since he was seeing Dr. Simmons in person. (T. 44). He testified he is still employed by the school district, is on

unpaid leave, and is still receiving Respondent's health insurance. (T. 44-45) Petitioner testified he is not aware of Dr. Simmons recommending another procedure. (T. 45) He testified he doesn't want to undergo the reverse total arthroplasty procedure offered by Dr. Simmons. (T. 46) He testified he and his wife go camping every once in a while. (T. 46)

On redirect, Petitioner testified he also received injections to other parts of his body, not just his left shoulder, when he received injections between the first left shoulder surgery and the second left shoulder surgery. (T. 47)

MEDICAL RECORDS (PX1-PX6)

A chronological review of the post-injury medical records, beginning with Petitioner's Exhibit 1, start with those of City of Collinsville Fire Department. (PX1) The narrative notes state, "called out for a 61 yr old male who fell and tore his shoulder". (PX1, p. 6) Petitioner was found lying on the bleachers. This history was consistent with Petitioner's testimony. (PX1, p. 6-7) His left arm was placed sling. He was given morphine for pain. (PX1, p. 7) He was transported by ambulance to St. Elizabeth's Hospital.

At the hospital emergency room, Petitioner's primary complaints were a fall and shoulder injury. (PX2, p. 11) The primary diagnosis was a shoulder contusion. (PX2, p. 11) The history was consistent with his testimony. (PX2, p. 10) He reported pain worsened with range of motion. (PX2, p. 17) Physical exam was positive for left shoulder swelling, tenderness, and decreased range of motion. (PX2, p. 21) Left shoulder x-rays were taken. His left arm was placed in a sling. (PX2, p. 22) He was given a morphine injection, prescribe Baclofen and Hydrocodone, and told to follow-up with his primary care provider. (PX2, p. 22) He was also taken off work. (PX2, p. 10)

On 12/08/21, Petitioner saw Dr. Gregory Simmons, who noted since the fall Petitioner had been having a lot of left shoulder pain and weakness. (PX4, p. 108) Physical exam showed tenderness to palpation across the left shoulder, especially anteriorly, and some ecchymosis of the medial proximal biceps. (PX4, p. 109) The left shoulder ROM was limited secondary to pain and infraspinatus testing was painful. (PX4, p. 109) Dr. Simmons administered a left shoulder subacromial cortisone injection. (PX4, p. 109) He ordered a left shoulder MRI. The impression included a traumatic complete tear of left rotator cuff, initial encounter. (PX4, p. 110) Dr. Simmons was concerned Petitioner had suffered a recurrent rotator cuff tear. (PX4, p. 110) Dr. Simmons took Petitioner off from work until further notice. (PX4, p. 113)

On 01/31/22, Petitioner returned to Dr. Simmons. (PX4, p. 114) Petitioner reported continued difficulty lifting his arm to shoulder level with pain and it still felt very weak and painful. (PX4, p. 114) Dr. Simmons reviewed the MRI dated 01/27/22 which showed three massive tears of the supraspinatus, infraspinatus, and subscapularis tendons. (PX4, p. 115; PX5, p. 187) His impression was a traumatic complete tear of the left rotator cuff. (PX4, p. 115) He noted Petitioner's symptoms had not improved since the initial injury 6 weeks ago. (PX4, p. 115) He recommended a left open rotator cuff repair. (PX4, p. 115) Dr. Simmons kept Petitioner off work until further notice. (PX4, p. 117)

On 03/01/22, Dr. Simmons performed a left rotator cuff repair. (PX5, p. 224) The post-operative diagnosis was traumatic tear of the left rotator cuff. (PX5, p. 224) The interoperative findings included a full-thickness complete rupture of the near entire rotator cuff. (PX5, p. 244)

On 03/16/22, Petitioner returned to Dr. Simmons. (PX4, p. 123) Petitioner reported the left shoulder was doing pretty well as far as overall pain but was still having pain over the incision site. (PX4, p. 123) Dr. Simmons removed the staples and recommended discontinuation of the sling. (PX4, p. 123) He kept Petitioner off work. (PX4, p. 124)

On 04/20/22, Dr. Simmons recommended formal physical therapy and keep Petitioner off work. (PX4, p. 125)

Petitioner underwent twelve sessions of physical therapy from 04/20/22 through 06/03/22 at Athletico Physical Therapy. (PX6) The discharge summary, dated 06/23/22, stated Petitioner's goals were partial achieved, he provided good effort, subjective reports were consistent with objective findings, Petitioner had partially recovered, and was told to transition to self-management to address remaining deficits. (PX6, p. 440-441)

On 06/08/22, Petitioner returned to Dr. Simmons, who noted Petitioner had pain and difficulty raising the arm over his head, but his strength had improved internally and externally. (PX4, p, 118) Dr. Simmons noted Petitioner had completed a round of physical therapy. (PX4, p. 118) He administered a left shoulder cortisone injection. (PX 4, p. 118) Dr. Simmons advised Petitioner to continue home exercises. (PX4, p. 119) He kept Petitioner off work. (PX4, p. 119)

On 07/25/22, Petitioner returned to Dr. Simmons, who noted Petitioner was still having difficulty fully lifting his arm and had significant weakness and did not have full active range of motion, but overall, his pain had improved. (PX4, p. 143) Dr. Simmons kept Petitioner off work. (PX4, p. 145)

On 09/07/22, Petitioner returned to Dr. Simmons. (PX4, p. 146) Petitioner reported range of motion difficulty, especially when reaching outwards since the last office visit. He kept Petitioner off work. (PX4, p. 148)

On 10/19/22, Petitioner returned to Dr. Simmons, who noted Petitioner was having some left shoulder discomfort but was learning how to adapt and was really unable to do anything overhead. (PX4, p. 149) Dr. Simmons remarked, "Patient had significant rotator cuff tear in the face of having degeneration aggravated by a significant traumatic event". (PX4, p. 149) Dr. Simmons opined Petitioner is definitely going to be unable to return to any function above his shoulder level and a reverse shoulder arthroplasty will completely rid him of this situation. (PX4, p. 149) Dr. Simmons also noted Petitioner had been very diligent with his exercise program. (PX4, p. 149-150) He kept Petitioner of work. (PX4, p. 151)

On 12/05/22, Petitioner returned to Dr. Simmons, who opined Petitioner had been working full duty with previous shoulder difficulty then had a traumatic work event which incited a full-thickness large rotator cuff tear. (PX4, p. 164) Dr. Simmons believed Petitioner's progression through physical therapy had been a failure because, despite Petitioner's diligence with the exercise program, he has failed to achieve any strength from an overhead position and unable to abduct the arm fully overhead. (PX4, p. 164) When he can get the arm overhead, he doesn't have enough strength to change a light bulb. (PX4, p. 164) Dr. Simmons opined the rotator cuff surgery had failed overall secondary to the traumatic tear. (PX4, p. 165) He believed the surgery was reasonable, but the circumstances presented a significant chance of failure. (PX4, p. 165) Only a reverse shoulder arthroplasty could restore shoulder mobility. (PX4, p. 165) Dr. Simmons opined Petitioner had reached MMI. (PX4, p. 165) He gave Petitioner the following permanent restrictions: no overhead activity, no climbing, no kneeling or getting on the floor due to difficulty getting up with use of the left arm, no pushing or pulling greater than 10 pounds, no lifting greater than 10 pounds, only one-third use of arms at the side, and limited reaching. (PX4, p. 165-166) Dr. Simmons believe these limitations would limit Petitioner's ability to get back to his previous work occupation. (PX4, p. 165)

MEDICAL RECORDS (RX3-RX7)

Petitioner's prior medical records were offered and admitted into evidence. These include Dr. Gregory Simmons' office records dated 08/05/05 through 11/05/21. (RX3) The records document Petitioner's complaints of bilateral knee pain and bilateral shoulder pain, for which he received periodic injections to both knees and both shoulders. The records also include treatment for left elbow pain. (RX3)

On 03/18/13 Petitioner underwent a left shoulder MRI at Mid America Imaging. (RX4) He underwent left shoulder x-rays at St. Elizabeth's Hospital on 08/08/13 and 10/07/13. (RX5) He underwent left shoulder x-rays at Memorial Hospital on 03/09/14. (RX6, p. 1-2) On 01/16/17, he underwent a left shoulder MRI. (RX7)

The operative report for the 11/24/15 left shoulder surgery shows the procedure was a left open shoulder rotator cuff repair, acromioplasty, and distal clavicle excision. (RX6, p. 3) The operative report for the 11/15/17 left shoulder surgery shows the procedure was a left open rotator cuff repair, acromioplasty, and distal clavicle excision. (RX6, p. 5-6)

On 11/05/21, Petitioner was examined by Dr. Simmons' physician's assistant, who noted Petitioner presented for further treatment of bilateral shoulder impingement syndrome and bilateral knee osteoarthritis. (RX 3, p. 107) It was noted cortisone injection therapy continued to work well. (RX3, p. 107) Physical exam of the bilateral shoulders revealed diffuse tenderness on palpation of the subacromial spaces but the skin was intact with no erythema. The assessment included impingement syndrome of the left shoulder. Injections were administered to both knees and both shoulders. (RX3, p. 107-108)

EVIDENCE DEPOSITION OF DR. GREGORY SIMMONS (PX8)

Dr. Gregory Simmons was deposed on 08/11/22, and his deposition was received into evidence at trial. On direct examination, Dr. Simmons' testimony was consistent with his medical reports, and he reaffirmed the opinions contained therein. Specifically, regarding causality, Dr. Simmons testified Petitioner suffered a traumatic recurrent tear as result of the 12/03/21 work-related fall. (PX8, p. 542-543) This opinion was based on his review of the 01/27/22 left shoulder MRI, his review of the videos (RX1), his physical exam findings, and Petitioner's presentation and change in presentation after his injury. (PX8, p. 542) He believed the type of fall, as shown in the videos, could injure or aggravate the condition of a person's left shoulder and make it symptomatic. (PX8, p. 543) He opined the trauma caused the tear or exacerbated Petitioner's recurrent condition to worsen the tear of his left shoulder. (PX8, p. 543-544) Dr. Simmons believed, before 12/03/21, Petitioner's left shoulder was compromised, and prior to 12/03/21 Petitioner was receiving treatment for left shoulder impingement and degenerative changes. (PX8, p. 545) He testified when he initially examined Petitioner after the 12/03/21 fall, on 12/08/21, Petitioner had bruising and ecchymosis, which was consistent with the St. Elizabeth's Hospital contusion diagnosis and was not present according to the records from before the fall. (PX8, p. 546-547) Dr. Simmons testified, on 12/08/21, when he examined Petitioner, he saw a noticeable injury, bruising, a noticeable increase in weakness on physical exam, and an identifiable traumatic cause of a rotator cuff tear. (PX8, p. 550) Petitioner couldn't lift his arm above shoulder level or even up to 30 degrees after the injury. (PX8, p. 567) He testified the rotator cuff covers the entire front, superior and posterior aspect of the humeral head, so falling backward can cause anterior shoulder bruising if there's a tear to the rotator cuff or biceps tendon. (PX8, p. 551-552)

EVIDENCE DEPOSITION OF SECTION 12 EXAMINER DR. WILLIAM CHRISTOPHER KOSTMAN (RX2)

At the direction of Respondent, Petitioner was examined by Dr. William Christopher Kostman. On direct examination, Dr. Kostman's testimony was consistent with his Section 12 report and the additional medical records reviewed, and he reaffirmed the opinions contained therein. Specifically, regarding causality, he did not believe Petitioner's condition of ill-being and need for medical treatment was related in any way to the 12/03/21 accident. (RX2, p. 20) He did not believe Petitioner required left shoulder restrictions as result of the 12/03/21 accident. (RX2, p. 20) The factors in support of his opinion, included Petitioner having a left shoulder pre-existing condition and the mechanism of injury, based on his review of the videos, not being consistent with the MRI findings and Dr. Simmons' interoperative findings. (RX2, p. 21) He did not believe falling backwards, as Petitioner did in the videos, would not cause bruising on the front of the shoulder. (RX2, p. 21)

On cross-examination, he agreed Petitioner's left shoulder had pre-existing conditions prior to December 2021. (RX2, p. 23) He didn't review anything indicating that a year before 12/03/21 work injury Petitioner was under any left shoulder restrictions given by a physician. (RX2, p. 23) It was his understanding, during the year prior to 12/03/23,

Petitioner was working as a custodian full duty. (RX2, p. 22) He didn't review anything indicating Petitioner had refused to perform any job duties asked of him due to left shoulder symptoms. (RX2, p. 22) He agreed signs of a rotator cuff tear included difficulty and pain when using the arm, and popping and clicking sounds or sensations when using the arm. (RX2, p. 22-23) He agreed, in some cases, signs of a rotator cuff tear included shoulder pain that grew worse at night, when resting the arm, and shoulder weakness and struggling to left items. (RX2, p. 23-24) He testified sometimes an MRI scan can show edema or swelling within the bone from a significant impact or soft tissues aside from the skin and surface structures, and contusions can come in a variety of forms depending on how significant and how deep. (RX2, p. 24) He agreed his report didn't say anything about whether he believed Petitioner to be honest. (RX2, p. 24) He agreed his report didn't say anything about if he believed Petitioner was exaggerating. (RX2, p. 25) He didn't recall if he reviewed the two videos (RX1) before or after his examination of Petitioner. (RX2, p. 26) He agreed Petitioner suffered a fall while at work based on the videos and the history Petitioner provided. (RX2, p. 27) He admitted it was possible the fall could cause left shoulder bruising, swelling and tenderness, but he opined, from what he saw on the video, Petitioner fell backwards, struck his backside, and rolled onto his left side, which didn't appear to be consistent. (RX2, p. 27) He didn't believe Petitioner's fall was consistent with a change in a pre-existing underlying shoulder condition based on what he saw. (RX2, p. 28) Based on his experience, most, but not all, events that cause a significant change in underlying conditions do have objective findings that support that, like MRI findings. (RX2, p. 28) Based on the information he had to date, he did not believe the mechanism of injury as shown in the videos caused an injury or aggravated the preexisting condition of Petitioner left shoulder and made it symptomatic. (RX2, p. 28-29)

ACCIDENT VIDEO (RX1)

During trial, the Arbitrator and the parties reviewed two videos, entered into evidence by the Respondent. Both videos were of poor visual quality. The first video was 31 seconds in length. It shows an individual walking along the bleachers, from right to left, on a single level. When the individual attempts to step down to the next level, he loses his footing and falls backward onto his back, left side, and left shoulder on the same level on which he had been walking. The second video is 20 second in length. The individual is walking toward the camera. It shows the individual walking on the bleachers and falling in the same manner described earlier, while attempting to step from one bleacher level to the bleacher level below. (RX1)

PHOTOS (PX9)

Petitioner offered into evidence six photographs of his left shoulder. The photos were admitted into evidence. Petitioner testified the photos were taken on 12/07/21 through 12/16/21. The photos show bruising to the posterior and anterior portions of his left shoulder. (PX9)

CONCLUSIONS OF LAW

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

Issue C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator concludes an accident did occur on December 3, 2021 that arose out of and in the course of Petitioner's employment by Respondent.

Acts that are incidental to and causally connected to an individual's employment are considered to be arising out of the employment if the individual was instructed by the employer to perform the acts or if the acts are ones the employee might reasonably be expected to perform incident to his assigned job duties. *McAllister v. IWCC*, 2020 IL 124848, 181 N.E.3d 656, 450 Ill. Dec. 309 (2020).

Petitioner testified, on December 3, 2021, he was setting up bleachers in the gym at the direction of the Respondent, as part of his job duties as a light maintenance custodian. The bleachers have backs that have to be raised up and put into position. As he was doing this, his feet got tangled up with one another, and he fell to his left side and hit his shoulder. This is supported by the videos, which show him walking along the bleachers, from right to left, on a single level. When Petitioner attempted to step down to the next bleacher level, he loses his footing and falls backward onto his back, left side, and left shoulder on the same level on which he had been walking.

Under *McAllister*, Petitioner's injury clearly arose out of his employment because the evidence established, at the time of the occurrence, Petitioner's injury was caused by one of the risks distinctly associated with his employment, performing his job duties in the bleachers and stepping down from one bleacher level to another.

Additionally, Petitioner's injury clearly occurred in the course of his employment because it occurred in the morning during his shift and in the bleachers were located in the Respondent's gymnasium.

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

The Arbitrator concludes Petitioner's current condition of ill-being is casually related to the accident of December 3, 2021.

In support of this conclusion the Arbitrator notes the following:

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th

Dist. 1994); *International Harvester v. Indus. Comm'n*, 442 N.E.2d 908 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

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). 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).

Dr. Simmons opined Petitioner suffered a traumatic recurrent tear as result of the 12/03/21 fall. This opinion was based on his review of the 01/27/22 left shoulder MRI, his review of the videos, his physical exam findings, and Petitioner's presentation and change in presentation after his injury. He believed the type of fall, as shown in the videos, could injure or aggravate the condition of a person's left shoulder and make it symptomatic. He opined the trauma caused the tear or exacerbated Petitioner's recurrent condition to worsen the left shoulder tear. Dr. Simmons believed, before 12/03/21, Petitioner's left shoulder was compromised, and prior to 12/03/21 Petitioner was receiving treatment for left shoulder impingement and degenerative changes. He testified when he initially examined Petitioner after the 12/03/21 fall, on 12/08/21, Petitioner had bruising and ecchymosis, which was consistent with the St. Elizabeth's Hospital contusion diagnosis and this was not present according to the records from before the fall. Dr. Simmons testified when he examined Petitioner, he saw a noticeable injury, bruising, a noticeable increase in weakness on physical exam, and an identifiable traumatic cause of a rotator cuff tear. Petitioner couldn't lift his arm above shoulder level or even up to 30 degrees after the injury. He testified the rotator cuff covers the entire front, superior and posterior aspect of the humeral head, so falling backward can cause anterior shoulder bruising if there's a tear to the rotator cuff or biceps tendon.

Dr. Kostman, on the other hand, did not believe Petitioner's condition of ill-being and need for medical treatment was related in any way to the 12/03/21 accident. He did not believe Petitioner required left shoulder restrictions as result of the 12/03/21 accident. The factors in support of his opinion, included Petitioner having a left shoulder pre-existing condition and the mechanism of injury, based on his review of the videos, not being consistent with the MRI findings and Dr. Simmons' interoperative findings. He did not believe falling backwards, as Petitioner did in the videos, would not cause bruising on the front of the shoulder.

Dr. Kostman didn't review anything indicating that a year before 12/03/21 work injury Petitioner was under any left shoulder restrictions given by a physician. It was his understanding, during the year prior to 12/03/21, Petitioner was working as a custodian full duty. He didn't review anything indicating Petitioner had refused to perform any job

duties asked of him due to left shoulder symptoms. He agreed signs of a rotator cuff tear included difficulty and pain when using the arm, and popping and clicking sounds or sensations when using the arm. He agreed, in some cases, signs of a rotator cuff tear included shoulder pain that grew worse at night, when resting the arm, and shoulder weakness and struggling to left items. He did believe a rotator cuff repair, like the one performed by Dr. Simmons, was a treatment option, despite having a poor prognosis for healing.

The Arbitrator notes, in the year prior to December 3, 2021, Petitioner had not suffered any injuries specifically to his left shoulder. He worked full duty doing light maintenance. He did not at any time refuse to perform any duties asked of him due to left shoulder symptoms. In the year prior to the date of the work-related injury he did not undergo a left shoulder MRI and no physician had recommended a third left shoulder surgery.

The Arbitrator also notes Dr. Simmons has been Petitioner treating physician since 2005. Since the date of the second left shoulder surgery, he was treating Petitioner for left shoulder impingement syndrome. While Petitioner did receive several injections to his left shoulder in 2021 before date of injury, he was not given and was not under any physical restrictions by a physician for his left shoulder.

Furthermore, on November 5, 2021, Dr. Simmons's physician's assistant, when administering an injection to Petitioner's left shoulder for left shoulder impingement syndrome, did not chart any bruising to the posterior or anterior parts of the left shoulder.

After the fall on December 3, 2021, Petitioner had a significant change in left shoulder symptomatology, including severe left shoulder pain and loss of range of motion. He felt a tugging and pulling sensation in the shoulder, which he did not have prior to the fall. He had significant bruising to the posterior and anterior parts of the left shoulder, as show in the photographs, the ER records, and Dr. Simmons' 12/08/21 physical exam. Based on this change in presentation, Dr. Simmons ordered a left shoulder MRI and kept Petitioner off work, and ultimately performed surgery to repair a recurrent traumatic tear of the left rotator cuff.

The Arbitrator finds the opinion of Dr. Simmons regarding causality to be more persuasive and creditable than that of Dr. Kostman. The record supports a finding of causal connection of ill-being under the "chain of events" as the December 3, 2021 fall aggravating the pre-existing condition of Petitioner's already compromised left shoulder.

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

Upon 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). 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).

Based upon the above findings as to causal connection the Arbitrator finds Petitioner is entitled to reasonable and necessary medical care, including the surgery performed by Dr. Simmons. Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Exhibit 7 that were incurred on and after 12/03/21 for Petitioner's left shoulder, pursuant to the medical fee schedule or PPO agreement (whichever is less), as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit.

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

The law in Illinois holds that "[a]n 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." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Based on the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits. Respondent shall therefore pay temporary total disability benefits for the period 12/04/21 through 12/08/22, representing 52 3/7 weeks.

Issue L: What is the nature and extent of Petitioner's injury?

Pursuant to Section 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 Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treatment medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No physician gave an opinion regarding an AMA rating. Based on this, the Arbitrator gives no weight on this factor.

(ii) **Occupation.** Petitioner is under significant permanent restrictions. The Respondent has not accommodated these restrictions. He cannot return

to work as a custodian, his usual and customary line of employment. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** Petitioner was 61 years old on the date of the injury. He several work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** Petitioner is unable to return to work as a custodian. T Therefore, the Arbitrator places substantial weight on this factor.

(v) **Disability.** Petitioner's testimony and corroboration by the medical records, particularly those of Dr. Simmons, show he continues to have substantial left shoulder symptoms because of the 12/03/21 injury. He has significant permanent restrictions. He still takes over-the-counter pain medication for the left shoulder symptoms. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds Petitioner's permanent partial disability to be 25% body as a whole under Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019402
Case Name	Conrado Arreola v. Innovated Staffing
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0424
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel J Levato

DATE FILED: 9/4/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Conrado Arreola,

Petitioner,

vs. NO: 20 WC 19402

Innovated Staffing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, prospective medical care, 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 19, 2024, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 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.

September 4, 2024

MP:yl
o 8/29/24
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	20WC019402
Case Name	Conrado Arreola v. Innovated Staffing
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel J Levato

DATE FILED: 1/19/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CONRADO ARREOLA
Employee/Petitioner

v.

INNOVATED STAFFING
Employer/Respondent

Case # **20** WC **19402**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva, IL**, on **12/14/2023**. 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **8/6/2020**, 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 $**n/a**; the average weekly wage was $**580.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **3** dependent children.

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

Respondent shall be given a credit of $**1,097.70** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,088.00 (medical)** for other benefits, for a total credit of $**3,185.70**.

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

ORDER

Respondent shall pay the medical bills identified in Petitioner's Exhibits 3, 4, and 5, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule, as set forth in the Conclusions of Law incorporated herein,

Respondent shall pay for the surgery recommended by Dr. Chhadia consisting of left shoulder subacromial decompression including all reasonable and necessary attendant care following the surgery pursuant to Sections 8.2 and 8(a) of the Act, as set forth in the Conclusions of Law incorporated herein,

Respondent shall pay TTD Benefits from August 7, 2020 through August 29, 2023, pursuant to 8(b) of the Act subject to a credit of $1,097.70 for TTD Respondent previously paid, as set forth in the Conclusions of Law incorporated herein,

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.

By: /o/ *Frank J. Soto* **JANUARY 19, 2024**
Arbitrator

Procedural History

This case was tried on December 14, 2023 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues were causation, unpaid medical bills, TTD benefits and prospective medical treatment. (Arb. Ex. #1).

Findings of Fact

Conrado Arreola (hereinafter referred to as "Petitioner") testified that on August 6, 2020, he was employed by Innovated Staffing (hereinafter referred to as "Respondent"). (T11). Petitioner worked as a forklift driver for Respondent. (T.12). The company manufactures soap. (T12). Petitioner described the workplace as a warehouse with machines to process chemicals. (T.12).

On August 6, 2002, Petitioner started work at approximately 6:00 a.m. On that date, Petitioner was driving a forklift when a coworker opened a 'tote' in a way that caused fluid to explode. (T13). Petitioner believed the explosion involved a reaction between acid and alcohol. (Id). A video was submitted into evidence which shows the explosion. (Px.7). Following the explosion, Petitioner got out of the forklift and heard his coworker, Gregorio, who had fallen from a ladder. (T.15). Petitioner testified that Gregorio was on the ground flailing his arms around. Petitioner testified to grabbing one of Gregorio's hands and he tried to pull him with all of his might to get him out of the area. (T.15). Petitioner testified he had to pick Gregorio up from behind and pull him toward to his chest to drag him outside. (T.16). Petitioner testified to pulling Gregorio sideways to get him out the door. (T.19). Petitioner testified he had to use as much force as needed to get Gregorio out the door because he was desperate. (T.19). Petitioner testified that he had to lift Gregorio off the ground first using his left arm before using both arms. (T.20).

After exiting the building, Petitioner and Gregorio were taken to the front of the building by another coworker who had also escaped the blast. (T.16). Petitioner testified Gregorio tried to clean off the chemicals with water from a hose but when the water encountered the chemicals he started to scream. (Id.). Petitioner testified he had chemicals on his right arm and near his right eye. (T.17).

Petitioner testified he was taken to Delnor Hospital by ambulance. (T.20). The medical records stated Petitioner received "*Chemical Exposure (to bilateral forearms, face, right eye*)." (Px.1, p. 5). The medical records Petitioner was exposed to a combination of furfuryl alcohol

and didobylbenzylsulfonic acid. (Px.1, p. 6). Petitioner's physical examination was focused upon Petitioner's burns. (Px.1, p. 9). The medical records indicate a tarry substance on Petitioner was removed and after that Petitioner was discharged with instructions to seek follow up care. (Px.1, p. 10). Petitioner was prescribed hydrocodone and bacitracin. (*Id.*).

Petitioner sought additional medical care at the Loyola Hospital burn unit. (T.22, Px2). At Loyola Hospital Petitioner was prescribed gabapentin. (Px.2, p. 11). On August 14, Petitioner was referred to ophthalmology and for psychotherapy. (Px.2, p. 26). Petitioner also tested positive on a PTSD. (Px.2, p. 43). Petitioner also received an ophthalmology consult resulting in the recommendation for a brain MRI. (Px.2, p. 61). At that time, Petitioner was experiencing double vision and a constricted field of vision. (Px.2, p. 61). By October 2, 2020, Petitioner underwent the brain MRI which was negative for any pathology. (Px.2, p. 76). Petitioner was referred to neuro-ophthalmology for issues involving his right eye. (Px.2, p. 76). Petitioner sought additional treatment for his eye at Aurora Eye Clinic. Petitioner was cleared to return to work for his eye issues on November 20, 2020. (Px.3, p. 12).

On September 1, 2020, Petitioner presented to RNS Physical Therapy complaining of bilateral shoulder pain since a work accident. (Px.4, p. 42). The medical records contain the following passage, "*He states his pain level has increased because he finished off his prescribed medication*." (Id.). At that time, Petitioner rated his pain level as 6-7 out of 10. (*Id*.). An examination taken at that time showed positive bilateral supraspinatus and impingement signs greater on the left. (Px.4, p. 45). Petitioner attended physical therapy at RNS from September 1, 2020 through July 6, 2021. Petitioner testified the therapy wasn't particularly helpful. (T.25).

On October 5, 2020, Petitioner presented to Dr. Ankur Chhadia at Suburban Orthopedics (Px.5, p.101). Petitioner provided a history similar to his trial testimony. Dr. Chhadia noted pressure-type pain in the right shoulder and an achy throbbing pain in the left shoulder. Petitioner reported his pain level as 7 out of 10. The examination noted positive Neer and Hawkins impingement tests bilaterally, positive cross arm adduction test on the left and the Speed's test was positive bilaterally. (Px.5, p. 102-103). At that time, Dr. Chhadia ordered a left shoulder MRI and he took Petitioner off work. (*Id*.). Petitioner underwent the left shoulder MRI October 14, 2020 which the radiologist noted mild supraspinatus tendinopathy and subjacent enthesopathy without frank rotator cuff or labral tear. (Px.5, p. 90-91).

On October 19, 2020, Petitioner followed up with Dr. Chhadia who administered a steroid injection into the left shoulder subacromial space. (Px.5, p. 83). Petitioner returned to Dr. Chhadia on November 16, 2020 and, at that time, Dr. Chhadia issued work restrictions of no lifting greater than 10 pounds and he prescribed additional therapy. (Rx.5, p. 70-74). Petitioner returned to Dr. Chhadia on November 23, 2020 reporting that no light duty work was available. (Px.5, p. 65). At that time, Dr. Chhadia recommended surgery consisting of a left shoulder subacromial decompression, distal clavicle excision, and open biceps tenodesis. (Px.5, 68).

On August 10, 2021, Petitioner was examined by Dr. Brian McCall, pursuant to Section 12 of the Act. Dr. McCall reviewed Petitioner's medical records. Dr. McCall's examination noted a positive Hawkins on the right but he did not report the left shoulder exam results for the for the O'Brien or Speeds tests but, he believed, those tests were negative because those tests were negative on the right side. Dr. McCall also reviewed the MRI which, he said, showed no rotator cuff or labral tears. Dr. McCall opined Petitioner was not a surgical candidate. Dr. McCall also opined that Petitioner could work full duty. Dr. McCall noted symptom magnification and he diagnosed left and right shoulder strains as a result of Petitioner's work accident.

Petitioner, who is right-handed, testified he started working for a different employer on August 30, 2023. (T.48-49, 51). Petitioner testified that at his new job he occasionally drives a forklift and lifts boxes weighing no more than five pounds onto a pallet. (T.27, 49). Petitioner testified he doesn't lift anything overhead and that he experiences shoulder pain turning the steering wheel of a forklift. (T.28).

Testimony of Dr. Ankur Chhadia, treating physician

Dr. Ankur Chhadia testified on March 14, 2022. Dr. Chhadia obtained his undergraduate from Northwestern University in biomedical engineering and he attended medical school at University of Illinois at Chicago. Dr. Chhadia is board certified in orthopedic surgery and orthopedic sports medicine and his practice focuses on shoulders and knees. (Px.6, p. 5-6).

Dr. Chhadia testified that he first examined Petitioner on October 5, 2020 and Petitioner complained of bilateral shoulder pain since his work injury of August 6, 2020. Petitioner reported that a chemical explosion occurred at work and he jumped out of a forklift and tried to pick up a coworker who was on the floor and he removed the coworker from the explosion site. Petitioner reported immediate burring on his forearm but after being weaned off his pain

medications that he experienced bilateral shoulder pain. (Px.6, p. 8). At that visit, Petitioner reported achy, throbbing left shoulder radiating pain. Petitioner rated his pain level as 7 out of 10. (Px.6, p. 9).

Dr. Chhadia conducted an examination which showed positive impingement signs, positive Neer, Hawkings, and Speeds tests. Dr. Chhadia noted weakness in the left shoulder rotator cuff, in the supraspinatus, with tendon and superior labrum pathology bilaterally. (Px.6, p. 7). Dr. Chhadia testified the left rotator cuff tendon had a type of tendinitis or inflammation consistent with an injury or repetitive use. Dr. Chhadia reviewed the October 14, 2020 MRI which, he said, showed no frank rotator cuff or labral tear but did show supraspinatus tendinopathy and enthesopathy. (Px.6, p. 10). Dr. Chhadia testified enthesopathy involves swelling in the sheath around a tendon. At that time, Dr. Chhadia administered a steroid injection. (Px.6, p. 12).

Dr. Chhadia testified Petitioner returned on November 16, 2020 reporting his left shoulder was worse but that therapy and injection helped a little. At that time, Dr. Chhadia recommended additional therapy and anti-inflammation medications. (Px.6, p. 13). Dr. Chhadia testified Petitioner returned on November 23, 2020 reporting his left shoulder pain was worsening. At that time, Dr. Chhadia recommended left shoulder arthroscopic surgery consisting of a subacromial decompression, distal clavicle excision and open biceps tenodesis. (Px.6, p. 14). Dr. Chhadia found no evidence of symptom magnifications. (Px.6, p. 21).

Dr. Chhadia opined Petitioner's August 6, 2020 injury caused his left shoulder condition and need for surgery. (Px.6, p. 17). Dr. Chhadia testified the surgery was recommended to address Petitioner's continued pain, weakness, and difficulty lifting things at or above the shoulder level. (Px.6, p. 20). Dr. Chhadia recommended the surgery because Petitioner continues to have pain and difficulty with lifting and functioning with the arm to his full pre-injury capacity. In support of his surgical recommendation, Dr. Chhadia testified Petitioner had positive Speed's, Neer's and Hawking's tests. Dr. Chhadia said the positive Speed's test shows a biceps condition which correlates with Petitioner's anterior shoulder pain and the positive Hawking's tests shows subacromial bursitis, subacromial impingement and rotator cuff tendinopathy which correlates with Petitioner's lateral and posterior shoulder pain. (Px.6, p. 22). Dr. Chhadia testified Petitioner had positive exam findings and positive MRI findings which correlate to his injury, subjective and objective findings and failed conservative treatment. (Px.6,

p.34). Dr. Chhadia further testified he based his opinions upon Petitioner's history, the sequence of events, continued pain, the correlating exam and treatment, and Petitioner's lack of preexisting shoulder issues. (Px.6, p. 29).

Testimony of Dr. Brian McCall, Section 12 examiner

Dr. McCall attended his undergraduate degree at Vanderbilt University and attended medical school at Georgetown University. Dr. McCall is board certified in orthopedic surgery and sports medicine. (Rx.2, p. 4-5).

Dr. McCall examined Petitioner on August 9, 2021 and he issued a report on August 10, 2021. Dr. McCall testified that Petitioner reported working as a forklift operator when an explosion occurred and, at that time, he jumped off the forklift and reached down to help a coworker out of the room. Dr. McCall testified it was his understanding that Petitioner pulled the coworker up with both hands and he lifted the coworker off the ground. (Rx.2, p. 20). Petitioner further reported feeling a pull or strain in both shoulders at the time he pulled the coworker up but that his shoulder pain developed over 3-4 weeks after he stopped taking his pain medicine. (Rx.2, p. 7-8).

Dr. McCall's exam noted full range of motion, no signs of instability, negative relocation test, no pain in the acromioclavicular joint. (Rx.2, p. 12-13). Dr. McCall testified the Spurling's test showed some irritation in the cervical spine while the Hawkins test elicited pain that, he believed, was unrelated to Petitioner's work injury. Dr. McCall indicated the O'Brien and Speed's tests were negative. Dr. McCall reviewed the MRI which, he said, showed mild supraspinatus tendinosis without tearing. (Rx.2, p. 16-18).

Dr. McCall testified Petitioner developed shoulder pain weeks after the injury which is inconsistent with a traumatic injury. (Rx.2, p. 21). Dr. McCall said a sprain would typically have immediate pain and, with mild strains, the pain would get worse over the next 24-48 hours. Dr. McCall characterized Petitioner's injury as a potential strain. (Rx.2, p. 21).

Dr. McCall testified he disagrees with the surgical recommendation because Petitioner's MRI was essentially normal without any tears of the rotator cuff or labrum. Dr. McCall also testified that he didn't see any biceps pathology. (Rx.2, p. 24). Dr. McCall testified Petitioner had a very normal shoulder and that his complaints do not correlate to any pathology. (Rx.2, p. 26).

Dr. McCall opined Petitioner sustained a strain of the shoulder based upon the mechanism of injury and the objective exam findings. (Rx.2, p. 28). Dr. McCall testified he doesn't believe Petitioner's work injury structurally injured his shoulder but that the mechanism of injury, pulling someone up, could cause pain for a period of time. (Rx.2, p. 29). Dr. McCall testified it was possible Petitioner strained his shoulder when he helped his coworker off the ground but, he opined, Petitioner's current condition was not related to his work accident. (Rx.2, p. 30). Dr. McCall also testified the number of treatment visits was much more than expected for a typical shoulder strain. (Rx.2, p.30).

On cross examination Dr. McCall acknowledged his report did not reference performing some tests on the left shoulder but that he assumes he performed those tests and that those tests were negative because he would have listed positive tests in his report. (Rx.2, p. 33). Dr. McCall also acknowledged the mechanism of injury could be sufficient to cause pre-existing asymptomatic rotator cuff tendinopathy to become symptomatic which could cause a temporary exacerbation of symptoms which should resolve. (Rx.2, p. 37). Dr. McCall also acknowledged narcotics could reduce or eliminate shoulder pain since those drugs are designed to dull one's sense of pain. (Rx.2, p. 38).

Additional Testimony from Petitioner

Petitioner testified he had no prior left shoulder injuries before this accident. (T.29). Petitioner testified he never received any medical treatment for his left shoulder prior to his work accident. (*Id*.). Petitioner testified he would like to undergo the recommended surgery. (T.25). Petitioner testified that his shoulder is the same and it hurts when he moves his left arm. (T.26). Petitioner said it feels like stabbing in his shoulder when he moves his arm. (T.26). Petitioner testified to difficulty sleeping, doing chores around the house and that his arm goes numb. (T.26).

The Arbitrator finds Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F) Whether Petitioner's current condition of ill-being is causally related to his injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease 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 a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held that "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, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id*. at 64.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that his current left shoulder condition is causally related to his work injury of August 6, 2020, as set forth more fully below.

The Arbitrator finds the opinions of Dr. Chhadia more persuasive than the opinions of Dr. Mccall. Dr. Chhadia acknowledged the MRI didn't show a frank rotator cuff tear but that he believes Petitioner's left shoulder issues involves ongoing impingement, tendinopathy, and bicipital tenosynovitis. Dr. Chhadia testified these conditions were consistent with the MRI

findings and the orthopedic testing. Dr. Chhadia stated, "*He has a clear shoulder condition that requires further treatment to improve and optimize his impairment, disability, pain, dysfunction, so it's my opinion to a reasonable degree of medical and surgical certainty that his left shoulder condition and the need for surgery due to failed conservative treatment for greater than three months initially and now greater well over a year have resulted from this injury*" (Px6, p. 18). Dr. Chhadia said the positive Speed's test indicates a biceps condition which correlated with Petitioner's anterior shoulder pain and the positive Neer's and Hawking's tests indicate subacromial bursitis, subacromial impingement and rotator cuff tendinopathy which correlated with Petitioner's lateral and posterior shoulder pain. (Px.6, p. 22). Dr. Chhadia testified the surgery is needed because Petitioner continues to have pain and difficulty with lifting and functioning with the arm to his full pre-injury capacity. Petitioner has a positive exam findings and positive MRI finding which correlate to his injury, subjective and objective findings and failed conservative treatment. (Px.6, p.34).

Dr. McCall opines that Petitioner is fine because the MRI did not show a rotator cuff tear. The Arbitrator notes Dr. McCall doesn't address the positive orthopedic tests and Petitioner's ongoing complaints. Dr. McCall acknowledged that Petitioner's work accident caused a strain that could aggravate tendinopathy or tendinitis causing it to become symptomatic but it would have been a temporary exacerbation of symptoms which should had resolved. (Rx.2, p. 37). The Arbitrator notes that Dr. McCall doesn't address what was Petitioner's baseline level and when Petitioner condition returned to baseline. Based upon the evidence submitted at trial, Petitioner's left shoulder has not returned to its pre-accident condition.

The Arbitrator further finds Petitioner also sustained his burden of proof under a chain-of-events theory. Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held that "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, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident

may be sufficient to sustain an award." *Id*. at 64. Petitioner was working full duty prior to his August 6, 2020 work accident. After that accident, Petitioner was taken off work and eventually placed on light duty. The Arbitrator notes that Petitioner' version of the accident was uncontradicted and his testimony was not impeached. As such, under the chain of events theory Petitioner's work accident creates a causal nexus between his current condition and his work accident.

With respect to issue "J" has Respondent paid all appropriate changes 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).

The Arbitrator incorporates the Conclusions of Law in Section F into this Section. Respondent denied paying the medical bills based upon liability and not that the treatment was unreasonable or unnecessary. (Arb. Ex. 1). As stated above, the Arbitrator found Petitioner's current left shoulder condition causally related to his work accident. As such, the Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment rendered was reasonable and necessary to cure or alleviate his condition. The Arbitrator notes that Dr. Chhadia opined Petitioner's medical treatment was reasonable and necessary. The Arbitrator notes Dr. McCall discussed some of the treatment being excessive for a strain but he did not identify which treatment, if any, was unreasonable or unnecessary. As such, Respondent shall pay the medical bills identified in Petitioner's Exhibits 3, 4, and 5, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

With respect to issue "K", whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows*:*

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. Procedures or treatment that have been prescribed by a medical service provider are "incurred" within the meaning of the statute, even if they have not yet been paid. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705, 710 (Ill. App. 2nd Dist. 1997).

The Arbitrator incorporates the Conclusions of Law in Sections F and J into this Section. Respondent disputed the surgical recommendation of Dr. Chhadia. As stated above, the Arbitrator found the opinions of Dr. Chhadia to be more persuasive than the opinions of Dr. McCall. As such, the Arbitrator further finds Petitioner proved by the preponderance of the evidence that he is entitled to the prospective medical care recommended by Dr. Chhadia. As such, Respondent shall pay for the surgery recommended by Dr. Chhadia consisting of left shoulder subacromial decompression including all reasonable and necessary attendant care following the surgery pursuant to Sections 8.2 and 8(a) of the Act.

With Respect to Issue (L) Whether Petitioner is entitled to TTD benefits, the Arbitrator Finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner seeks TTD benefits from August 7, 2020 through August 29, 2023. (Arb. Ex. #1). The Arbitrator incorporates the Conclusions of Law in Sections F and J into this Section. Regarding the entitlement to TTD benefits the dispositive question involves whether Petitioner's condition stabilized and, if so, when. The Arbitrator finds Petitioner's left shoulder condition hasn't stabilized since surgery has been recommended. Respondent paid TTD benefits from August 7, 2020 through August 27, 2020 totaling $1,097.70. (Arb. Ex. 1). Dr. Chhadia took Petitioner off work and subsequently issued light duty restrictions. Based upon the evidence submitted at trial, Respondent did not accommodate Petitioner's light duty restrictions and Petitioner did not find employment within his work restrictions until August 30, 2023. No evidence was presented at trial showing that Petitioner worked prior to August 30, 2023. The Arbitrator finds Petitioner has proven by the preponderance of the evidence that he is entitled to TTD benefits and, as such, Respondent shall pay TTD Benefits from August 7, 2020 through

August 29, 2023, pursuant to 8(b) of the Act subject to a credit of $1,097.70 for TTD Respondent previously paid. Respondent also paid an additional sum of $2,088.00 entitled "other benefits" but the record is unclear regarding the nature of those payments but, based upon the stipulation of the parties, those benefits were not TTD benefits.

By: /o/ *Frank J. Soto* January 18, 2024
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC003404
Case Name	Quantrell Strickland v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0425
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Elizabeth Meyer, Barrett Long

DATE FILED: 9/4/2024

/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

QUANTRELL STRICKLAND,

Petitioner,

vs. NO: 23 WC 3404

CTA,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 4, 2024 is hereby affirmed and adopted.

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

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

September 4, 2024

/s/ *Christopher A. Harris*
Christopher A. Harris

CAH/pm
d: 8/29/24
052

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC003404
Case Name	Quantrell Strickland v. Chicago Transit Authority
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Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Elizabeth Meyer, Barrett Long

DATE FILED: 1/4/2024

THE INTERET RATE FOR THE WEEK OF JANUARY 3, 2024 5.04%

/s/ Jeffrey Huebsch, Arbitrator

Signature

Q. Strickland v. C.T.A., 23 WC 003404

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

Quantrell Strickland
Employee/Petitioner
v.
Chicago Transit Authority
Employer/Respondent

Case # **23** WC **003404**

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 **10/27/2023**. 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 **2/1/2023**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**61,856.00**; the average weekly wage was $**1,546.40**.

On the date of accident, Petitioner was **41** 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. Medical benefits denied.

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

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

ORDER

Respondent shall pay reasonable and necessary medical expenses of $2,914.65, in accordance with the Medical Fee Schedule, as provided in Sections 8(a) and 8.2 of the Act, and as is provided below.

Because the Arbitrator finds that Petitioner failed to prove that he sustained accidental injuries as a result of the February 1, 2023 work accident, his claim for medical expenses beyond the ambulance and emergency room, TTD and PPD 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.

JANUARY 4, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner was employed by Respondent as a bus operator. Petitioner testified that on 2/1/2023 he was injured when a car rear-ended the bus while he was letting passengers off the bus. He testified he injured his low back, neck, and right knee. (Tr. 10-11).

Petitioner was taken by Cicero Fire Department ambulance to the emergency room at Loretto Hospital after the accident. (PX1, PX3). The Cicero FD records show that Petitioner was a belted driver and he complained of low back pain. He denied neck pain. The ambulance transferred care to the ER at 16:53. (PX1). Petitioner testified that he complained of low back, neck, and right knee pain at Loretto. (Tr. 11) The Loretto ER records (beginning at 17:23) only mention complaints of low back pain to the left and note he specifically "denies other pain or injury." (PX3, pp. 1, 7, 24). The Loretto records document that Petitioner specifically denied any neck or leg pain. (PX3 at 24). The discharge diagnosis was: Acute lumbar strain, MVC. Petitioner was given medication and told to follow up with his PCP. (PX3 at 26). Petitioner was discharged at 01:23 on February 2, 2023. (PX 3 at 27).

Petitioner next sought treatment with Illinois Orthopedic Network ("ION") on February 2, 2023. At that visit, he complained of pain in his neck and his 9/10 lower back, left. (PX 5, at 5). The diagnosis on February 2 was Lumbago and Cervicalgia. PT, medications and off work status was ordered. Petitioner's testimony was that he also complained of right knee pain at the first ION visit. (Tr. 12). This is not reflected in the record from that date. He did not mention knee pain to Dr. Chunduri until February 23, 2023, although he told the doctor at that visit that his right knee started hurting the day after the first visit and that he "hit the dash." (PX5 at 10). Dr. Chunduri diagnosed him with lumbar and cervical strains and a patella contusion at the February 23 visit. Interestingly, the PE revealed some patellar tenderness, but no evidence of bruising, swelling or effusion and normal range of motion was documented, with an absence of any mention of a limp. Petitioner's next visit at ION was March 27, 2023, when he complained of pain to the neck and low back with symptoms into his right knee and left hip. It is noted that he had not complained about the left hip prior to this date, nor did he mention it at trial. Petitioner testified he had completed two weeks of physical therapy, but no records of therapy were submitted at trial. The Arbitrator notes that Respondent's Section 12 examiner, Mark Levin, apparently reviewed PT records from February of 2023. (RX1). Petitioner underwent lumbar and cervical MRI studies, as scripted by Dr. Chunduri. The studies are consistent with degenerative changes. (PX5 at 32-35). Petitioner's final visit with Dr. Chunduri was on May 4, 2023. He told the doctor he "no longer has any pain" and only some stiffness in the neck and low back. On that date, he was released to full duty and was discharged from

treatment. The final diagnosis was: cervical spondylosis/cervical strain and lumbar spondylosis/lumbar strain. (PX5 at 36).

At trial, Petitioner testified he still had some stiffness in his low back, after sitting for a long time, a little stiffness in his neck and his right knee was okay. (Tr. 15).

Petitioner also testified about the bus seat (air seat-air ride?), which is described by the Arbitrator and agreed to by the Petitioner as "like a shock absorber." He went on to say the difference between the "shock absorber from the air seat compared to this rear-end collision" was the jolt was unexpected, "like my body was more relaxed." Tr. 19-20).

Petitioner saw Dr. Mark Levin for a Section 12 examination at the request of Respondent on July 11, 2023. (RX1). Dr. Levin took a history from Petitioner of a car making contact with the rear of the bus, which forcibly bent him forward and his right knee hit the steering wheel. He also told Dr. Levin he was told "what to do" by a friend and treated at ION Clinic and at Bone & Joint Clinic for therapy. Dr. Levin commented on chiropractic records, but there were no records from physical therapy or of any chiropractic treatment submitted at trial. Petitioner told Dr. Levin he treated at ION until 7/2/2023, having returned to work in May and then going off work again. This is not consistent with Petitioner's testimony and the exhibits entered at trial, including the RFH form. Petitioner further told Dr. Levin he had pain in his neck, trapezius, low back, and left hip, but no right knee pain. Dr. Levin did a physical examination, reviewed the MRI films, reviewed medical records, and reviewed a video which showed the MVC accident on 2/1/2023. After review of the video, Dr. Levin noted as follows: "when this [a red vehicle bumping the back of the bus] occurs, the passengers are leaving the bus with no disruption of their ability to leave the bus or motion." (RX1 at 4). He goes on to state, "the motion of Mr. Strickland in the driver's seat does not show any motion to the lumbar spine or him hitting the knee on the dashboard. There is no excessive motion to his cervical spine or lumbar spine area. The motion that occurs at the time of the vehicle bumping the back of the bus is no different than the motion . . . as he drives down the road." (RX1 at 4).

Dr. Levin's description of the video is consistent with the Arbitrator's careful review of the video at trial and in preparation of this Decision. (RX2)

Dr. Levin gives a diagnosis of subjective reports of discomfort inconsistent with objective pathology caused or aggravated by an alleged work injury on 2/1/2023. He noted any MRI findings were chronic and preexisting with no aggravation from the incident on 2/1/2023. He went on to state any complaints were subjective and out of proportion, that no chiropractic care or medications were needed for any alleged work injury on 2/1/2023, that there was in fact no need for any prescriptions as a result of any alleged injury on 2/1/2023, that Petitioner did not require any further treatment, and that he was capable of full duty work. (RX 1).

At trial, there was a video shown by Respondent which purported to show the incident on 2/1/2023 from multiple cameras in or on the bus. Petitioner did corroborate what was shown on the video and testified it accurately showed what happened on that date and time. (Tr. At 23-24). Between the times of 15:52:27 and 15:53:20, the Petitioner appeared to be driving down the road before stopping to let passengers off the bus, consistent with his testimony. At the end of that specific time frame, Petitioner took a phone out of his pocket, and per another camera view, a red truck strikes the bus around 15:52:49. While watching this time period on the video, Petitioner was not able to pinpoint where the incident happens when watching camera angle 1, which was directly pointing at him.

CONCLUSIONS OF LAW

The Arbitrator adopts the 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 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 elements of their claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 235 (1980)), including that there is some causal relationship between their employment and their 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)

C. & F. Did Petitioner suffer injuries in an accident on 2/1/2023? Is Petitioner's condition of ill-being causally related to the incident on 2/1/2023?

The evidence establishes that Petitioner was the driver of Respondent's bus on 2/1/2023 and the bus was struck by a red Blazer SUV at about 3:52 pm. An accident occurred.

At issue in this case is whether Petitioner suffered injuries on 2/1/2023 and whether Petitioner's current condition of ill-being as relates to his right knee, neck, and low back is causally related to the 2/1/2023 accident.

Petitioner's testimony is found to be not credible. This, along with the opinions of Dr. Levin and the bus video leads the Arbitrator to find that Petitioner did not sustain accidental injuries which arose out of and in the course of his employment by Respondent on February 1, 2023. As such, there can be no condition of ill-being related to the accident of February 1, 2023 (no injury sustained = no causally related condition of ill-being).

Petitioner testified that he injured his right knee, neck and low back as a result of the accident and he was treated for these injuries at the ER at Loretto Hospital. The ambulance records and the Loretto records do not corroborate Petitioner's testimony. (PX1-low back pain, no neck pain, no mention of any knee pain; PX 3-low back pain, no neck pain, no mention of knee pain). Neck pain was not noted until the first visit at ION (hours after being discharged from Loretto ER with no neck complaints or findings). Knee pain was not documented until February 23, some 3 weeks after the accident. Petitioner's testimony about his injuries is not corroborated by the medical records. The testimony is not credible and is fatal to Petitioner's claim.

The video does not show any impact of any kind (Petitioner does not move and neither do any of the passengers) and certainly does not show Petitioner's right knee striking anything, or his neck moving in response to the blazer striking the bus.

Dr. Levin's opinions are found to be persuasive regarding causation and the absence of any injury to Petitioner as a result of the accident.

Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment by Respondent on February 1, 2023 and failed to prove a causal connection between any alleged injuries and his current condition of ill-being, if any.

The claim for compensation is, therefore, denied.

J. Are the medical bills outstanding owed by Respondent?

As the Arbitrator finds Petitioner did not sustain injuries as a result of the 2/1/2023 accident, only the ambulance bill (PX 2, $1,298.50) and the ER bill (PX 4, $2,013.00) are awarded, in accordance with Sections 8(a) and 8.2 of the Act. Thes bills should be paid pursuant to the Medical Fee Schedule as put forth in Sections 8(a) and 8.2 of the Act and shall be paid directly to the providers. Respondent is entitled to a Section 8(j) credit for the Loretto bill and the Town of Cicero bill (if paid by Cigna). Respondent is obliged to hold Petitioner safe and harmless for any 8(j) credit that it asserts.

No other bills are awarded.

K. Is Petitioner entitled to TTD benefits?

As the Arbitrator finds Petitioner did not sustain injuries as a result of the 2/1/2023 accident, no TTD is awarded.

L. What is the nature and extent of the injury?

As the Arbitrator finds Petitioner did not sustain injuries as a result of the 2/1/2023 incident, no award for PPD is made.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC038804
Case Name	Josefina Zavala v. Cushioneer Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0426
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jose Rivero
Respondent Attorney	Miles Cahill

DATE FILED: 9/4/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Josefina Zavala,

Petitioner,

vs. NO: 13 WC 38804

Cushioneer 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 causal connection, benefit rates, medical expenses, temporary total disability, prospective medical care, 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, with the change made below.

While the Commission affirms the Arbitrator's award of medical expenses to be paid by Respondent, the Commission notes the decision omits an order of credit for amounts paid. The Commission writes additionally to award Respondent credit for all amounts previously paid.

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 filed on February 28, 2024 is hereby affirmed and adopted with the changes stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under Section 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 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.

September 4, 2024

o: 8/29/24
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	13WC038804
Case Name	Josefina Zavala v. Cushioneer Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Jose Rivero
Respondent Attorney	Miles Cahill

DATE FILED: 2/28/2024

/s/Frank Soto, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 27, 2024 5.13%

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Josefina Zavala
Employee/Petitioner

Case # **13WC038804**

v.

Consolidated cases: _____

Cushioneer, 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 **Frank Soto,** Arbitrator of the Commission, in the city of **Geneva, Illinois**, on **December 18, 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 _____

On **11/14/2013,** 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 $**18,720.00**; the average weekly wage was $**360.00**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **3** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $330.00/week for 44-3/7 weeks, commencing November 30, 2016 through October 6, 2017, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of NA Partners in Anesthesia in the amount of $11,332.25, Illinois Orthopedic Network in the amount of $32,862.73, Kishwaukee Hospital in the amount of $3007.00, Dr. Mark Sokolowski in the amount of $82,445.00; Dreyer Medical Clinic: $712.00; Neuromonitoring Services of America in the amount of $5948.00; Archer Open MRI in the amount of $2,155.00; American Diagnostics MRI in the amount of $1,700.00; Midwest Orthopedic Institute in the amount of $8,735.74; Prescription Partners in the amount of $9,264.10; Dekalb Clinic in the amount of $157.00; Anesthesia Associates in the amount of $984.00as provided in Sections 8(a) and 8.2 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner permanent partial disability benefits of $330/week for 175 weeks, because the injuries sustained caused the 35% loss of the person as a whole, as provided in Section 8(d)2 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner compensation that has accrued from November 14, 2013 through December 18, 2023 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.

By: /o/ *Frank J. Soto*
Arbitrator

February 28, 2024

Procedural History

This case proceeded to trial on December 18, 2023. The issues in dispute are whether Petitioner's current condition of ill-being is causally connected to her injury, whether Respondent is liable for medical bills and TTD benefits as well as the nature and extent of Petitioner's injury. (Arb. Ex.#1). Subsequent the trial, it was discovered that Respondent's Exhibit List incorrectly identified 14 exhibits. The parties forwarded a stipulation acknowledging the correct number of exhibits Respondent submitted was 13. (Arb. Ex.#2).

Findings of Fact

Josefina Zavala (hereinafter referred to as "Petitioner") testified she worked for Cushioneer, Inc. (hereinafter referred to as "Respondent") as a machine operator. (T. 11). Petitioner testified, on November 14, 2013, she was walking backwards when she tripped over a pallet falling onto her back. (T. 11). Petitioner experienced an immediate onset of low back pain and, after reporting the incident, she was sent to DeKalb Clinic. (T. 12).

At the DeKalb Clinic Petitioner reported as she was walking backwards, she tripped and fell. At that time, Petitioner complained of pain radiating down her right leg that was becoming more severe. (Px.1). The examination noted pain with motion and tenderness to the right lumbar region. Petitioner was assessed with low back radiating pain into the right leg. Petitioner was prescribed Medrol and Tylenol and placed on light duty. (Px.1).

Petitioner returned to DeKalb Clinic on January 21, 2014 reporting continued low back pain with occasional radiation pain into the right hip and thigh. (Px.1). The examination noted that the standing leg raise test at 60 degrees produced pain in the right buttock and proximal thigh. At that time, an MRI was ordered which Petitioner underwent on February 22, 2014. The MRI showed a 6 mm broad based posterior and left foraminal disc protrusion and left facet joint hypertrophy resulting in left neural foraminal encroachment that abuts the left exiting L5 nerve root. (Px.1). Petitioner was referred to Midwest Orthopedic Institute (MOI). (T. 12).

On March 11, 2014, Petitioner was examined by Dr. Hwang, of MOI, reporting tripping and falling pulling a 20-pound bag. Petitioner stated prior to the incident she had no significant back pain but after the incident she developed low back pain that radiates into her right buttock and right posterior thigh. (Px.2). The examination noted mild tenderness to palpation along the midline of the lumbosacral junction and that her low back pain was reproduced with extension.

Dr. Hwang referred Petitioner to physiatry because he didn't believe the MRI showed any surgically amendable pathology or spinal nerve root compression. (Px.2).

Petitioner presented to Dr. Faubel, a physiatrist with MOI, who examined her on April 2, 2014. The examination noted tenderness along the entire sacrum. Dr. Faubel reviewed the February 22, 2014 MRI which, he said, showed encroachment on the left exiting L5 nerve root. Dr. Faubel ordered a ganglion impar block, which Petitioner underwent on April 18, 2014. (Px.2). Petitioner followed up with Dr. Faubel on April 25, 2014 reporting a 50% decrease in pain after the ganglion impar block. Petitioner was examined which showed tenderness over the distal sacrum and coccyx junction and that lumbar flexion caused a pulling pain. (Px.2).

On May 29, 2014, Dr. Faubel diagnosed left L5 radiculopathy and he ordered a left L5 transforaminal epidural steroid injection, which Petitioner underwent on June 6, 2014. (Px.2). Petitioner returned to Dr. Faubel on September 2, 2014 reporting no relief from the steroid injection. At that time, Dr. Faubel recommended a second ganglion impar injection, which Petitioner underwent on September 29, 2014. (Px.2).

On October 14, 2014, Petitioner followed up with Dr. Faubel reporting pain going down the right groin into her he right lower extremity. Dr. Faubel diagnosed axial low back and right lower extremity pain. At that time, Dr. Faubel released Petitioner from care stating he couldn't find anything that medically explained Petitioner's pain. (Px.2, p. 35-36).

Petitioner testified she returned to work for Respondent in a full duty capacity but that her back pain persisted. (T. 13). Petitioner sought a second opinion from Dr. Gerber, of Fullerton Drake Medical Center, who referred Petitioner to Dr. Mark Sokolowski of Orthopaedic Surgery of the Spine. (T. 13, 14)(Px3).

On February 20, 2015 Petitioner presented to Dr. Sokolowski reporting persistent low back pain with radiation into her right buttock and right leg after falling backwards on a pallet jack at work on November 13, 2013. (Px.3). The examination noted forward flection beyond 30 degrees reproduced concordant back pain while extension beyond neutral reproduced concordant right buttock and right leg pain. (Px.3). The straight leg test was also positive on the right side. (Px.3). Dr. Sokolowski reviewed the MRI, dated February 22, 2014, which, he said, showed L5-S1 disc desiccatory changes with an associated annular tear. Dr. Sokolowski diagnosed lumbar pain with some features of lumbar radiculopathy which he stated was causally related to Petitioner's work injury. (Px.3, p. 16). At that time, surgery was discussed. (Px.3, p.17).

Petitioner returned to Dr. Sokolowski on October 21, 2015 reporting her symptoms are progressively worsening as she continued to work. The examination noted positive sagittal profile, lumbar and right sciatic notch tenderness, and that extension beyond neutral caused concordant right buttock pain and right leg pain. (Px.3). Dr. Sokolowski also noted that straight leg test reproduced concordant radicular symptoms that were contralaterally positive on the left. Petitioner was assessed as suffering from lumbar pain and radiculopathy. At that time, Dr. Sokolowski assessed both radiculopathy and axial back pain. (Px.3). Dr. Sokolowski ordered a new lumbar MRI and x-rays, placed Petitioner on work restrictions of no lifting greater than 15 pounds and provided Petitioner a semi-rigid lumbosacral orthosis. (Px.3).

On November 21, 2015 Petitioner underwent a lumbar MRI which showed a 2 mm posterior central protrusion and an asymmetric bulge toward the left with lumbar spondylosis at L5-S1. (Px.3). Petitioner returned to Dr. Sokolowski on December 8, 2015 and, at that time, surgery was discussed. Dr. Sokolowski stated Petitioner was suffering from both radiculopathy and axial back pain. (Px.3, p. 34). Dr. Sokolowski wasn't sure as to the type of surgery to perform so he ordered a provocative discogram. In his records Dr. Sokolowski stated if the provocative discogram reproduces concordant pain at L5-S1 he would recommend fusion surgery but, if not, he proceed with decompression surgery. (Px.3, p.26, 36).

Petitioner underwent the provocative discogram on March 33, 2016 which produced pain at L5-S1 with control levels of L2-3, L3-4, L4-5. (Px.3). Petitioner also underwent a post-diskogram CT scan which showed a 4-5 mm posterior central disk herniation at L5-S1 with extruded nucleus pulposus which indented the ventral surface of the thecal with spinal stenosis and mild bilateral neuroforaminal narrowing. (Px.3, p. 46).

On April 13, 216, Petitioner returned to Dr. Sokolowski who noted the provocative discography report showed discogenic pain at L5-S1 while the CT scan showed a central disc herniation at L5-S1 with spinal and neuroforaminal stenosis. At that time, Dr. Sokolowski recommended proceeding with decompression and fusion surgery to address both the axial back pain and radiculopathy. (Px.3, p.48). Dr. Sokolowski continued Petitioner's light duty restrictions noting that Petitioner was highly motivated to continue working despite her symptoms. (Px.3).

Petitioner underwent surgery on November 30, 2016 which consisted of a anterior diskectomy at L5-S1 with decompression and fusion and a right hemilaminectomy at L5-S1 with

decompression of the thecal sac. (Px.3). Petitioner followed up with Dr. Sokolowski on December 14, 2016 reporting that she is not experiencing any back pain. (Px.3). Dr. Sokolowski noted during his examination that the straight leg raise test was negative. Dr. Sokolowski took Petitioner off all work and ordered physical therapy which Petitioner attended at Kish health system physical therapy center. (Px.3). On June 2, 2017, Dr. Sokolowski ordered x-rays and issued work restrictions of no lifting greater than 20 pounds. (Px.3).

Petitioner returned to Dr. Sokolowski on October 6, 2017 who noted that the x-rays showed no evidence of loosening. At that time, Dr. Sokolowski issued permeant work restrictions of no lifting greater than 20 pounds, placed Petitioner at maximum medical improvement (MMI), and released her from care. (Px.3).

Petitioner was examined by Dr. Alexander Ghanayem on June 29, 2015, April 11, 2016, and September 7, 2017, pursuant to Section 12 of the Act. (Rx.1, Rx.2, Rx.3). In his June 29, 2015 report Dr. Ghanayem opined that Petitioner aggravated or sustained a small lumbar disc herniation as the result of her fall. (Rx.3). Dr. Ghanayem also opined that Petitioner received appropriate treatment including physical therapy and injections. (Rx.3). At that time, Dr. Ghanayem found Petitioner to be neurologically without focal motor or sensory deficits so he opined she was at MMI and could return to work full duty. (Rx.3).

In his report dated April 11, 2016 Dr. Ghanayem reviewed an MRI which, he said, showed a small central disc protrusion at L5-S1 and opined that further medical care was not required and surgery was not warranted. (Rx.2). On September 7, 2017, after Petitioner underwent surgery, Dr. Ghanayem examined Petitioner. In his September 7, 2017 report, Dr. Ghanayem stated that his opinion remains unchanged and Petitioner did not need surgery. Dr. Ghanayem also stated that just because someone improves after surgery doesn't mean surgery was indicated. (Rx.1).

As to her current condition, Petitioner testified the surgery alleviated her pain "a lot." (T. 16). She testified the numbness and tightness down her leg to her toes subsided. (T. 16). Petitioner testified she still experiences back pain but that it is significantly less than before the surgery. (T. 16).

Petitioner testified she worked all of 2015 for Respondent without any lost time until she started treating with Dr. Sokolowski. (T.29). Petitioner testified her employment with Respondent was terminated on June 6, 2016 for allegedly having walked off the job due to hand

pain. (RX. 5, T. 17). Petitioner testified to looking for work within 3 months after Respondent terminated her employment. (T.34). Petitioner testified after being fired she looked for work at several places including factories and employment agencies. (T.36). Petitioner testified she made a short list of the places she applied for jobs but forgot to bring it to the hearing. (T.37-38). Petitioner testified finding work as of November 18, 2019 and that she works for McDonald's preparing hamburgers. (T.17, 35). Petitioner testified after being released from care, no factory would hire her due to her restrictions. (T. 16).

The Arbitrator finds Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With respect to issue (F) whether Petitioners' current conditions of ill-being is causally related to the accident, the Arbitrator finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease 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 a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that her current conditions of ill-being is causally related to her work injury of November 14, 2013, as set forth more fully below.

The Arbitrator finds the opinions of Dr. Sokolowski more persuasive than the opinions of Dr. Ghanayhem. Dr. Sokolowski opined Petitioner suffered from radiculopathy and axial back pain caused by her work accident. Dr. Sokolowski recommended and performed an anterior diskectomy and fusion to address Petitioner's axial back pain and a right hemilaminectomy with decompression to address her radiculopathy. Two weeks after the surgery, on December 14, 2016, Petitioner returned to Dr. Sokolowski reporting no back pain and the examination also showed a negative straight leg test. (Px.3). Within two weeks of the surgery, Petitioner was pain free and after completing physical therapy she was released from care. Based upon the results of the surgery it is reasonable to infer Dr. Sokolowski's diagnoses and surgical recommendation were appropriate.

In addition to the successful surgical outcome, the Arbitrator finds that Dr. Sokolowski's opinions were supported by objective tests, exam findings and the surgical findings. The provocative diagnostic lumbar discography generated pain at the L5-S1 level which was consistent with the CT scan and various MRIs. From the date of the accident, Petitioner continuously reported pain radiating down her right leg. On the date of the accident, Petitioner was assessed as sustaining low back pain and right leg radiating pain. (Px.1). The MRI, dated February 22, 2014, showed encroachment on the exiting L5 nerve root. (Px.2). Dr. Hwang, of MOI, noted that prior to the incident Petitioner reported no significant back pain and that her low back pain was reproduced with extension. (Px.2). Additionally, Dr. Faubel, of MOI, noted that Petitioner's L5 nerve root was being irritated and that flexion reproduced her symptoms. (Px.2). Dr. Sokolowki also noted that forward flexion reproduced concordant back pain while extensions reproduced right leg radicular symptoms. (Px.3). The CT scan, dated March 22, 2016, showed extruded nucleus pulposus indenting the ventral surface of the thecal sac. (Px.3). The Arbitrator notes that Dr. Ghanayem, who performed a Section 12 examination, also believed Petitioner aggravated or sustained a small lumbar disc herniation from her fall at work. (Rx.3).

The Arbitrator does not find the causation opinion of Dr. Ghanayem persuasive. In his report dated September 7, 2017, Dr. Ghanayem acknowledged Petitioner's symptoms improved after the surgery but he stated that just because someone improved after surgery doesn't mean

surgery was indicated. (Rx.1). Dr. Ghanayem did not provide any medical basis supporting his statement that improvement after surgery doesn't mean surgery was warranted. The Arbitrator also notes that Dr. Ghanayem did not address the surgical finding or results of the CT scan or discography. As such, the Arbitrator finds Dr. Ghanayem's causation opinions to be based on guess, surmise, or conjecture. It is axiomatic that the weigh accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-15 (First Dist. 2000).

With respect to issue (J), whether the medical services rendered to petitioner were reasonable and necessary, the Arbitrator finds as follows:

Under Section 8(a) of the Act (820 ILCS 305/8(a)(West 2010), an employer "shall…pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising job search program, and vocational retraining, which includes education at an accredited learning institution. See 820 ILCS 305/8(a) (West 2010).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that the medical services provide Petitioner was reasonable and necessary, as set forth more fully below.

Respondent disputed the medical treatment based upon causation. As stated above, the Arbitrator found Petitioner's condition of ill-being causally connected to her work accident. The Arbitrator notes Dr. Ghanayem, who performed the Section 12 examination, believed, as of June 29, 2015, that all of Petitioner's treatment was appropriate including the physical therapy and injections. (Rx.3). Given the Arbitrator's finding regarding causal connection and the need for surgery, the Arbitrator further finds Respondent liable to Petitioner for the medical services rendered to Petitioner including the surgery performed by Dr. Sokolowski. As such, Respondent is liable to Petitioner for medical expenses consisting of NA Partners in Anesthesia in the amount of $11,332.25, Illinois Orthopedic Network in the amount of $32,862.73, Kishwaukee Hospital in the amount of $3,007.00, Dr. Mark Sokolowski in the amount of $82,445.00; Dreyer Medical Clinic: $712.00; Neuromonitoring Services of America in the amount of $5,948.00; Archer Open MRI in the amount of $2,155.00; American Diagnostics MRI in the amount of $1,700.00; Midwest Orthopedic Institute in the amount of $8,735.74; Prescription Partners in the amount of

$9,264.10; Dekalb Clinic in the amount of $157.00; Anesthesia Associates in the amount of $984.00, pursuant to Sections 8.2 and 8(a) of the Act, subject to the fee schedule.

With respect to issue (K) whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e.*, reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner claims to be entitled to TTD benefits from November 30, 2016 through October 6, 2017, representing 45 5/7th weeks. (Arb. Ex. 1). The date of Petitioner's surgery was November 30, 2016 and the date Dr. Sokolowski found Petitioner reached maximum medical improvement (MMI) was October 6, 2017. (Px.3). Dr. Sokolowski issued light duty restrictions on June 2, 2017 but Petitioner's employment with Respondent terminated in June of 2016. (Px.3, T.17).

Given the Arbitrator's finding regarding causal connection and the need for surgery the remaining question involves whether Petitioner is entitled to TTD benefits until the date she was issued light duty restrictions or the date she was placed at MMI by Dr. Sokolowski. The Arbitrator finds that Petitioner's condition stabilized as of October 6, 2017, the date Dr. Sokolowski determined she reached MMI. This is not a situation where, at the time Dr. Sokolowski issued the light duty restrictions, Petitioner was still employed by Respondent and she could return to work for Respondent within her restrictions. At the June 2, 2017 appointment with Dr. Sokolowski, he ordered x-rays to determine whether any of the hardware at the fusion site had loosened. It was after Dr. Sokolowski reviewed the x-rays and confirmed the hardware was secure before determining Petitioner reached MMI. Based upon the facts in this case it is reasonable to infer that Petitioner's condition had not stabilized until Dr. Sokolowski confirmed

the hardware at the fusion site was stable. As such, Respondent shall pay Petitioner TTD benefits from November 30, 2016 through October 6, 2017, representing 44 and 3/7ths weeks, pursuant to Section 8(b) of the Act.

With respect to issue (L) what is the nature and extent of Petitioner's condition, 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.

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. As such, the Arbitrator gives no weight to this factor determining the level of permanent partial disability.

With regards to subsection (ii) of §8.1b(b), Petitioner's occupation. The record reveals that Petitioner was employed as a machine operator at the time of her work accident and is now employed at McDonald's preparing hamburgers. Petitioner has permanent work restrictions of no lifting greater than 20 pounds. Petitioner was unable to find work in her prior capacity. As such, the Arbitrator gives this factor greater weight in determining the level of permanent partial disability.

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 she is relatively young, Petitioner must endure the effects of her injury for a longer period of her remaining work life than someone nearing the end of their work life. As such, the Arbitrator gives greater weight to this factor in determining the level of permanent partial disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was offered regarding future earning capacity. The Arbitrator therefore gives no weight to this factor in determining the level of permanent partial disability.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records. Petitioner suffered from a herniated disc and axial back pain which caused her to undergo spinal fusion and L5-S1. As a result of her injury, Petitioner was issued permeant work restrictions of no lifting greater than 20 pounds. Petitioner testified to experiencing pain after standing for long periods of time and back pain after working a full day. (T. 18). The Arbitrator finds evidence of her disability was corroborated by the medical records. As such, the Arbitrator gives greater weight to this factor in determining the level of permanent partial disability.

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 35% loss of use of person as a whole pursuant to §8(d)2 of the Act.

By: /o/ *Frank J. Soto* February 27, 2024

Arbitrator Date

February 28, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007228
Case Name	Sofia Trujillo Rincon v. Source One Staffing, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0427
Number of Pages of Decision	27
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Joseph R. Needham

DATE FILED: 9/4/2024

/s/Carolyn Doherty, 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

SOFIA TRUJILLO RINCON,

Petitioner,

vs. NO: 22 WC 007228

SOURCE ONE STAFFING INC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b 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, benefit rates, temporary total disability, and evidentiary objections and rulings, Section 12 denial and objections, continuance denial, petitioner's number of dependent, admission of records without certification and all trial issues raised, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 12, 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 $50,300.00. 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.

September 4, 2024

O: 08/29/24
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	22WC007228
Case Name	Sofia Trujillo Rincon v. Source One Staffing, Inc.
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Joseph R. Needham

DATE FILED: 1/12/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 9, 2024 5.03%

/s/Michael Glaub, Arbitrator

Signature

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
19(B)/8(A) ARBITRATION DECISION

SOPHIA TRUJILLO RINCON
Employee/Petitioner

v.

SOURCE ONE STAFFING INC.
Employer/Respondent

Case # **22** WC **007228**

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 **Michael Glaub,** Arbitrator of the Commission, in the City of **Wheato**n, on **11/16/23.** 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 **Prospective Medical Care**

FINDINGS

On the date of accident **September 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 accidental injuries that arose out of and in the course of employment.

Timely notice of the accidents ***was*** given to Respondent.

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

In the year preceding the injuries, Petitioner earned $**21,748.48**; the average weekly wage was **$418.24**.

On the dates of accident, Petitioner was **44** years of age, ***single*** with **2** dependent children.

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

Respondent to be given a credit of $**7,019.88** TTD, and $**4,047.98** for other benefits, for $**11,067.86** total.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $381.33 per week for 110 weeks, commencing September 2, 2021 through October 11, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services through November 16, 2023, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for a left knee diagnostic arthroscopy with possible partial meniscectomy, as recommended by Dr. Koutsky, along with all resulting treatment and follow-up care. Respondent shall authorize and pay for a left ankle procedure as recommended by Dr. Peterson and appropriate post-operative treatment and follow-up care pursuant to the Illinois Medical Fee Schedule.

Other – Prospective medical treatment

Respondent shall authorize and pay for left knee aspiration and steroid injection, followed by a pain management consultation if needed to rectify Petitioner's left knee injury.

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 appeal results in either no change or a decrease in this award, interest shall not accrue.

Michael Glaub **JANUARY 12, 2024**

Signature of Arbitrator

This case was tried to conclusion on November 16, 2023 under Sections 19(b) & 8(a) of the Act, before the Honorable Michael Glaub, Arbitrator at the Illinois Workers' Compensation Commission. Jack R. Epstein appeared on behalf of the Petitioner, Sofia Trujillo Rincon (hereinafter "Petitioner"), and Joseph Needham appeared on behalf of the Respondent, Source One Staffing, Inc. (hereinafter "Respondent").

RESPONDENT'S MOTIONS

As a threshold issue, the Respondent's counsel made a motion to continue the Hearing the Arbitrator addressed at the initiation of the Hearing and then another motion when the Respondent moved to introduce evidence into the record.

The Respondent's initial motion was to continue the Hearing of this case. Respondent argued that the Hearing of Petitioner's 19b Petition should be continued because Petitioner's Petition violated Sections 9020.70(a) and 9030.20(c)(1)(B) of the Rules Governing Practice. Section 9020.70(a) states as follows:

> Section 9020.70 - Motion Practice, General
>
> a) Form of Motions
>
> All motions, except motions made during an Arbitration or Review hearing, motions for a continuance of cases in the regular review call, and petitions filed under Section 19(h) and/or Section 8(a) of the Act must be accompanied by a Commission form entitled Notice of Motion and Order and must be served on the Arbitrator or Commissioner and all other parties in accordance with subsection (b). All such motions must set forth the date on which the moving party will appear before the Arbitrator or Commissioner to present the motion and must include the type of motion and nature of the relief sought. A Notice of Motion and Order not accompanied by the motion may be stricken.
>
> Motions on Arbitration
>
> A) Motions requesting a trial date will be heard during the status call in accordance with Section 9020.60(b)(2).
>
> B) All other motions will be heard in accordance with Section 9020.60(b)(2)(E). Each Arbitrator will hear all motions, other than motions requesting a date certain for trial, on any case assigned to the Arbitrator, even if it does not appear on the status call.

The Arbitrator notes that Section 9020.70(a) does not require that the Petitioner provide the Respondent with a completed Request for Hearing. However, Section 9030(a)(1)(B) states that the Arbitrator shall set the matter for trial on a date certain if: . . . B) the opposing party was provided with a completed Request for Hearing.

The Arbitrator denied the motion to continue because the Petitioner provided the Respondent with a Completed Request for Hearing. Nothing in the record indicates that Respondent was surprised by Petitioner's 19(b) petition. In fact, the November 16, 2023 hearing is the second time Petitioner's 19b petition was set for trial. This matter was initially set for hearing on January 31, 2023. Request for Hearing forms were exchanged at that time. The matter continued to allow the Respondent to depose Dr. Schiff. The Rules regarding the exchange of the completed Request for Hearing document are to prevent surprise. There is no surprise here. The parties previously exchanged almost identical Request for Hearing forms. The only difference is the stipulated Average Weekly Wage, to which the Respondent agreed in the current Request for Hearing form submitted at this Hearing.

The Respondent's motion to continue the Hearing based upon the Rules of Practice was denied.

The Respondent also moved to continue the Hearing to allow the Respondent to depose Dr. Schiff a second time. The Respondent argues that the Respondent should be afforded an opportunity to depose Dr. Schiff a second time because the Respondent tendered the Petitioner with Dr. Schiff's addendum opinion, and the Petitioner refuses to waive her hearsay objection to the report and refused to agree to a second deposition date.

Dr. Schiff drafted his original IME opinion on May 4, 2023. The following day, May 5, 2022, the Petitioner underwent stress radiographs. Dr. Schiff was deposed on March 16, 2023. On June 18, 2023, Dr. Schiff drafted an addendum report after reviewing the May 5, 2022, stress radiographs, despite the stress radiographs being available prior to Dr. Schiff's deposition.

Moreover, and more importantly, Dr. Schiff drafted his addendum report on June 18, 2023. The Respondent did not tender this report to Petitioner until October 18, 2023, one week after this matter was set for hearing on October 11, 2023. Under such circumstances, the motion to continue the matter was denied.

The standard for continuing a hearing is "good cause shown." The Respondent previously had an opportunity to have their IME doctor, Schiff, review the May 5, 2022, radiographs at issue in the Addendum IME report before Dr. Schiff's June 18, 2023, deposition. Moreover, the Respondent had months to schedule another deposition with Dr. Schiff but did not do so until after the petitioner's attorney had filed a new Request For Hearing and the matter was set for pre-trial. Under such circumstances, the motion to continue the Hearing to take Dr. Schiff's deposition a second time was denied.

Lastly, the Respondent moved to admit into evidence the Section 12 Report of Dr. Adam Schiff of June 18, 2023. This report was tendered to the Petitioner subsequent to Dr. Schiff's March 16, 2023 deposition. The Petitioner objected to the admission of this report because of the hearsay nature of the report. The Arbitrator sustains this objection as the report contains hearsay statements that are not admissible under an exception to the rules of evidence. For this reason, Respondent's Exhibit 3 is not admitted into evidence.

FINDINGS OF FACT

At the Hearing for this matter, the Petitioner, Sophia Trujillo Rincon (hereinafter the "Petitioner"), testified through an interpreter that she was employed by Source One Staffing (hereinafter the "Respondent").

Petitioner's Medical Treatment

On September 3, 2021, the Petitioner presented to Tyler Medical Services (hereinafter "Tyler Medical") for an evaluation and was seen by Dr. Robert Long. Dr. Long took a history from the Petitioner which included an injury to the left knee and left ankle. Dr. Long took X-rays, and performed a physical exam. Dr. Long diagnosed Left Knee and ankle strains. He restricted the petitioner to light duty work. The X-rays showed no fractures to the left knee or ankle. (P. Ex. 1, p. 43, 93-94).

On September 7, 2021, September 14, 2021, and September 24, 2021, Dr. Long again examined the Petitioner's left ankle and left knee at Tyler Medical. The exams noted tenderness,

pain, and an antalgic gait to her left extremity. Dr. Long continued to diagnose the Petitioner with left knee and ankle sprains. Dr. Long recommended the Petitioner continue with conservative treatment and begin physical therapy. Dr. Long gave the Petitioner work restrictions of alternate sitting and standing, no standing or walking more than 15 minutes in an hour, no continuous sitting more than 45 minutes in an hour, and no squatting or climbing stairs. The Petitioner was also to elevate and support the lower left extremity when necessary and able. (P. Ex. 1 p. 56, 67, 89).

From September 17, 2021, to December 30, 2022, the Petitioner underwent Physical Therapy at Tyler Medical (P. Ex. 1).

On September 25, 2021, the Petitioner underwent MRIs of the left ankle and left knee at Rayus Radiology. Dr. Susan Fanapour interpreted the MRIs and diagnosed the Petitioner with subtalar effusion of the left ankle and a medial meniscus tear. (P. Ex. 1, p. 91-92 and P. Ex. 2, p. 2-3).

On September 28, 2021, Dr. Long examined the Petitioner and noted left knee edema, tenderness, and pain. Dr. Long recommended the Petitioner see an orthopedic physician. Dr. Long again provided the Petitioner with work restrictions. (P. Ex. 1 p. 46).

On September 30, 2021, the Petitioner presented to Tyler Medical for an orthopedic consultation and examination with Dr. Ted Suchy. The left knee exam revealed a positive McMurray test, pain and tenderness over the medial joint line, and slight synovitis and joint effusion. The left ankle exam revealed slight swelling laterally and tenderness over the anterior talofibular ligament. Dr. Suchy recommended physical therapy for the left ankle and a medial meniscectomy surgery for the left knee. Dr. Suchy noted that the Petitioner wished to proceed with the procedure and authorized her to stay off work. (P. Ex. 1, p. 47).

On October 21, 2021, and November 18, 2021, the Petitioner followed up with Dr. Suchy. Dr. Suchy's exam revealed left knee pain and tenderness and a positive McMurray's test. Dr. Suchy again diagnosed the Petitioner with a torn medial meniscus. Dr. Suchy recommended arthroscopic surgery and authorized the Petitioner to stay off work. Dr. Suchy reviewed the diagnostic MRI again, which correlated with his objective findings and the Petitioner's work-related injury. Dr. Suchy again recommended a left knee arthroscopy with partial medial meniscectomy. (P. Ex. 1 p. 57, 65).

On December 16, 2021, Dr. Suchy examined the Petitioner, gave the Petitioner a corticosteroid injection, and prescribed anti-inflammatory medication. Dr. Suchy again recommended surgery as the Petitioner's symptoms had been consistent and persistent. (P. Ex. 1 p. 66).

On January 26, 2022, and February 17, 2022, the Petitioner followed up with Dr. Suchy. Dr. Suchy's physical exam noted pain, tenderness, positive McMurray's, and slight synovitis. As the Petitioner had completed injections and physical therapy but remained symptomatic, Dr. Long again recommended arthroscopic evaluation with partial meniscectomy. (P. Ex. 1 p. 82-83).

On March 14, 2022, the Petitioner presented to Illinois Orthopedic Network (hereinafter "ION") for an initial consultation and underwent a televisit with Dr. Eugene Lipov. Dr. Lipov took a history from the Petitioner and reviewed her MRIs with her. Dr. Lipov diagnosed the Petitioner with left knee pain with a medial meniscus tear and left ankle pain. Dr. Lipov gave the Petitioner referrals for orthopedics and podiatry. (P. Ex. 2, p. 5-6).

On March 15, 2022, the Petitioner presented to DuPage Spine and Orthopedics for an evaluation and was examined by Dr. Kevin Koutsky. Dr. Koutsky took a history from the Petitioner and diagnosed the Petitioner with an ankle strain and a meniscal tear in the left knee. Dr. Koutsky recommended knee arthroscopy and partial meniscectomy. (P. Ex. 2, p. 9).

The Petitioner underwent Physical Therapy at ATI from March 22, 2022, to September 15, 2022. (P. Ex. 3).

On March 28, 2022, the Petitioner was examined by Dr. Kyle S. Peterson. Dr. Peterson took a history from the Petitioner and conducted a physical exam of the left ankle. Dr. Peterson's exam showed pain, tenderness, limited range of motion and strength. X-rays were taken, which Dr. Peterson indicated were normal. Dr. Peterson diagnosed the Petitioner with a left lateral and medial ankle sprain, peroneal tendon strain or a tear, posterior tibial tendinopathy, and persisting pain. (P. Ex. 2 p. 13-17).

On April 6, 2022, the Petitioner underwent a second left foot MRI that showed mild tendinosis and tenosynovitis of the peroneus longus, peroneus brevis, and posterior tibialis tendons. (P. Ex. 2, p. 33).

On April 19, 2022, Dr. Koutsky examined the Petitioner. Dr. Koutsky again reiterated his diagnosis of left knee meniscal tear and ankle strain. Dr. Koutsky noted that the Petitioner's ankle

improved, but her knee pain increased. Dr. Koutsky again recommended knee arthroscopy and partial meniscectomy. (P. Ex. 2 p. 24).

On May 4, 2022, the Petitioner underwent a Section 12 Independent Medical Examination of her foot with Dr. Adam Schiff. (R. Ex 2).

On May 5, 2022, June 2, 2022, and June 30, 2022, Dr. Peterson examined the Petitioner at Suburban Orthopedics. Dr. Peterson's exams of the Petitioner's left foot and ankle all showed an antalgic gait, pain, tenderness, and limited strength, and noted that the Petitioner was experiencing numbness and tingling. Dr. Peterson prescribed pain medication and recommended left ankle joint arthroscopy with extensive debridement, open Bostrom/Gould, and possible repair of the peroneal tendons and/or posterior tibial tendon. (P. Ex. 2 p. 26-31 36-41, 43-48)

On June 30, 2022, the Petitioner underwent an injection at Suburban Orthopedics by Dr. Peterson (P. Ex. 2 p. 50). On July 13, 2022, the Petitioner had a phone consultation with Dr. Peterson. Dr. Peterson indicated that they would continue to seek authorization for surgery and discussed undergoing another steroid injection. (P. Ex. 2 p. 54-55).

On July 28, 2022, August 25, 2022, September 22, 2022, October 20, 2022, and November 17, 2022, the Petitioner presented to Suburban Orthopedics for follow-ups with Dr. Peterson. Dr. Peterson's physical exams noted an antalgic gait, tenderness, limited range of motion, limited stability, and diminished sensation. He also noted that the Petitioner continued to experience severe pain. Dr. Peterson gave an impression of left plantar fasciitis, lateral ankle sprain, and ankle instability with tearing confirmed on MRI and stress radiographs, peroneal tendinitis, posterior tib tendinopathy, and left knee medial meniscal tear. Dr. Peterson recommended surgery once again. (P. Ex. 2 p. 57-62, 68-73, 80-93, 97-102).

On August 15, 2022, September 2, 2022, and October 31, 2022, the Petitioner had a virtual tele visit with Dr. Koutsky. Dr. Koutsky indicated that the Petitioner was still symptomatic. Dr. Koutsky maintained his recommendation of surgery. He also indicated the Petitioner would continue with physical therapy and recommended an anti-inflammatory and muscle relaxant. Dr. Koutsky released the Petitioner to work with restrictions of sedentary/sitting work only. (P. Ex. 2 p. 65-66, 76, 94-95).

On December 15, 2022, January 12, 2023, and January 26, 2023, the Petitioner presented to Suburban Orthopedics for a follow-up and was examined by Dr. Peterson. Dr. Peterson indicated that the Petitioner reported worsening symptoms. The Petitioner reported difficulty

with movement, burning sensations, inflammation, numbness, inability to bear weight, and pain so severe it keeps her up at night. She rated her pain as an 8-9/10. Dr. Peterson's physical exams noted an antalgic gait, tenderness, limited range of motion, limited stability, and diminished sensation. Dr. Peterson maintained his diagnosis and recommendation for surgery and gave her a boot to wear. (P. Ex. 2 p. 104-117 and 118 - 124).

On June 8, 2023, the Petitioner had a phone consultation with Dr. Eugene Lipov at ION. Dr. Lipov indicated that the Petitioner had a left ankle sprain, instability, peroneal tendinitis, left plantar fasciitis, and tarsal tunnel syndrome. Dr. Lipov indicated that the Petitioner was still awaiting surgery and she would continue a home exercise program and remain off work in the meantime. (P. Ex. 2 p. 127).

Petitioner's Testimony

The Petitioner testified that she began working for the Respondent in 2020 and later suffered an accident while working for the Respondent on September 1, 2021. At that time, the Respondent had the Petitioner working at Ball Horticulture. (Tx. 35).

The Petitioner testified that she had two children, Omar Quiroz Trujillo, born April 2, 2005, and Jonathan Enrique Quiroz Trujillo, born February 10, 206. (Tx. 29-34)

The Petitioner testified that the Respondent had also sent her to work at other companies. The Petitioner testified that she never had any problems with her left ankle or knee doing any of those jobs. (Tx. 37-38).

The Petitioner testified that before September 1, 2021, she never had any problems with her ankles or knees, nor had she sought medical treatment for a problem with her left knee or left ankle. (Tx. 36).

The Petitioner testified that her job at Ball Horticulture was maintaining and cleaning the gardens. This job required The Petitioner to remove garbage, dead or dried plants, weed, and garden. (Tx. 37).

The Petitioner testified that it had been raining two days before her accident. The Petitioner testified that on the day of the accident, she was going to clean the garden when she slipped and twisted her left foot and grabbed a tree to her left before falling. The Petitioner testified that she injured her left knee and left ankle. (Tx. 38).

The Petitioner testified that she reported her accident to the Respondent, who then sent her to Tyler Medical Services. (Tx. 38-39).

The Petitioner testified that she first saw a doctor at Tyler Medical Services on September 3, 2021. The Petitioner complained of pain in her left knee and ankle to her doctor, and they treated her left knee and left ankle. (Tx. 39).

The Petitioner testified that she still has considerable pain in her left knee and left ankle. Her knee and ankle are both still inflamed and swollen, and she did not have any swelling, inflammation, or pain in her left knee and left ankle before the accident. (Tx. 40-41).

The Petitioner testified that she wears an ankle brace, which she had never done before September 1, 2021. (Tx. 42).

The Petitioner testified that she has been prescribed surgery for her left knee and is asking the Arbitrator to award her that surgery. The Petitioner testified that she was prescribed a procedure for her left ankle. (Tx. 42).

The Petitioner testified that on October 11, 2023, she started working at Organic Life. The Petitioner's job is to prepare lunches for students. The Petitioner testified that Organic Life accommodates her left knee and left ankle. She gets breaks where she can sit because she cannot stand for long. (Tx. 43-44).

The Petitioner testified that she began working again because she needed to be able to pay her bills and support her children and that she is the only support her children have. (Tx. 43). The Petitioner testified that her pain has been worse since she had to start working again. (Tx. 45).

Dr. Kyle Peterson Testimony

Dr. Peterson testified that he first saw the Petitioner on March 28, 2022, for an evaluation for a work injury to her left ankle. (P. Ex. 6 P. 9).

Dr. Peterson testified that he took a history from the Petitioner, noting that she had a work injury on September 1, 2021, involving her left ankle and left knee. Dr. Peterson testified that the Petitioner reported that she slipped outdoors, twisting her ankle and that some garbage bin fell on her left knee. (P. Ex. 6 P. 9-10).

Dr. Peterson testified that he reviewed the MRI film and performed an exam. Dr. Peterson testified that he diagnosed the Petitioner with a left lateral ankle sprain, peroneal tendon strain versus tear, posterior tibial tendinopathy, and persisting pain despite six months of

conservative treatment. Dr. Peterson also made an impression on the left knee, which states osteoarthritis with medial meniscal tear, pain continuing despite prior steroid injection. (P. Ex. P. 11-12).

Dr. Peterson testified that the Petitioner's complaints were consistent with the findings in his exam, the MRI, and the X-rays. (P. Ex. 6 P. 12).

Dr. Peterson testified that he recommended the Petitioner continue to have an inflammatory called Mobic, undergo physical therapy, and fitted her with an ankle brace. He also reordered the MRI of her left ankle since it had been six months since her prior MRI, and she was still having pain. Dr. Peterson recommended that the Petitioner continue to remain off work. (P. Ex. P. 12-13).

Dr. Peterson testified that it is his opinion that the Petitioner's complaints and the condition she presented were causally related to a work injury. Based on the history provided, the mechanism of injury, where her complaints of pain are, and where his physical exam findings are consistent with the work injury. (P. Ex. 6 P. 13).

Dr. Peterson testified that he reviewed the Petitioner's April 6, 2022, MRI. His impression is that the MRI still showed tendinitis and tendinosis of the posterior tibial tendon and the peroneus longus and peroneus brevis tendons. The MRI also demonstrated a partial ATFL tear, the lateral ligament commonly strained with ankle sprains. (P. Ex. 6 P. 15).

Dr. Peterson said that on May 5, 2022, he added an additional diagnosis of ankle instability. He noted that he performed a stress radiograph of the ankle in that exam, which confirmed the instability noted on the clinical exam. Dr. Peterson testified that he discussed his diagnosis with the Petitioner, including the fact that she hadn't healed even after almost eight months despite physical therapy, bracing, and anti-inflammatories. As a result, he recommended surgical intervention. (P. Ex. 6 P. 16).

Dr. Peterson testified that on June 30, 2022, the Petitioner reported worsening pain and pain shifting into the plantar side of the heel or the calcaneus area, which was new in that exam. Dr. Peterson testified that with ankle sprains and injuries to these ligaments, the foot compensates for walking, and different ligaments and tendons around the ankle and the foot can cause and become inflamed. The Petitioner's new diagnosis was plantar fasciitis of the left foot, common with these injuries. (P. Ex. 6 P. 18-19).

Dr. Peterson testified that he offered a rebuttal of the Petitioner's IME when surgery was denied. Dr. Peterson testified that he disagreed with Dr. Schiff and continues to recommend surgery. He confirmed the diagnosis with the stress radiographs and by reading the MRI himself. Dr. Peterson testified that he doesn't trust a radiologist to detail these intricate ligaments in the ankle. Dr. Peterson testified that simply because one radiologist does not read a tear does not mean that there's clinically a tear in the ankle, and that's why he did a dynamic stress exam of the ankle under X-ray, which confirmed his diagnosis. (P. Ex. P. 20-21).

Dr. Peterson testified that once ankle sprains and ligament tears don't heal for three months after an injury, they know they're severe enough to have a very low chance of healing on their own. (P. Ex. 6 P. 22).

Dr. Peterson testified that it is significant that the Petitioner is healed not only ten months later but also that his symptoms increased in her last visit. Dr. Peterson pointed out that the Petitioner is compensating with the way she's walking. She's getting worse with the amount of instability in her ankle, and it's putting pressure on the plantar fasciitis, significant enough to note that her ankle still needs to be fixed. (P. Ex. 6 P. 22-23, 44-45).

Dr. Peterson testified that all the treatment he had rendered up to this point had been reasonable, necessary, and causally related to the Petitioner's work injury. Dr. Peterson testified that the surgery he recommended was reasonable, necessary, and causally related to her work injury as well. (P. Ex. 6 P. 23).

Dr. Peterson testified that, at the time of the deposition, he continued to opine that the Petitioner needed the surgery and understood the insurance company did not approve the procedure. (P. Ex. P. 27).

Dr. Peterson testified that he received a copy of Dr. Schiff's IME report from the Petitioner after he requested it. (Tx. 29). Dr. Peterson testified that he requests all IME reports for his patients because he likes to know what they have an opinion about and information on why treatments are not being approved. (P. Ex. 6 P. 30).

Dr. Peterson testified that Dr. Schiff is an orthopedic surgeon with a subspecialty in foot and ankle surgery, where he is purely a podiatrist who works exclusively as a foot and ankle surgeon. (P. Ex. 6 P. 32-33).

Dr. Peterson testified that, when performing a stress test, he has the patient lying on a table. He takes a life X-ray, manipulates the ankle, and applies stress to the ligaments

themselves. Dr. Peterson testified that it is the most definitive way to show instability in the ankle. (P. Ex. 6 P. 35-36).

Dr. Peterson testified that the misalignment shown could not result from a degenerative condition, only a tear, and the Petitioner's images demonstrate tearing of the ligaments. Dr. Peterson testified that he saw no degeneration in the Petitioner's ankle. (P. Ex. 6 P. 37).

Dr. Peterson testified that he noted the tear on the Petitioner's MRI as well. The arrow points to the ligament's atrophic or wavy appearance on the image. No injury would appear as a straight line. Dr. Peterson testified that when he looks at images, he looks for atrophy, thinning of the ligament, and if it is attenuated. The Petitioner's stress X-ray further supported that the Petitioner has an unstable ankle. (P. Ex. 6 P. 39).

Dr. Peterson testified that most ankle sprains are inverted ankle sprains, which means the ankle is twisted inward toward the midline. This is what the Petitioner sustained. The most commonly damaged ligament with an inversion ankle sprain is the ATFL, the ligament being discussed and he recommends surgery. (P. Ex. 6 P. 43).

Dr. Peterson testified that he treats patients looking at the entire picture, not just one image. Even if the MRI did not show any tearing, which it did according to his reading, the stress radiograph, his clinical exam, and patient history indicate the ligament is partially torn and unstable. Therefore, he is treating the Petitioner and recommending surgery despite Dr. Schiff reading the MRI as "normal." (P. Ex. 6 P. 47-48).

On July 1, 2022, Dr. Peterson wrote a rebuttal to Dr. Schiff's IME. He feels that Dr. Schiff's diagnosis of left ankle sprain is not the only diagnosis contributing to the Petitioner's symptoms. If the Petitioner's pain was only from an ankle sprain, it should have resolved within eight weeks of the injury. However, the Petitioner continues to have bothersome pain and swelling in the ankle. She is also having continued instability, which, at this far out from her injury, is another indicator of a continued problem. He believes his diagnoses of left lateral ankle sprain and ankle instability, peroneal tendinitis, and posterior tib tendinopathy more appropriately explain the Petitioner's symptoms. Further, just because Dr. Schiff feels no structural pathology is visible on the MRI imaging studies, this does not mean that the Petitioner does not have pain. Dr. Peterson testified that it is important not to dismiss the fact that the Petitioner still has pain that requires comprehensive treatment consisting of physical therapy, pain medications, therapeutic modalities, and surgical intervention. Dr. Peterson has not

witnessed any signs of symptom magnification or fabrication throughout the Petitioner's treatment with him. The fact that Dr. Schiff states the Petitioner's pain is out of proportion is another indicator that more than just an ankle sprain is occurring and demonstrates that she is not yet at MMI. Dr. Peterson opined that the delay in treatment from the insurance not responding to their surgical request has caused the Petitioner continued pain, disability, and time off work. The longer she waits for surgery, the longer they prolong her pain and decrease her quality of life. (P. Ex. 6 P. 51-53).

Dr. Kevin Koutsky Testimony

Dr. Koutsky testified that he first saw the Petitioner on March 15, 2022. The Petitioner presented to him with complaints of left knee pain, some stiffness and clicking, as well as left ankle pain, and she stated that her symptoms began after an injury at work in September 2021. (P. Ex. 7 P. 8).

Dr. Koutsky testified that he took a history from the Petitioner and performed an exam. The pertinent findings of her knee exam are that she did have swelling or effusion with some crepitus or clicking upon the range of motion. Her ankle examination revealed limitations with range of motion. (P. Ex. 7 P. 9).

Dr. Koutsky testified that he reviewed the Petitioner's MRI scans. The September 21, 2021, knee scan revealed some age-related changes and swelling, inflammation, or effusion. There was a torn cartilage or torn medial meniscus in her knee, and the major ligaments were intact. (P. Ex. 7 P. 9).

Dr. Koutsky testified that he diagnosed the Petitioner with a sprained ankle and a meniscal tear in her knee, causing the clicking, pain, and swelling. At that point, she had been through a few months of physical therapy, so they discussed a pretty standard recommendation of treatment, which would be an arthroscopy to go in and shave the torn cartilage down. (P. Ex. 7 P. 10)

Dr. Koutsky testified that his findings upon examination, his review of the MRI, and the Petitioner's subjective complaints were consistent. Dr. Koutsky opined that the sprained ankle and meniscal tear were causally and directly related to her work injury. (P. Ex. 7 P. 10-11).

Dr. Koutsky testified that it is not surprising that the Petitioner's condition worsened between visits because the tears can worsen. If they are not treated immediately, the tears can enlarge, requiring the removal of more cartilage to remedy the situation. (P. Ex. 7 P. 13).

Dr. Koutsky testified that when a patient is stuck waiting for surgery to be approved and performed, he always recommends physical therapy to maintain their current function. Still, there's no question that that won't be the end. The Petitioner requires an arthroscopy and partial meniscectomy for her mechanical issue in the knee. Still, he would rather at least be doing something with maintaining physical therapy than just sitting and waiting. (P. Ex. 7 P. 15-16).

Dr. Koutsky testified that he released the Petitioner for sitting work only because spending more time on her feet would increase the risk of the tear worsening. (P. Ex. 7 P. 16).

Dr. Koutsky testified that he reviewed the films and the report from the Petitioner's MRI on September 25, 2021. (P. Ex. 7 P. 18).

Dr. Koutsky testified that effusion is a swelling or inflammation of the fluid within the knee joint. You can have inflammation within the tendon that is different from effusion. An effusion is an increased amount of fluid in the knee. (P. Ex. 7 P. 19-20). It is this

Dr. Koutsky testified that the clicking, crepitus, and effusion noted on his physical exam caused him to diagnose the Petitioner with a medial meniscus tear. (P. Ex. 7 P. 24).

Dr. Koutsky testified that, even if he did agree with Dr. Yanke's interpretation of the MRI and his findings in his IME, he would still recommend surgical medial meniscus repair. Operations are not performed by MRIs alone. They operate based on how much what they see on the MRI is causing the symptoms that the patient is experiencing and how much those symptoms are interfering with their activities of daily living and their ability to function. (P. Ex. 7 P. 35).

Dr. Adam Yanke Testimony

On April 5, 2023, Dr. Yanke testified in an evidence deposition. Dr. Yanke testified he performed a Section 12 Independent Medical Examination on December 2, 2021, and again on March 7, 2022. (R. Ex. 1, P. 12, 28).

Dr. Yanke testified that the Petitioner reported to him that she sustained a work injury on September 19, 2021, when she slipped down a hill. (Tx. 10). The Petitioner reported left knee

pain. (R. Ex. 1, P. 11). Dr. Yanke testified that the Petitioner described the left knee treatment and that the Petitoner saw no significant improvement since her accident. (R. Ex. 1, P. 11).

Dr. Yanke testified that his physical examination on December 2, 2021, revealed swelling inside the left knee and a significant amount of pain with range of motion. (R. Ex. 1, P. 15-16). Dr. Yanke testified that the Petitioner reported she had no prior knee history prior to her work-related accident. (R. Ex., P. 13).

Dr. Yanke testified that the Petitioner's left knee X-rays, performed on December 2, 2021, revealed early joint-space narrowing on the inside of the knee. Dr. Yanke testified that the Petitioner's MRI showed some mild thinning of the cartilage on the lateral femoral condyle but testified that he did not see a tear of the medial meniscus. (R. Ex. 1, P. 13-14).

Dr. Yanke testified that he could not confirm that the Straight leg raise result was inconsistent with a medial meniscus tear as he didn't perform that examination relative to that diagnosis. (R. Ex. 1, P. 16). Dr. Yanke also testified that medial and lateral joint line tenderness, noted in his Petitioner exam, can be caused by arthritis or a tear. (R. Ex. 1, P. 16).

Dr. Yanke testified that he could not recall if he had reviewed the Petitioner's medical records that were provided to him before examining her. (R. Ex. 1, P. 19) and disagreed with the radiologist's interpretation of the Petitioner's MRI. He reviewed the images himself and did not find anything consistent with a meniscus tear. (R. Ex. 1, P. 21). Dr. Yanke admitted that a meniscal tear can exist but be too faint or mild to show up on MRI imaging. (R. Ex. 1, P. 25).

Dr. Yanke testified that he diagnosed the Petitioner with synovitis, which is inflammation of the lining of the joint and is treated with anti-inflammatories. He recommended the Petitioner be restricted to sedentary duty only. (R. Ex. 1, P. 22 and P. 24).

Dr. Yanke testified that he again examined the Petitioner on March 7, 2022. The only difference in her physical exam was tenderness in the pes bursa, and the Petitioner's range of motion was more limited. (R. Ex. 1, P. 32-33, 35).

Dr. Yanke testified that she experienced pain everywhere he pushed in and about the knee when evaluating the Petitioner's knee. (R. Ex. 1, P. 35). Dr. Yanke testified that he diagnosed the Petitioner with left knee effusion, synovitis, and possibly sympathetically mediated pain on his second examination on March 2, 2022. (R. Ex. 1, P. 39). Dr. Yanke testified that the Petitioner's symptoms matched his objective findings. R. Ex. 1, P. 41). Dr. Yanke testified that the Petitioner had progressed more slowly than expected and required an

aspiration of the left knee with with a repeat steroid injection. (R. Ex. 1, P. 50). Dr. Yanke testified that he gave the Petitioner restrictions to remain off work until the procedure, slowly increasing from sedentary duty into light duty and back to full duty by six weeks. (R. Ex. 1, P. 43).

Dr. Yanke testified that the treatment the Petitioner received was reasonable and necessary. (R. Ex. 1, P. 47). Dr. Yanke also testified that he made no record or observation of the Petitioner faking her pain. (R. Ex. 1, P. 48). Dr. Yanke believes that the Petitioner is honest and her symptoms are legitimate. (R. Ex. 1, P. 54).

Dr. Adam Schiff Testimony

Dr. Schiff testified that he performed a Section 12 Independent Medical Examination of the Petitioner on May 4, 2022. (R. Ex. 2 P. 9). Dr. Schiff testified that the Petitioner indicated that she suffered a work-related injury on September 2, 2021. The Petitioner told Dr. Schiff that she was injured when she was picking up garbage at work and taking it outside to a dumpster when she slipped on mud, twisting her left leg and foot. The Petitioner described immediate pain in her left knee and ankle. (R. Ex. 2, P. 12).

Dr. Schiff confirmed that the Petitioner walked with a limp and reported left foot pain. (R. Ex. 1, P. 13). However, Dr. Schiff testified that the Petitioner's exam did not indicate any condition requiring surgical intervention or any further medical intervention. (R. Ex. 2, P.12, 15-16).

Dr. Schiff testified that he does not recall if he reviewed the Petitioner's medical records prior to performing her exam. (R. Ex. 2, P. 16).

Dr. Schiff testified that an ankle immobilizer such as a sleeve or a brace would be appropriate. (R. Ex. 2, P. 21). Dr. Schiff also testified that all the treatment the Petitioner had received was reasonable, necessary, and appropriate, except for the second MRI, as it was essentially the same as the first. (R. Ex. 2. 24).

Dr. Schiff testified that an ankle sprain can require surgery if there are tears or the sprain results in continued instability. R. Ex. 2, P. 27). Dr. Schiff testified that tendinopathies that have failed to improve with nonoperative care could potentially require surgery. R. Ex. 2, P. 29).

Dr. Schiff testified that stress radiographs can show laxity but are unreliable for determining whether a ligament is torn. (R. Ex. 2, P. 33).

Dr. Schiff testified that walking with an abnormal gait can throw off how someone walks and affects the joints. (R. Ex. 2, P. 40).

Dr. Schiff testified that he did not review the films and only the radiologist's report from the Petitioner's September 25, 2021, left foot MRI. R. Ex. 2, P. 41). Dr. Schiff also testified that the radiologist reported that the MRI showed a slightly thickened appearance of the posterior tibialis tendon with mild increased signal suggestive of tendinopathy. Dr. Schiff testified that this finding was abnormal and testified that it is his opinion that the Petitioner's complaints and the diagnoses are related to her work incident on September 1, 2021. (R. Ex. 2, P. 43).

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm 'n*, 115 lll.2d 524, 505 N.E.2d 1026 (1987). An injury arises out of one's employment if it has its origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs Industrial Commission*, 58 Ill. 2d 226, 317 N.E.2d 515 (1974). To be compensable under the Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2. An injury "arises out of' one's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. *Parra v. Industrial Comm 'n*, (1995) 167 Ill. 2d 385,393, 212 Ill. Dec. 537, 657 N.E. 2d 882.

In support of the Arbitrator's decision relating to Disputed Issue (F), Is Petitioner's current condition of ill-being causally related to the injury? The Arbitrator finds as follows:

The Arbitrator finds that Petitioner's current left knee condition and left ankle condition are casually related to Petition's work-related accident of September 1, 2021.

Regarding the Petitioner's left ankle, the Petitioner suffered a left ankle injury on September 1, 2021. The initial treatment records indicate the Petitioner sustained a left ankle

injury, and the Petitioner was also treated for her left ankle injury consistently since the accident date. The Arbitrator also notes that the Petitioner testified she has continuing problems with her left ankle at the Hearing and testified at the Hearing wearing a left ankle brace. Drs. Suchy and Anderson agree the Petitioner suffered a left ankle injury. Dr. Schiff agreed at his deposition that the Petitioner's ankle condition arose from the work-related injury. While Dr. Anderson and Dr. Schiff may disagree on the proper treatment of the Petitioner's ankle injury, there is no question that the Petitioner's current ankle condition arose out of and is causally related to the accident.

Regarding Petitioner's left knee, the Petitioner's left knee MRI revealed a medial meniscal tear. Dr. Suchy, Dr. Koutsky, and the radiologist diagnosed the Petitioner with a left meniscal tear. While Dr. Yanke diagnosed Petitioner as having suffered a left knee strain and synovitis, Dr. Yanke admitted that the Petitioner sustained a left knee injury and required additional treatment. While Dr. Yanke and Dr. Koutsky may disagree with the Petitioner's knee injury diagnosis and treatment recommendations, the Arbitrator finds that the Petitioner's current condition is related to the September 1, 2021, accident.

Lastly, the Arbitrator further notes that the Petitioner has continued to complain of left ankle and knee pain and problems since the accident. Additionally, the Petitioner had no left foot or knee problems before the September 1, 2021, accident. As explained by the court in *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982), "[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." Although the doctors may disagree about the extent of the left knee and ankle injuries, it is clear to the Arbitrator that a left knee and ankle injury occurred, and Petitioner has had left knee and ankle pain and problems since.

The Arbitrator finds the Petitioner's current left knee and ankle symptoms are related to the September 1, 2021, work-related accident.

In support of the Arbitrator's decision relating to Disputed 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).

Respondent disputed liability for the medical bills based upon causation. As the Arbitrator found that the Petitioner has proven causation, the Arbitrator finds that the Petitioner proved by the preponderance of the evidence the medical treatment she received was related and reasonably required to cure or relieve Petitioner from the effects of her accidental injury. Moreover, the Respondent provided no evidence that the medical services provided to the Petitioner were unreasonable or unnecessary. As such, the Respondent shall pay the following medical bills, pursuant to Sections 8.2 and 8 (a) of the Act and subject to the Illinois Medical Fee Schedule:

Medical Provider	Amount of Bill
Illinois Orthopaedic Network	$ 532.44
Midwest Specialty Pharmacy	$6,747.14
ATI	$2,152.99
Suburban Orthopedics	$7,765.00
Rayus Radiology	$2,086.00

Respondent shall be given credit for all medical bills that have been paid, and Respondent shall hold Petitioner harmless from any claims by medical bills for which Respondent claims a credit pursuant to Section 8(j) of the Act.

In support of the Arbitrator's decision relating to Disputed Issue (K), Is Petitioner entitled to any prospective medical care? The Arbitrator finds as follows:

The Arbitrator notes that in Section (F), the Arbitrator that Petitioner's current conditions of ill-being regarding her left foot and left knee are causally related to the work accident. The Arbitrator further notes that in Section (J), the Arbitrator found that Petitioner's treatment was reasonable and necessary and that Respondent is responsible for payment of Petitioner's medical expenses through the hearing date.

Regarding the left knee, the Arbitrator also notes that while the Petitioner has reported improvement following treatment, she continues to complain of pain and swelling in her left knee. Furthermore, the MRIs of the left knee revealed the Petitioner sustained a left knee meniscal tear. Dr. Suchy, Dr. Koutsky, and the radiologist all agree the MRI shows the Petitioner suffered a meniscal tear in the left knee. Dr. Suchy and Dr. Koutsky agree the Petitioner requires left knee surgery. Under such circumstances, the Arbitrator does not find Dr. Yanke's opinion that the Petitioner did not sustain a left knee meniscal tear and does not require surgery credible. Thus, the Arbitrator finds that the Petitioner is entitled to the surgical treatment to the Petitioner's left knee that Dr. Suchy and Dr. Koutsky prescribed.

As to the Petitioner's left ankle, Dr. Peterson is treating the Petitioner for her left ankle condition. He believes that the Petitioner suffered an injury to her left anterior talon-fibular ligament, requiring surgery. Dr. Peterson based his opinions on the April 6, 2022, MRI and the May 5, 2022, dynamic stress exam under X-ray. Considering the physical diagnostic examinations performed by Dr. Peterson's exams, including the stress X-ray, and the Petitioner's ongoing problems with her left ankle after conservative treatment, the Arbitrator finds Dr. Peterson's opinion that additional treatment is required persuasive.

In making the finding in favor of Petitioner, the Arbitrator does not find Dr. Schiff's diagnosis of a simple ankle sprain persuasive. The Arbitrator also finds it significant that Dr. Schiff did not review the May 5, 2022, stress radiographs and did not testify regarding the radiographs at his deposition. Moreover, Dr. Schiff failed to explain why the Petitioner's left foot condition had not improved in the months subsequent to the accident. Dr. Schiff also did not explain why the Petitioner could appear at the IME examination with a noted limp, and in pain

but not require surgery. Dr. Schiff testified that the Petitioner appeared truthful relative to her pain complaints.

Thus, the Arbitrator finds that the Petitioner is entitled to the surgical treatment to the Petitioner's left ankle Dr. Peterson prescribed.

In support of the Arbitrator's decision relating to Disputed Issue (L), What Temporary Total Disability Benefits is the Petitioner due, the Arbitrator finds as follows:

The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "i.e., until the condition has stabilized." *Gallentine v. Industrial Comm'n,* 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. Gallentine, 201 Ill. App. 3d at 887; see also *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

The Arbitrator finds Petitioner proved by the preponderance evidence that she is entitled to TTD benefits from September 2, 2021, through October 11, 2023, or 110 and 1/7ths weeks. The Petitioner was taken off work by her treating physicians as of September 2, 2023, and she continued off work until she returned to work for a different employer on light duty on October 11, 2023. As such, Respondent shall pay Petitioner TTD benefits from September 2, 2023, through October 11, 2023, or 110 weeks. Respondent is entitled to a credit in the amount of $7,019.88 for temporary total disability benefits paid and $4,047.98 for an advancement against permanency for a total credit of $11,067.86.

In support of the Arbitrator's decision relating to Disputed Issue (O) The Number of Petitioner's dependents at the time of the injury, the Arbitrator finds as follows:

The Petitioner testified credibly at the Hearing that she has two children, Omar Quiroz Trujillo, born April 2, 2005, and Jonathan Enrique Quiroz, born February 10, 2006. The Petitioner submitted documentary evidence indicating she was the two children's mother and neither child had been adopted by any other party.

Under these circumstances, the Arbitrator finds the Petitioner had two dependent children at the time of the injury.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000845
Case Name	Kyle McFarlane v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0428
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Michael Manseau

DATE FILED: 9/6/2024

/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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kyle McFarlane,

Petitioner,

vs. No. 21 WC 000845

City of Chicago,

Respondent.

19(b) DECISION AND OPINION ON REVIEW

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

In his decision, the Arbitrator ordered Respondent to authorize and pay for the prospective medical services suggested by Dr. Matthew Colman in his October 10, 2023 deposition. At his deposition, Dr. Coleman recommended Petitioner: undergo an EMG to get more information regarding Petitioner's nerve dysfunction; receive pain management interventions; and possibly, undergo a functional capacity examination. The Commission agrees that Respondent shall authorize and pay for the lower extremity EMG, and pain management interventions, as recommended by Dr. Coleman. However, as Petitioner has not yet reached maximum medical improvement for his work-related injuries, we find it premature to award a functional capacity evaluation at this time, and modify the Arbitrator's award of prospective medical care by vacating

the award of a functional capacity evaluation. We affirm all else in the Arbitrator's decision, and remand this case back to the Arbitrator for further proceedings consistent with this decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2024, is hereby 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.

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

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

September 6, 2024

MP/mcp
o-08/29/24
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	21WC000845
Case Name	Kyle McFarlane v. City of Chicago
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Michael Manseau

DATE FILED: 2/7/2024

/s/ Jeffrey Huebsch, 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)/8(a)

Kyle McFarlane
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **21** WC **000845**

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 **November 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **1/6/2021**, 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 $**88,507.38**; the average weekly wage was $**1,702.06**.

On the date of accident, Petitioner was **29** 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 $**153,023.74** for TTD, $**0** for TPD, $**0** for maintenance, and $**15,255.24** for other benefits (PPD advance), for a total credit of $**168,278.98**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,134.91/week for 149-6/7 weeks, commencing January 7, 2021 through November 21, 2023, in accordance with Section 8(b) of the Act.

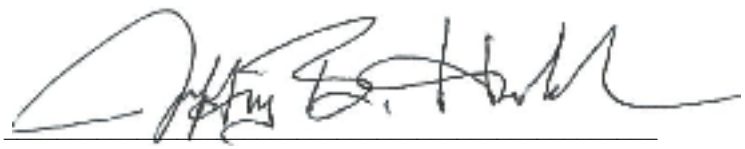
Respondent shall pay medical services of $32,412.16, pursuant to the Medical Fee Schedule and Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall authorize and pay for prospective medical services as suggested by Dr. Matthew Colman in his deposition of October 10, 2023, in accordance with sections 8(a) and 8.2 of the Act, and as is set forth below.

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

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

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



Signature of Arbitrator

February 7, 2024

FINDINGS OF FACT

Petitioner's Testimony:

Petitioner, Kyle McFarlane, was employed by Respondent, City of Chicago, as a construction laborer in the Department of Water. He had been so employed for approximately twelve (12) years. (Transcript, p. 11, hereinafter ("T" , -)). Petitioner's job duties included climbing and descending ladders, digging, loading pipes and materials, sweeping debris and lifting up to 100lbs. (T, 12). On the day of the accident, he was working his normal laborer job, full duty, without any physical restrictions. (T, 13).

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on January 6, 2021. Petitioner testified that he was injured when he slipped on a wooden wedge on the ground that was concealed by snow. (T, 14). He testified that he fell to the ground onto the lower left side of his low back. (T, 14). Petitioner testified that he was taken to the hospital by ambulance, from the scene. (T, 14-15). He testified that he was taken to the emergency room at Mt. Sinai Hospital. (T, 15, PX 1). Petitioner testified that he was taken off work and began receiving disability benefits shortly thereafter. (T, 21).

Petitioner testified that prior to the January 6, 2021 work accident, he did have prior injuries to his lower back. (T, 15). He testified that he sustained a work injury in 2018, wherein he injured his lower back. (T, 15, RX 13). He testified that he did not go off work on duty disability following that occurrence. (T, 15). He also testified that he sustained a lower back injury in 2020, while attempting to lift and carry a case of water up the stairs, causing him to fall down. (T, 16). He testified that he missed some time from work following that occurrence. (T, 16). He testified that he treated with his primary care physician and underwent chiropractic care, physical therapy and an injection. (T, 16). He testified that following the treatment, he improved and he was released to return to work at full duty in December of 2020. (T, 18). He testified that he returned to work without restrictions and worked full duty for Respondent until the January 6, 2021 work accident. (T, 18). Petitioner testified that prior to January 6, 2021, no doctor ever recommended surgery for his lumbar spine. Petitioner testified that prior to January 6, 2021, no doctor even discussed the possibility of surgery for his lumbar spine. (T, 48-49).

Petitioner testified that he was seen for ER follow-up by Dr. Mark Sokolowski. He gave Dr. Sokolowski a history of his injury and of his prior back problems. Dr. Sokolowski ordered PT and medications. The PT was at ATI. (T, 21-23). Petitioner testified that he had continued low back and left leg pain and Dr. Sokolowski referred him for a possible injection by pain management. He was seen by Dr. Kurzydlowski at Pain Care Advisors and received an injection. He had temporary relief (a couple days) with the injection. (T, 24-25). Dr. Sokolowski recommended spinal fusion surgery.

Petitioner testified that he was sent by Respondent for an independent medical examination by Dr. Matthew Colman at Midwest Orthopedics at Rush. (T, 26). He testified that Dr. Colman took a history from him as part of the examination. (T, 27). He testified that he was truthful with Dr. Colman and he informed him about the prior issues that he had with his lower back. (T, 27). He testified that following the examination with Dr. Colman the surgery that Dr. Sokolowski recommended was authorized by his employer. (T, 28). He testified that he had the surgery performed but that Dr. Sokolowski did not perform the surgery. (T, 28). He testified that Dr. Sokolowski referred him to Dr. Nockles, a neurosurgeon at Loyola, to perform the surgery due to Petitioner's epilepsy. (T, 29).

Petitioner testified that following the surgery performed by Dr. Nockles his condition did not improve. (T, 30). He testified that he followed up with Dr. Sokolowski and Dr. Nockles following surgery and Dr.

Nockles recommended another surgery due to broken screws in his back following the first surgery. (T, 31). Petitioner testified that he did not feel comfortable continuing treatment with Dr. Nockles and so he went back to see Dr. Colman, who was willing to take over his treatment. (T, 32). Petitioner testified that Dr. Colman agreed that he needed another surgery. (T, 33). He testified that he had another surgery that was performed by Dr. Colman and was approved by Respondent. (T, 33).

Petitioner testified that, following the second surgery, he initially was doing much better with the leg pain going away following that surgery. (T, 34-35). He testified that he was kept off work after the second surgery and was still getting TTD benefits at that time. (T, 33). He testified that following the second surgery he underwent more physical therapy. (T, 35). He testified that another MRI was ordered, which showed fluid in his back. (T, 36). He testified that he had the fluid drained at Rush Hospital and a temporary drain was placed, which he had in for a couple of weeks. (T, 37). Petitioner testified that following that procedure, his symptoms did not improve much. (T, 37). He testified that following this procedure he underwent two (2) additional post operative injections with Dr. Madhu Singh, on referral from Dr. Colman. (T, 38-40). He testified he had limited temporary relief following each injection. (T, 38-41). He testified that Dr. Colman recommended a third injection, but he never had it done because Respondent did not authorize the procedure. (T, 42-44). He also testified that Dr. Colman referred him for further pain management to Drr. Lubenow at Rush. (T, 43).

Petitioner testified that he was sent by Respondent for another independent medical examination, by Dr. Mather. He said that he brought films for Dr. Mather to review and he explained to Dr. Mather how he was injured and what caused his symptoms. (T. 44-45). After the Dr. Mather exam, he learned his injection was not approved and he stopped receiving TTD benefits. (T, 45).

Petitioner was seen by Dr. Colman after the Dr. Mather exam and Dr. Colman continued to excuse him off work. (T, 47).

Petitioner testified that he saw Dr. Lubenow for an initial pain management consultation the week before the Arbitration hearing and that Dr. Lubenow recommended the possibility of a spinal cord stimulator and excused him from work. (T, 46). Petitioner testified that he remains off work as a result of his injuries and is still in treatment. (T, 47).

Petitioner testified that he has not re-injured his lower back in any way since his January 2021 work accident. (T, 47). Petitioner testified that prior to January 6, 2021, no doctor ever recommended surgery for his lower back nor was surgery ever even discussed. (T, 48). Petitioner also testified that his current lower back and left leg symptoms have not improved. (T, 47). At the time of his return to work release by Dr. Angeles, his leg pain was nonexistent. His low back pain was 85% improved.

Petitioner testified regarding some photographs that were shown to him on cross examination, from his Facebook account. (T, 108-112). Petitioner testified that none of the photographs shown depict him working. (T, 112). He also testified that none of the photographs shown to him depict him lifting or doing any strenuous activity. (T, 108).

On cross examination, Petitioner agreed that his back pain dated back to January of 2018, when he fell down stairs while working for Respondent. He filled out an accident report regarding this accident (RX 13) and declined medical treatment (RX 14). He injured his low back and left side at that time. (T, 49-51). He had off and on back pain thereafter. (T, 52).

He saw Dr. Angeles for back pain in February of 2019. She prescribed anti-inflammatories at that time and ordered x-rays. He saw Dr. Angeles again for low back pain in February of 2020. He saw Chiropractor Wade for low back and leg pain in July of 2020. (T, 53-54). He told Dr. Wade that the onset of these symptoms was in March of 2020. (T, 57). He had a short course of treatment with Dr. Wade and then began chiropractic treatment with Dr. Dino O'Mara at Greenwood Chiropractic Wellness Center on September 29, 2020 for low back and leg pain. (T, 57-59). His leg pain and back pain remained about the same. (T, 60).

Petitioner then went back to Dr. Angeles on October 12, 2020, complaining of ongoing left-sided low back and left leg pain. (T, 60-61). He had a fall on September 20, 2020, lifting a case of water and falling backwards. He had a bruise as a result of the fall. (T, 62). Petitioner went to the ER at Advocate Christ Medical Center the next day with low back and left leg pain. (T, 64-65).

Petitioner testified that he then went to the ER at Mercy Hospital for back pain and was admitted to the hospital for 2 days. The history was of back pain for months, worsening in the last few weeks. (T, 65-66). An MRI was performed. In follow up with Dr. Angeles, Petitioner gave a history back pain when lifting pipes at work on October 5, 2020. He did not report this incident. (T, 68-69). Petitioner testified that Dr. Angeles recommended a pain specialist, and he did not recall her recommending a spine surgeon. (T, 70-71). Dr. Bathla, the pain specialist, gave Petitioner an injection. Petitioner had PT at ATI, beginning October 21, 2020. (T, 72-73). Petitioner gave the therapist at ATI the history of back pain since a fall down the stairs in 2018 and of lifting something at work and feeling tingling going into his buttocks on October 5, 2020. (T, 74).

Petitioner agreed that Dr. Angeles filled out FMLA paperwork for him on October 29, 2020. He went on leave of absence. RX 10 was the FMLA paperwork. He requested leave from October 14, 2020 through December 14, 2020. (T, 74-75). Petitioner agreed that he told the therapist at ATI that he was 85% improved on December 10, 2020. He then saw Dr. Angeles for a return-to-work exam on December 11, 2020. At that time, he could have extended his leave, although she wanted Petitioner to continue PT and see Dr. Bathla for another injection. (T, 79-80). Petitioner testified on re-direct that he told Dr. Angeles that he felt better after therapy and she examined him and released him to return to work. (T, 106-108).

Petitioner's first day back at work was December 14, 2020. He worked his normal full-time shift that day and until January 6, 2021. (T, 80-81).

Petitioner was questioned about the history that he gave to Dr. Mather. (T, 104-105). On cross examination, he said that he was truthful with Dr. Mather in giving his history. Petitioner also said that Dr. mather did not question him about his prior back condition, but the said he told Dr. Mather that he never had any preexisting low back complaints or issues. On re-direct, Petitioner testified that Dr. Mather did not ask him whether he had back pain before the incident. He did ask Petitioner how he was feeling immediately before the incident. (T, 105).

Petitioner testified that he saw no doctors after returning to work from the FMLA off-work until January 6, 2021. He did not take time off work or leave early during this time. He did not see a spine surgeon until after the work accident. (T, 114).

Testimony of Dr. Matthew Colman, M.D., PX 11

Dr. Colman's evidence deposition was taken on October 10, 2023.

Dr. Colman is a board certified, fellowship trained orthopedic surgeon, who specializes in spinal surgery.

He first saw Petitioner for an independent medical examination on May 18, 2021. (PX 11, p. 11). He testified that he generated a report contemporaneous with his examination of Petitioner and also reviewed records provided to him for review. Dr. Colman also testified that he took a history from Petitioner and that Petitioner did inform him that he had issues with his lower back prior to the January 6, 2021 work injury. (PX 11, p. 15). He testified that based on his review of the records provided to him Petitioner was working his normal position as a laborer on the day of the work injury.

Dr. Colman testified that he reviewed the x-rays, CT and MRI that were done following the January 6, 2021 work accident. (PX 11, p. 15-16). Dr. Colman testified that the MRI was the best study to look at the nerves directly and opined that the MRI showed foraminal stenosis and isthmic spondylolisthesis. He testified that the MRI showed grade II spondylolisthesis, which is worse than grade I. (PX 11, pp. 16- 17). He testified that grade I implies less than a 25% slip and grade II is a 25-50% slip. He testified that a fall is a competent mechanism of injury to cause worsening of a pre-existing isthmic spondylolisthesis condition. (PX 11, p. 17). Dr. Colman testified to a reasonable degree of medical certainty that the work accident caused an acceleration of Petitioner's pre-existing isthmic spondylolisthesis. (PX 11, p. 18). Dr. Colman testified that at the time of the May 2021 examination of Petitioner, he had exhausted therapy, medications and injections and remained symptomatic, so he was a candidate for a L5-S1 fusion surgery as of that date. (PX 11, p. 24). Dr. Colman testified that Petitioner should be off work as of the date of his independent medical examination of Petitioner, until he could get the proper treatment. (PX 11, p. 25).

Dr. Colman testified that he authored an addendum report after being provided with pre-accident imaging to compare to the post-accident imaging. (PX 11, p. 25-26). He testified that there was isthmic spondylolisthesis with foraminal stenosis visible in both scans. (PX 11, p. 27). He testified that his opinion regarding the work accident causing an acceleration of the Petitioner's pre-existing condition did not change following his comparison of the two scans as well as the additional records he reviewed. (PX 11, p. 27). Dr. Colman testified that his opinion regarding the acceleration is a clinical opinion based on a clinical downturn and objective neurological findings following the accident. (PX 11, p. 27).

Dr. Colman testified that he became the Petitioner's treating physician in July of 2022 at the request of Petitioner following his first surgery. (PX 11, p. 29-30). Dr. Colman testified that he reviewed a post-surgical MRI, which demonstrated failed hardware, so he recommended a revision surgery. (PX 11, p. 32). He testified that he performed the revision surgery on Petitioner on September 8, 2022. (Pet. Ex. 11, p. 33). Dr. Colman testified that Petitioner was initially doing well after the revision surgery but had a flare up of radicular pain weeks later and so another MRI was ordered. (PX 11, p. 35). He testified that the MRI showed fluid in the postoperative bed, which was a seroma, which is not abnormal following surgery. (PX 11, p. 35-36). He testified that he referred Petitioner to Madhu Singh, M.D. for some post-operative injections. (PX 11, p. 36). Dr. Colman testified that Petitioner had two (2) post-operative injections with Dr. Singh. (PX 11, p. 37). He testified that the last day he saw Petitioner prior to the evidence deposition was August 22, 2023. (PX 11, p. 38). Dr. Colman testified that he ordered a CT on that date, which was done and showed no problems with the hardware. (PX 11, p. 40). He also testified that he referred Petitioner for ongoing pain management at that time and suggested that he undergo a FCE to objectively determine what permanent activity restrictions are needed. (PX 11, p. 39-40). He also testified that no further surgery would be beneficial. (PX 11, p. 40).

Dr. Colman testified that he is aware that Petitioner was seen for another Section 12 examination with Dr. Steven Mather, while under his care. (PX 11, p. 43). Dr. Colman testified that he disagrees with Dr. Mather's opinion on causation and maintains his opinion that the January 2021 work accident caused a permanent acceleration of his pre-existing isthmic spondylolisthesis. (PX 11, p. 47).

On cross examination, he testified that the prior records shown to him were not completely consistent with the history that was reported to him by Petitioner. (PX 11, p. 84-85). He testified that Petitioner did report an issue with his low back in October of 2020, which had improved with treatment and Petitioner's history is not the only thing he relied on in rendering his opinions. (PX 11, p. 85-86). Dr. Colman testified to a reasonable degree of medical certainty, it is more likely true than not, that the January 2021 accident permanently accelerated the condition. (PX 11, p. 87). He testified that the basis for that opinion in lieu of the prior records shown to him, is that the last record prior to the work injury showed that Petitioner was 85% better, consistent with what Petitioner told him. (PX 11, p. 87).

On re-direct examination, Dr. Colman testified that another basis for his opinion that the January 6, 2021 work accident permanently accelerated his pre-existing isthmic spondylolisthesis, is that in December of 2020 he returned to full duty work and was working full duty at the time of the work accident. (PX 11, p. 93). He further testified that a person's function at the time of an injury is one of the important data points used to opine whether the injury caused a permanent acceleration of a pre-existing condition rather than a temporary exacerbation. (PX 11, pp. 93-94).

Dr. Colman testified that from a surgical standpoint, Petitioner would be at MMI, following a functional capacity evaluation (hereinafter "FCE") to determine what physical restrictions should be placed. (PX 11, p. 91-92). Dr. Colman also testified that he referred Petitioner to a pain management specialist for future pain management care. (PX 11, p. 41). Dr. Colman testified that he would defer opinions regarding the potential need for spinal cord stimulation to the pain doctor. (PX 11, p. 41-42). Dr. Colman testified that spinal cord stimulation can be successful for a patient suffering from failed low back syndrome. (PX 11, 42.-43).

Testimony of Dr. Steven Mather, M.D. RX 7

Dr. Mather's evidence deposition was taken on November 9, 2023.

Dr. Mather is a board certified, fellowship trained, orthopedic surgeon. Medical legal work takes up about 10% of his time. (RX 7, p.18).

Dr. Mather testified that his opinion is that Petitioner suffered a soft tissue injury in the form of a lumbar contusion type sprain and there was no evidence of aggravation of the pre-existing spondylolistheses. (RX 7, p. 43-44). He testified that the basis for his opinion was that the imaging he reviewed from October of 2020 showed the same pathology that the MRI after January 6, 2021 showed. (RX 7, p. 49). He testified that the treatment that Petitioner underwent was reasonable and necessary, but was not related to the accident. (RX 7, p. 45). He testified that Petitioner was temporarily totally disabled due to the accident for 2 to 4 weeks. (Res. Ex. 7, p. 46). Dr. Mather testified that Petitioner should have permanent restrictions of no lifting more than forty (40) pounds due to the fusion procedures and testified that those restrictions are unrelated to the work accident. (RX 7, p. 59). The fusions were not related to the work accident. (RX 7, p. 60).

Dr. Mather testified that he thought that Petitioner's subjective complaints were questionable because of the history of no prior back problems. (RX 7, p.45). He does not agree with Dr. Coleman's opinion that Petitioner suffered a permanent aggravation as a result of the work accident. Petitioner's subjective complaints can't be used as a measure of decline of function because they are not accurate. (RX 7, p.106).

Dr. Mather rendered a PPI opinion regarding Petitioner. He thought that Petitioner had 15% whole person impairment as a result of the fusions. (RX 7, p.55-56).

Dr. Mather defined aggravation as a medically recognizable pre-existing condition with some sort of worsening of the condition. (RX 7, p.19). Dr. Mather testified that an exacerbation would be a medically recognizable pre-existing condition that had symptoms and then was worsened to some degree by a work injury and then went back down to its pre-existing baseline state. (RX 7, p. 20). On cross examination, Dr. Mather testified that he agreed that there is an array of circumstances that a clinician must evaluate to determine whether trauma in a patient with a pre-existing condition causes an exacerbation or an aggravation of that condition. (RX 7, p. 66-67).

Dr. Mather testified that he examined Petitioner on June 12, 2023. Petitioner gave a history of no prior back problems. (RX 7, p.25, 28-29). Dr. Mather said that he dictated the history of no prior back problems right in front of Petitioner. (RX 7, p. 30). Dr. Mather thought that Petitioner had inconsistencies in the physical exam. He was 5'9'' and weighed 305 pounds. He walked with a limp. He had decreased range of motion and no neurologic findings. (RX 7, pp. 31-33).

On cross examination, Dr. Mather testified that Petitioner had a significantly symptomatic L5-S1 spondylolisthesis only a few weeks before the alleged work injury. (RX 7, p. 69). However, when showed a medical record authored by Petitioner's primary care physician following a visit that took place in December of 2020, prior to the work accident, he conceded that the record stated that Petitioner had no neuro deficits, had not taken pain meds in weeks, was doing well, and was released to return to work full duty. (RX 7, p. 72-76). Dr. Mather testified that he was aware that Petitioner was working full duty without restrictions on the day of the work accident. (RX 7, p. 80-81). He also testified that he has examined many laborers in the past that work for the City of Chicago and that he is aware that the City of Chicago does not allow a laborer to work if they have any sort of physical restrictions. (RX 7, p. 84-85). Dr. Mather conceded that slipping and falling and landing on one's back can cause a permanent acceleration of a pre-existing condition. (RX 7, p. 95, 96).

Pre-Accident Medical Records

Petitioner testified that prior to the January 6, 2021 work accident, he did have prior injuries to his lower back. (T, 15). Petitioner testified that he had a work injury in 2018, which did not require him to miss time from work. (T, 15). He testified that he also sustained a lower back injury in 2020, while he attempted to lift and carry a case of water up the stairs and fell, while at home. (T, 15). He testified that following the physical therapy and injection in 2020, he felt 85% improved as it relates to his back pain, and was able to return to work full duty without any difficulties doing his job, until the January 6, 2021 work accident. (T, 19).

On July 10, 2020, Petitioner presented to chiropractor Shane Wade, with complaints of lower back pain. (RX 1, p. 7). Petitioner returned for one more visit with Dr. Wade on July 15, 2020 complaining of lower back pain of 6/10 on a pain scale and underwent chiropractic treatment that day. RX 1, p. 1). It is noted that Dr. Colman did not agree with chiropractor Wade's diagnosis of lumbar radiculopathy. On September 29, 2020, Petitioner presented to chiropractor Dino O'Mara, D.C., with complaints of lower back pain. (RX 2, p. 7). Petitioner underwent chiropractic care from September 29, 2020 through October 8, 2020, with Dr. O'Mara for a total of four (4) visits. (RX 2, p. 10-15).

On October 10, 2020, Petitioner presented to Dr. Angeles with complaints of back pain. (PX 12, p. 70). Petitioner underwent an X-ray of his lumbar spine at Mercy Hospital. (PX 12, p. 92). On October 14, 2020, Petitioner presented to Mercy Hospital ED with complaints of low back pain with radiation into his abdomen. (PX 12, p. 115). Petitioner underwent an MRI of his lumbar spine at Mercy Hospital. (PX 12, p. 230-231). The MRI of the lumbar spine showed Grade 1 anterolisthesis of L5-S1 secondary to bilateral L5 pars defects, causing right and left sided foraminal narrowing. (PX 12, p. 231). On October 29, 2020, Petitioner returned to

Dr. Angeles for a follow-up appointment with continued complains of lower back pain. (PX 12, p. 335). He was referred to Dr. Bathla for an epidural injection and was prescribed physical therapy. (PX 12, p. 337).

Petitioner began physical therapy at ATI on October 21, 2020). (RX 5, p. 230). Petitioner attended physical therapy at ATI on November 25, 2020, November 30, 2020, December 2, 2020, December 4, 2020, December 7, 2020, and December 10, 2020, and did not complain of any lower back pain during any of those sessions. (RX 5, p. 177-191). On December 10, 2020, Petitioner attended his last physical therapy session and the progress note stated 85% improvement following physical therapy. (RX 5, p. 177). The note also states that at rest, his pain is 0/10 and with activity, he had residual pain of 2/10 on a pain scale. *Id*.

On December 11, 2020, Petitioner returned to see Dr. Angeles, following completion of physical therapy. (PX 12, p. 354-356). The chart note documents that he was doing well, no neuro deficits, he walks freely, can climb stairs, can bend, and can lift weight. (PX 12, p. 354). His physical examination was normal on that date, with normal range of motion, normal strength, and normal gait. *Id*. The record also notes that he was back to his "baseline" and has not taken and pain medication for weeks. (PX 12, p. 356).

Post-Accident Medical Records

On January 6, 2021, Petitioner presented to the Emergency Room at Mt. Sinai hospital, immediately following the work accident. (PX 1). The emergency room record notes that Petitioner reported slipping at work on a wedge and fell onto his back. (PX 1, p. 6). The record indicates that Petitioner complained of low back pain with numbness and tingling down his left leg. (PX 1, p. 20). Petitioner underwent x-rays of his lower back which showed Grade 2 spondylolysis and spondylolisthesis L5 on S1. (PX 1, p. 25). Petitioner was admitted to the hospital for a neurosurgical consultation. (PX 1, p. 32). Upon admission, he was sent for a CT scan of his lumbar spine, which revealed the same pathology as the x-ray and also a significant disc bulge at L4-L5. (PX 1, 41-42). He was also sent for an MRI of the lumbar spine, which revealed the same pathology as the CT scan. (PX 1, p. 43-44). Petitioner was provided a script for physical therapy, was taken off work, and was discharged the following day. (PX 1, p. 52).

On January 12, 2021, Petitioner presented to Mark Sokolowski, M.D., an orthopedic surgeon, complaining of lower back pain with radiating numbness traveling down his left buttocks, thigh and leg. (PX 2, p. 4). The record notes that Petitioner reported slipping at work and falling backwards onto his lower back. *Id*. The record also notes that Petitioner reported having prior lumbar symptoms in October of 2020, which caused him to miss time from work. *Id*. Further, the record notes that Petitioner's symptoms improved significantly and he resumed unrestricted duty in December, where he continued to work without restrictions until the January 6, 2021 work accident. *Id*. On physical examination, the record notes a positive straight leg raise test. *Id*. Petitioner was diagnosed with lumbar radiculopathy, prescribed medication, was kept off work, and was given a script for physical therapy. (PX 2, p. 5).

On January 18, 2021, Petitioner began physical therapy at Athletico where he completed nine (9) sessions over the next month, with limited improvement. (PX 16).

On February 24, 2021 Petitioner returned to see Dr. Sokolowski, complaining of continued lower back pain with numbness down his left leg. (PX 2, p. 8). The record indicates that Dr. Sokolowski referred Petitioner to an independent pain specialist for a lumbar epidural injection and also wrote him another script for additional physical therapy. *Id*. Further, he was kept of work at this time. *Id*.

On March 8, 2021, Petitioner presented to Laser Spine Center for a consultation with Dr. Faris Abusharif on referral from Dr. Sokolowski. (PX 3, pp. 1- 4). The record indicates that Dr. Abusharif ordered a left L5-S1 epidural steroid injection. On March 16, 2021 Petitioner was seen by pain specialist Henry Kurzydlowski, M.D., who agreed that a steroid epidural injection was appropriate. (PX 6, p. 18 of 20). On April 12, 2021, Petitioner underwent a left L5-S1 transforaminal injection, performed by Dr. Kurzydlowski. (PX 6, p. 26).

On May 18, 2021, Petitioner presented to Matthew Colman, M.D. for a Section 12 examination at the request of Respondent. (PX 11, pp. 55-59).

On May 20, 2021, Petitioner returned to see Dr. Sokolowski, who noted that Petitioner had limited temporary relief following the injection and complained of ongoing lower back pain with numbness down his left leg. (PX 2, p. 20). He was kept off work, and another steroid epidural was ordered by Dr. Sokolowski. On July 20, 2021, he returned to Dr. Sokolowski for another follow-up with continued complaints of lower back pain with numbness down his left leg. (PX 2, p. 25). Dr. Sokolowski recommended a fusion surgery at this time and referred Petitioner to neurosurgeon Russ Nockels, M.D. to perform the procedure due to Petitioner's epilepsy, to mitigate perioperative risk of seizure. *Id*. Dr. Sokolowski kept Petitioner off work at this time. *Id*. Dr. Sokolowski saw Petitioner two (2) more times on September 15, 2021 and November 29, 2021, while Petitioner was awaiting authorization for surgery by Dr. Nockels and kept Petitioner off work following those visits. (PX 2, p. 30-33). On February 12, 2022, Petitioner presented to Dr. Sokolowski for follow-up after having the surgery at Loyola on January 25, 2022, with Dr. Nockles. (PX 2, p. 34). He was kept off work at this time. *Id.*

The Parties did not submit the records from Loyola.

On July 26, 2022, Petitioner presented to Dr. Matthew Colman, M.D. for an initial evaluation as a patient. (Pet. Ex. 10, p. 76-79). The record indicates that Petitioner complained of lumbar pain with numbness traveling down his left leg to the foot, following surgery by Dr. Nockels. (PX 10, p. 77). The record notes that Dr. Colman reviewed a post-surgical MRI, that revealed screw fractures and foraminal stenosis at L5-S1. (PX 10, p. 78). Dr. Colman recommended a revision fusion surgery along with a TLIF at L5-S1 to truly correct the foraminal stenosis and kept Petitioner off work pending surgery. *Id*.

On September 8, 2022, the Petitioner underwent the revision fusion surgery, performed by Dr. Matthew Colman. (PX 10, p. 90-92). The operative report notes that the following procedures were performed during the surgery: Revision combined interbody and posterolateral fusion at L5/S1 with use of synthetic interbody cage and posterior segmental pedicle screws, revision posterolateral fusion alone at L4/5, revision laminectomy, partial facetectomy, foraminotomy between L4 and S1, and posterior column osteotomy at L5/S1. (PX 10, p. 90).

On October 18, 2022, Petitioner returned to Dr. Colman 6 weeks out from revision surgery on his lower back. (PX 10, p. 64-66). The record indicates that he complained of a recent flare up of his radicular symptoms, which the doctor notes as post-surgical radiculitis. (PX 10, p. 65). Dr. Colman ordered physical therapy, kept Petitioner off work and prescribed a Medrol Dosepak. (PX 10, p. 65-66). On December 29, 2022, Petitioner followed-up with Dr. Colman approximately 3 months out from revision surgery. (PX 10, p. 47-48). The record indicates that a post-surgical MRI revealed fluid collection in the lumbar spine, which required draining in the ER as well as implantation of a temporary drain for continued draining upon discharge. (PX 10. P. 47). On exam, Petitioner continued to display a positive straight leg raise test on the left side, consistent with his subjective complaints of low back pain with numbness traveling down his left leg. *Id*. Dr. Colman kept

Petitioner off work, ordered physical therapy, as well as an epidural injection due to clear S1 radiculopathy on exam. (PX 10, p. 48).

On January 11, 2023, Petitioner underwent the first post-revision surgery epidural injection, performed by Dr. Madhu Singh at Rush. (PX 10, p. 41-42). On January 26, 2023, Petitioner followed-up with Dr. Colman following the first post-revision surgery epidural injection, reporting relief of his radicular symptoms, which only lasted a few days. (PX 10. p. 34). Dr. Colman kept Petitioner off work at this time and recommended continued physical therapy and a second injection. (PX 10, p. 35). On February 21, 2023, Petitioner underwent a second post-revision surgery injection, performed by Dr. Madhu Singh. (PX 10, p. 28-29). Dr. Singh notes that following the injection Petitioner was to return to see Dr. Colman for follow-up. (PX 10, p. 29). On March 9, 2023, he returned to Dr. Colman for follow-up, complaining of persistent left sided L5-S1 radiculopathy, although somewhat improved following surgery. (PX 10, p. 21). On exam, Petitioner continued to display a positive straight leg raise on the left. *Id*. Another MRI was ordered on this date, he was kept off work and he was instructed to continue physical therapy. (PX 10, p. 22).

Petitioner was seen by Dr. Mather for a Section 12 examination on June 12, 2023. (RX 7).

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 his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his 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, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. Walker v. Chicago Housing Authority, 2015 IL App (1st) 133788, ¶ 47 Petitioner's testimony is found to be credible. He does appear to be an unsophisticated individual and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact. The Arbitrator's impression of Petitioner at trial was: honest; in pain; did well on cross examination.

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

Petitioner's current condition of ill-being regarding his low back, to wit: status post revision fusion surgery - combined interbody and posterolateral fusion at L5/S1 with use of synthetic interbody cage and posterior segmental pedicle screws, revision posterolateral fusion alone at L4/5, revision

laminectomy, partial facetectomy, foraminotomy between L4 and S1, and posterior column osteotomy at L5/S1, as documented by the testimony of Dr. Colman and the medical records is causally related to the injury.

This finding is based on the testimony of Petitioner, the medical records and the persuasive opinions of Dr. Colman.

"In preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease 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." Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 204 (2003). Petitioner has done so in this case.

The Supreme Court further noted in Sisbro that the work injury needs only be a causative factor in the resulting condition. *Id. At 205.* The January 6, 2021 fall at work is found to be a causative factor in the condition that led to the subsequent lumbar fusion surgeries.

Petitioner's testimony that he returned to work at full duty as a construction laborer for Respondent, with no problems as of December 14, 2020 is unrebutted. Respondent did not submit the testimony of a supervisor or a co-worker to dispute Petitioner's testimony. Petitioner was able to function as a construction laborer from the time he returned to work until the January 6, 2021 work accident.

While it is true that Petitioner was on unpaid FMLA from October 2020 to his December 14, 2020 return to work, Petitioner testified that he could have requested more FMLA time (albeit unpaid), if he felt that he had not recovered.

Accident was stipulated to and the bottom line is that a high energy fall can aggravate or accelerate an isthmic spondylolisthesis condition, such that fusion surgery is needed, as Dr. Colman testified. Petitioner is a big man and a fall as he described can certainly be considered a high energy fall. Petitioner was taken from the accident scene via ambulance to the ER at Mount Sinai and, after appropriate ER workup, he was admitted to the hospital for a neurosurgical workup. Thereafter, he had consistent complaints and gave a consistent history (including regarding his prior treatment shortly before the accident).

Dr. Colman's testimony persuasively explains his causation opinions and it is important to note that his first opinions were as a Section 12 examiner and they were relied on by Respondent to pay a huge amount of TTD and medical benefits. (See: RX 8 and RX 9, ArbX 1).

Dr. Mather's causation opinions are not persuasive. He bases his opinion on the lack of interval change on MRI studies taken before the work accident and taken after. He also appeared to dispute causation because Petitioner's subjective complaints appeared exaggerated and Petitioner gave Dr. Mather a history of no prior back issues before the subject accident. Given the Arbitrator's finding regarding Petitioner's credibility and common sense and experience, the Arbitrator finds it hard to believe that Petitioner would deny prior incidences of back pain (he gave a history of prior back pain to all of the treaters mentioned above and Dr. Colman for the Section 12 exam). The Arbitrator thinks that there was a mis-communication between Dr. Mather and Petitioner. The Arbitrator does not endorse Dr. Mather's assessments regarding Petitioner's credibility, which underlie Dr. Mather's opinions.

Petitioner's current condition of ill-being regarding his low back is causally related to the January 6, 2021 work injury.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?, THE ARBITRATOR FINDS:

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

Petitioner claimed the following medical bills, which are awarded:

Team Rehabilitation		$23,475.00
ATI Physical Therapy		$2,495.65
Premier Healthcare Services		$2,278.50
Prescription Partners		$1,128.01
Athletico		$2,385.00
Laser Spine Center		$650.00
	TOTAL:	**$32,412.16**

The award is subject to the Medical Fee Schedule and pursuant to §§8(a) and 8.2 of the Act. Respondent is entitled to a credit for all awarded bills that have been paid or compromised by it.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS:

Given the Arbitrator's finding above on the issue of causation and the testimony of Dr. Colman, the Arbitrator finds that Petitioner is entitled to prospective medical care.

The Arbitrator will not address any issue regarding a spinal cord stimulator, as no records from Dr. Lubenow were submitted into evidence.

Respondent shall authorize and pay for prospective medical services as suggested by Dr. Matthew Colman in his deposition of October 10, 2023, in accordance with sections 8(a) and 8.2 of the Act. The services are possible EMG, FCE and pain management. Petitioner shall follow up with Dr. Colman to determine the appropriate steps to take in managing his medical care.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS:

Based upon the Arbitrator's findings above on the issues of causation and prospective medical treatment, Petitioner is not yet at MMI. Accordingly, Petitioner is entitled to TTD benefits. Interstate Scaffolding, Inc., 236 Ill. 2d 132 (2010)

The medical records show that Petitioner was taken off work following the work accident of January 6, 2021 and has been authorized off work through the date of trial. The Arbitrator finds that Respondent shall pay Petitioner temporary total disability benefits of $1,134.70/week for 149-6/7 weeks, commencing January 6, 2021 through November 21, 2023, as provided in §8(b) of the Act. Respondent is entitled to a credit for the compensation benefits that it has paid, per ArbX 1.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC036796
Case Name	Martin Vicik v. Builder's Heating, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0429
Number of Pages of Decision	26
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Mark Weissburg
Respondent Attorney	W. Britt Isaly

DATE FILED: 9/6/2024

/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

Martin Vicik

Petitioner,

vs. NO: 16 WC 036796

Builder's Heating 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 permanency, penalties/fees, and evidentiary issues, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

FINDINGS OF FACT

Petitioner, a sheet metal journeyman had been employed with Builder's Heating, Inc. ("Respondent") since 2000. His job duties included installing heating and air conditioning equipment and ductwork. Petitioner performed many duties including daily work on ladders and roofs. Petitioner was a member of Sheet Metal Union Local 265 (Union).

On September 21, 2016, Petitioner was lifting pieces of ductwork using a "Vermette", when the lift kicked back causing the handle to hit Petitioner in the right hand. Petitioner sustained a comminuted fracture and ulnar deviation of the right ring finger and underwent open reduction and internal fixation insertion of plates and pins by Dr. John Pomponi.

Petitioner attended occupational therapy from October 12, 2016, through May 30, 2018, with continued reports of weakness in his right hand and diminished grip strength.

Petitioner returned to work for Respondent on June 5, 2017, with temporary restrictions of no work on roofs or scaffolding. Respondent accommodated Petitioner's restrictions.

Petitioner was released by Dr. Pomponi on May 30, 2018, with permanent restrictions of no work on roofs or scaffolding due to his diminished grip strength and atrophy of the foreman muscle. He was advised to continue building strength in his hand with a spring-loaded grip. (PX1 at 450).

Petitioner continued to work for Respondent as Respondent accommodated Petitioner's restrictions through August 24, 2018, but was laid off because Respondent no longer had work available that allowed for accommodation of Petitioner's permanent restrictions. Petitioner consulted his union representative about work but was told they had nothing available if he had restrictions. (TR at 42).

Approximately three months later, Petitioner relocated to Tennessee in November 2018 and started a job search. In March 2019, seven months after his permanent restrictions were no longer accommodated by Respondent and four months after his relocation to Tennessee, Respondent offered Petitioner a job within his permanent restrictions. Petitioner testified that he did not attempt employment in sheet metal because of his permanent restrictions, diminished grip strength, and lack of union jobs in Tennessee. Petitioner testified he accepted a position as a postal carrier earning $19.83 per hour, working 40-50 hours per week.

At the time of trial, Petitioner had relocated again within Tennessee and worked part-time at a local grocery store, making $11 per hour. Petitioner testified that he continued to have diminished grip strength which made household activities more difficult. His hand would get very sore with eating and driving.

The Commission notes that Petitioner would be earning $54.25 per hour, working 40 hours per week if he was employed as a sheet metal worker per his testimony, the testimony of Respondent's witness, John Harmon, and the wage rate sheet admitted into evidence. (PX9).

Vocational expert, Kathleen Mueller, consulted with Petitioner and prepared a transferrable skills analysis and vocational assessment. Mueller opined Petitioner suffered a loss of his usual and customary employment as well as diminished earning capacity. She based her opinion on Petitioner's permanent medical restrictions and the opinions of two Local 265 union representatives who opined that Petitioner was not employable in sheet metal with his restrictions. Mueller opined Petitioner's job as a postal carrier was within his earning capacity range however, she had not evaluated Petitioner's grocery store position and did not provide an opinion about that position.

CONCLUSIONS OF LAW

Per Section 8(d)1, an impaired worker is entitled to a wage differential award when (1) he is "partially incapacitated from pursuing his usual and customary line of employment" and (2) there is a "difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." *820 ILCS 305/8(d)1*. There is a preference to give a wage differential award over person as a whole award when the employee has presented sufficient

evidence to show loss of earning capacity. *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 734 N.E.2d 482 (3d Dist. 2000). The determinations of whether the employee lost earning capacity or is unable to return to his or her usual and customary line of employment are questions of fact for the Workers' Compensation Commission and will not be disturbed unless they are against the manifest weight of the evidence *Eward Gray Corp. v. Industrial Comm'n (Gimino)*, 316 Ill. App. 3d 1217, 738 N.E.2d 139 (1st Dist. 2000).

1. Loss of Usual and Customary Line of Employment

An employee is considered disabled in regards to a certain type of employment when he or she can no longer perform the tasks of said employment without endangering his or her life or health. *Radaszewski v. Industrial Comm'n*, 306 Ill. App. 3d 186, 713 N.E.2d 625 (1st Dist. 1999).

Petitioner has proven he is partially incapacitated from his usual and customary line of employment based on his permanent restrictions and the unrebutted opinions of vocational expert, Kathleen Mueller. Petitioner continues to have diminished grip strength in his right hand, which is well documented in his medical records. Per Petitioner and Dr. Pomponi, Petitioner's diminished grip strength creates an unsafe work environment by increasing his chances of falling and dropping objects from roofs/scaffolding. Although Respondent accommodated Petitioner's permanent restrictions from June 2017 through August 2018, he was laid off when Respondent ran out of accommodated work. Petitioner relocated to Tennessee once he learned the Union could not place him with another employer if he had restrictions.

The Commission acknowledges Respondent offered Petitioner a full-time position as a sheet metal worker accommodating his restrictions however, the offer arrived seven months after he was laid off in August 2018 and was again subject to potential layoffs as testified to by Respondent's witness John Harmon. Mr. Harmon testified:

Q: How could you accommodate…was this going to be a permanent job offer?
A: As long as we had work.
Q: Right. And obviously if you didn't have work, you'd have to lay him off.
A: Correct…(TR at 122).

In addition to Mr. Harmon's testimony, the Commission notes a history of layoffs with Respondent. Petitioner testified and Respondent confirmed Petitioner worked from 2000 until he was laid off in 2009. (TR at 98). He did not resume employment with Respondent until 2016 and was laid off again in August 2018.

Outside of Respondent's offer to accommodate Petitioner's restrictions as long as it had work, the evidence shows Petitioner is unable to return to sheet metal work. Given the above, the Commission agrees with Kathleen Mueller that Petitioner lost his usual and customary line of employment.

2. Diminished Earning Capacity

Once it is established the employee is disabled to the point where he or she can no longer resume his or her usual and customary employment, a diminished earning capacity must also be shown. In determining diminished earning capacity, the Commission should consider the actual earning capacity of the new employment, not just actual wages. *Smith v. Industrial Comm'n*, 308 Ill. App. 3d 260, 719 N.E.2d 329 (3d Dist. 1999); *Jackson Park Hosp. v. Illinois Workers' Comp. Comm'n*, 2016 IL App (1st) 142431WC, 400 Ill. Dec. 202, 47 N.E.3d 1167. The Commission has a duty to evaluate all the evidence when determining a Petitioner's true earning capacity in a competitive job market, including someone's permanent restrictions and skill level, not just pre and post injury wages offered by Respondent to accommodate Petitioner's restrictions. *Jackson Park Hosp* at N.E.3d 1167, 1168.

Based on the record, the Commission finds Petitioner has met his burden to prove a diminished earning capacity. In so finding, the Commission notes that although Respondent offered Petitioner a job earning scaled union wages in March 2019, those earnings are limited to that specific job offered *by Respondent* and were not earnings available to Petitioner with another employer given his permanent restrictions. The Commission further finds the proffered job with Respondent earning scaled union wages does not accurately reflect Petitioner's overall earning capacity. See *Jackson Park Hosp v. Illinois Workers Comp. Comm'n,* 2016 IL App (1st) 142431WC, P1, 47 N.E.3d 1167, 1168, 2016 Ill. App. LEXIS 5, *1, 400 Ill. Dec. 202, 203. Rather, the Commission relies on the unrebutted testimony of Kathleen Mueller who opined that Petitioner suffered a reduced earning capacity based on his permanent restrictions and his loss of his usual and customary line of employment as a sheet metal work. (TR at 86). The Commission notes that Petitioner was able to find employment as a postman earning $19.83/hour and Kathleen Mueller testified Petitioner's postal earnings of $19.83/hour was within his earning range and constituted suitable employment. Accordingly, the Commission finds that Petitioner is unable to return to his usual and customary employment due to his permanent restrictions and has sustained a loss in earning capacity. Petitioner is thus entitled to an award under Section 8(d)(1) of the Act.

3. Wage Differential Benefit Rate

Calculating the wage differential rate requires the Commission to make two earnings determinations: (1) "the average amount which he would be able to earn in the full performance of his duties in the occupation in which… he was engaged at the time of the accident," and (2) "the average amount which he is earning or is able to earn in some suitable employment or business after the accident." 820 ILCS 305/8(d)1. The average amount the employee would be able to earn absent the injury is considered to be the amount he or she would have earned in that employment at the time the Commission is hearing a claim for benefits *General Electric Co. v. Industrial Comm'n*, 144 Ill. App. 3d 1003, 495 N.E.2d 68 (4th Dist. 1986).

The preponderance of the evidence shows Petitioner would currently be earning $54.25 per hour at 40 hours per week in his duties as a sheet metal worker (TR at 46; PX9). As for calculating the average amount Petitioner can earn in suitable employment, Kathleen Mueller testified Petitioner's postal earnings of $19.83/hour was within his earning range. Ms. Mueller

did not evaluate Petitioner's current job working part time in a local grocery store for $11/hour and that rate falls below the earning capacity range cited in her report. Based on the above, the Commission recognizes Petitioner's postal earnings of $19.83 as the appropriate wage for calculating his wage differential benefits.

Petitioner's current average weekly wage as a sheet metal worker in the full performance of his occupation is $2,170.00/week, which equals his hourly earnings of $54.24 multiplied by 40 hours per week. His average weekly wage as a postal carrier is $892.35/week, which equals his hourly earnings of $19.83 multiplied by 45 hours per week (average hours worked). This is an impairment of $1,276.00 multiplied by 66 2/3, which equals $851.14 per week. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 13, 2023, is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner wage differential benefits, commencing March 9, 2019, of $851.14 per week for the duration of the disability, until Petitioner reaches age 67 or 5 years from the date of the final award, whichever is later, because the injuries sustained caused a loss of earnings, as provided in §8(d) 1 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of 55% loss of use of Petitioner's right ring finger is stricken.

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.

September 6, 2024

/s/ *Marc Parker*
Marc Parker

MP: ns
o 7/25/24
68

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC036796
Case Name	Martin Vicik v. Builder's Heating, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Mark Weissburg
Respondent Attorney	W. Britt Isaly

DATE FILED: 10/13/2023

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

/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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Martin Vicik
Employee/Petitioner

Case # **16** WC **036796**

v.
Builder's
Builder's Heating, 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 **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **August 7, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/21/2016** 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*** 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 $**53,299.82**; the average weekly wage was $**1,531.60**.

On the date of accident, Petitioner was **55** years of age, **married** with **no** 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 $**7,035.19** for TTD, $**14,686.14** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**21,721.33**.

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

ORDER

Respondent shall pay for the reasonable and necessary medical services provided in Petitioner's exhibit 7, in the amount of $8,579.09 subject to 8.2 of the Act.

Respondent shall pay to the Petitioner temporary total disability benefits of $1,021.07/week for 10 3/7 weeks commencing September 22, 2016 through December 3, 2016, as provided in Section 8(b) of the Act. Per the parties' stipulation, Respondent is entitled to a credit in the amount of $7,035.19 for temporary total disability benefits paid to the Petitioner. Respondent shall pay to the Petitioner maintenance benefits of $1,021.07 for 28 weeks commencing August 25, 2018 through March 8,2019. The Arbitrator finds that thereafter, the Petitioner was offered a job at his union scale, subject to his permanent restrictions at full duty.

Respondent shall pay the Petitioner permanent partial benefits of $775.18/week for 14.85 weeks as provided in Section 8(e) of the Act. The Petitioner has been permanently partially disabled to the extent of 55% loss of use of his right ring finger.

The Arbitrator awards $0.00 in penalties pursuant to Sections 19(k), 19(l) and fees under Section 16. Please refer to the Addendum to Arbitration 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. /s/

Raychel A. Wesley OCTOBER 13, 2023

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on August 7, 2023, in Chicago, Illinois, before Arbitrator Raychel Wesley on Petitioner's Request for Hearing. The issues in dispute include (1) Causal connection; (2) Unpaid medical bills; (3) Temporary total disability ("TTD") benefits; (4) Temporary partial disability ("TPD") benefits; (5) Maintenance benefits; (6) Nature and extent of the injury; and (7) Penalties and attorneys' fees under Section 19(k), 19(l), and 16.

FINDINGS OF FACT

Testimony of Martin Vicik, Petitioner

Petitioner testified his date of birth is February 9, 1961 (62 years old) and that he lives in Bluff City, Tennessee. He is married and has no children. His highest level of education is some college, and he is right hand dominant.

On September 21, 2016, Petitioner was employed by Builder's Heating, Inc. ("Respondent") and he first started working for them in 2000, working for about 15 years. He was employed full time with the job title of Sheet Metal, Journey Man. (Tr. at 14) He never held any other titles for Respondent during his work there. He has been a member of the Sheet Metal Worker Union since 1985. (T. 15) His job duties include installing heating and air conditioning equipment, ductwork, using a chain saw to cut houses or using a Sawzall or a circular saw depending on what is needed. He uses sheet metal snips all the time to cut the sheet metal to size. He uses a tape measure to measure everything. (T. 15-16) He uses a ladder every single day, usually up on the roof most of the time. (T. 16)

Petitioner testified that on September 21, 2016, he suffered a work accident while working for the Respondent. He and other workers were lifting up pieces of ductwork using a Vermette, which lifts the material

up, and they were using two of them because the ductwork was very large. While cranking up the Vermette, almost like riding a bicycle with your hands, all of the sudden, the lift kicked back and caused the handle to reverse itself which hit his hand. (T. 15-18) He noticed when he looked down that the right ring finger on his right hand was crooked. (T. 18-19) Prior to September 21, 2016, he had never injured or had medical treatment for that right ring finger or for his right hand. (T. 19)

For medical treatment, he went to Urgent Care at Franciscan Health. They told him that because it happened at work, he would have to go to the hospital. (T. 20) At the hospital, he got x-rays showing that the right ring finger had been broken and so he was put into a soft cast. He believes he was referred on September 23, 2016 to a specialist named Dr. John Pomponi. (T. 22) The x-rays eventually showed that he had a displaced proximal phalanx fracture of his right ring finger with an ulnar deviation and moderate comminution. (T. 22) Surgery was prescribed by Dr. Pomponi and that surgery was performed on September 27, 2016. (T. 23) The surgical procedure included an open reduction and internal fixation of the right ring finger with insertion of plates and pins. (T. 23-24) He had no complications with the healing process after his surgery. (T. 24) When Petitioner followed up with Dr. Pomponi on October 12, 2016, he was still off work. He also enrolled in occupational therapy which helped. (T. 26) On December 9, 2016, he followed up with Dr. Pomponi confirming that he was doing well in physical therapy.

By December of 2016, he went back to work light duty, the Respondent assigning him to Home Depot selling furnaces and air conditioners. He was only getting paid $10 per hour but workers' compensation picked up the difference. He followed up on February 10, 2017 with Dr. Pomponi and was still working light duty. (T. 28) On March 2, 2017, the doctor removed the hardware in his hand and he had some tendon adhesion according to the medical records. (T. 29) On May 31, 2017, he returned for a follow up with Dr. Pomponi and the medical records showed that he had some diminished grip strength at that point. (T. 30) The Petitioner believes that his grip strength has everything to do with his employment. On May 31, 2017, he was unable to climb ladders because of the risk of grip strength. (T. 31) He continued to be off work through July 31, 2017, when he returned for a

follow up with Dr. Pomponi with some weakness in the right hand. (T. 32) By October 2, 2017, he was enrolled in home exercise program for six months. (T. 33) He received an injection on April 2, 2018. (T. 35)

By May 30, 2018, he was declared at MMI by Dr. Pomponi and he was given permanent restrictions of no ladders, no roof work and no scaffolding. (T. 37)

The Arbitrator notes that Dr. John Pomponi's final Progress Note dated 5/30/2018, under PLAN, Dr. Pomponi states "[t]he patient is considered an MMI (Maximum Medical Improvement), so he is to have permanent restrictions at work such as: no roofs or scaffolding. The patient was advised to purchase a spring-loaded grip so he can work on strengthening his hand." (Px. 1, 5/30/18 Progress Note) Dr. Pomponi does not mention restrictions with gripping or mention working with or without ladders in his 5/30/2018 Progress Note.

The Petitioner also testified that he could work on rooftops so long as he could climb stairs to get there. (*See*, T. 69) Today, the one thing he notices is that while carrying things around or building something at home, like painting or holding a paint brush, his hand gets sore, and he has to stop. And with driving the car, while on a road trip for a long period of time, his hand gets very sore. (T. 38) The last time he got treatment for the right ring finger was on May 30, 2018.

August 24, 2018 was his last date of work for the Respondent, earning $46.55 per hour, working 40 hours a week at regular hours. (T. 40) He was laid off by the Respondent. He started searching for a job within his restrictions. He called his Union BA and after telling him about his restrictions, the union representative told the Petitioner that it would be difficult to try to find him work without using scaffolding or going on roofs. (T. 41) The Petitioner reviewed Px. 4, which are his job search logs. (Px. 42-43) These job logs record a search for jobs between January 14, 2019 – March 16, 2019, when he applied for jobs. (*See*, Px. 4) None of the jobs listed in Px. 4 are for sheet metal worker jobs. The Petitioner said he never looked for a sheet metal worker job in Tennessee because it only pays $25.00 per hour. (T. 60-61) Ultimately, he found a job with the United States Postal Service in Tennessee in the job title of Mail Carrier. This job title was within the work restrictions provided to him. He was earning $19.00 per hour between 40 to 50 hours a week. (T. 43) Currently, however, he works for Food City,

a local grocery store in Tennessee because he and his wife moved to a different area where the Postal Service required him to use his own vehicle and he could not afford such another vehicle. He now earns $11.00 per hour, part time, for Food City. (T. 44-45) He now works about 24 hours a week. If he was still working full duty as a Union Sheet Metal Worker, he would currently have been making $54.25 per hour. (T. 46)

The Petitioner testified that if not for his hand injury and his permanent restrictions, he would be working as a Sheet Metal Worker. (T. 47)

On cross examination, the Petitioner testified that he worked for the Respondent between 2000 until 2009 (T. 48) but that he was laid off in 2009 due to lack of work due to the recession. The Petitioner testified that he usually worked with other sheet metal workers, usually just one other person. (T. 49) Following his accident, he took a light duty job through the Respondent working at Home Depot between November 29, 2016 and June 2, 2017. He was paid workers' compensation to make up the difference in his salary. (T. 50)

He returned to work on June 5, 2017 for the Respondent doing his regular work as a sheet metal worker but with restrictions of no going on roofs and no climbing scaffolding. (T. 50-51) When the Petitioner refers to using a ladder all the time, he is referring to a step ladder which is 4ft. to 6ft. He is not talking about the sectional ladder but needed a sectional ladder for pretty much every job. (T. 51) He agreed that he did not bring his own sectional ladder but that the Respondent would supply it. (T. 51) The Petitioner testified he believed his restrictions were no ladders, no scaffolding, and no rooftop work. (T. 53)

After returning to work on June 5, 2017 he was laid off again on August 24, 2018. During that more than one year period of 2017-2018, the Respondent accommodated his restrictions the best they could. (T. 54) If there was something he could not do, the other person on the job would take care of it. (T. 55)

The Petitioner did not know what his doctor had in his report with regards to restrictions. He just knows that the therapist with Dr. Pomponi, every time he went to see him, the grip strength was always an issue. (T. 55-56) But since he was released in May, 2018, he never received a restriction for grip strength. (T. 56-57) The Petitioner agreed that when he was finally laid off from the Respondent on August 24, 2018, he was told by

Respondent they no longer had work for him. The Petitioner has been laid off before and the Respondent hired him back. (T. 57) The Petitioner testified that John Harmon told him that if anything comes up in the future, they would call him. But Petitioner testified that he never heard from the Respondent since August, 2018. (T. 58)

The Petitioner testified that he and his wife had always talked about moving to Tennessee. When he got laid off in August of 2018, and after talking to the union representative, he assumed that his sheet metal career was over, so he made a move to move to Tennessee. (T. 58-59) The Petitioner testified he never got a call from John Harmon on March 8 or March 11 of 2019. (T. 59) He said that he never told John Harmon he was on vacation but was in Tennessee in November, 2018. (T. 59) The Petitioner testified that he never looked for work in Tennessee as a sheet metal worker because he thinks it is only $25.00 per hour. He thought it would be impossible to find a job for $25.00 an hour so he did not look for work as a sheet metal worker in Tennessee. (T. 61)

The Petitioner agrees that if the record showed he had diminished grip strength on his last office visit, in his physical exam, he had had diminished grip strength even though it was not part of his permanent restrictions. (T. 63-65) The Petitioner testified he never went back to a doctor after May 30, 2018 for his hand because Dr. Pomponi told him there was nothing else he could do about his right hand pain. (T. 66) He believes that because of his restrictions no one would hire him and he does not feel comfortable doing it anymore. (T. 38)

The Petitioner agreed there are some rooftops where he could take the stairs, such as in commercial buildings so standing on a rooftop does not require use of any sectional ladders. The Petitioner even told Dr. Pomponi to allow for a flat roof because that is different than a pitched roof and he agreed that the flat roof would be fine. (T. 68)

Testimony of Kathleen Mueller, Vocational Counselor

For the Petitioner, Kathleen Mueller, vocational rehabilitation consultant testified. (*See*, T. 72 at. seq.) Her work consists of performing vocational assessments to determine levels of employability and earning capacity. She has been doing this for 15 years and is a certified rehabilitation consultant and a certified ergonomic assessment specialist. She worked with Martin Vicik at the Petitioner's attorney's request. She first talked to him

over the phone in November, 2021. She prepared a report dated December 14, 2021. (T. 75) Ms. Mueller took information of the Petitioner where he lived and his medical records.

Ms. Mueller testified that as a vocational expert, she relies on medical restrictions in order to render a vocational opinion. She utilized the restrictions provided by Petitioner's treating doctor in order to make a recommendation about his employment. (T. 79) The permanent restrictions for Vicik the last time he treated with Dr. Pomponi in May, 2018, included no work involving roofs and scaffolding. (T. 80) Those are the restrictions she relied on in formulating her vocational opinions. She reviewed Petitioner's vocational history, including his work for the Sheet Metal Workers Union since 1985. He had also been employed as a postal carrier for the US Postal Service. (T. 80) She believed he had a singular work history as a sheet metal worker which meant it could limit his transferability of skills to new employment. (T. 81) She performed transferable skills analysis for the Petitioner and the analysis she utilized was based on requiring work in heights, that he was unable to work on scaffolding and on roofs. (T. 83)

She found several entry level positions with wages in the range of $12.60 to $22.00 per hour. (T. 85) Based on the limitations provided by her treating physician, it was Ms. Mueller's opinion that Mr. Vicik lost his usual and customary access to his position as a sheet metal worker. She also testified that he suffered a loss of earning capacity based on these restrictions. (T. 86) His work life expectancy is up to age 67. (T. 86)

At the time he was earning approximately $19.00 per hour in Tennessee, it was her opinion that these earnings were within the capacity that she had quoted in her report. (T. 87) Ms. Mueller was asked to look at Px. 11, wage stubs from Food City but she had not evaluated his work at Food City and did not know Petitioner's job title at Food City. (T. 88) He had left the US Postal Service to a different location and had been required in the different location to provide his own vehicle and his refusal to take this employment considering his expenses at the new USPS location was a reasonable action. (T. 89)

On cross-examination, Ms. Mueller testified she agreed that after the economy crashed in 2009 and there was no work available and he was laid off, so he went to work in Illinois at US Postal Service. (T. 82) Ms. Mueller

testified that she relied on opinions from two union representatives that she mentions in her report in order to form her opinion. She received a phone call from one union representative, and she received a letter from another individual. The letter contained information about the availability of work on ladders and scaffolding, and that information was used to provide her opinion. (T. 94-95) However, she received no information from the Respondent, Builder's Heating. She only heard from Mr. Vicik that there was no accommodated duty work available and Respondent had not provided any vocational rehabilitation or anything for alternate employment. (T. 96)

Testimony of John Harmon, Owner of Builder's Heating

John Harmon testified that he is the owner of Builder's Heating, Inc. which is also known as Builder's Heating and Cooling. (T. 97) He has been working for the Respondent for 35 years. He employed Martin Vicik, the Petitioner, from 2000 until 2009 and then he was rehired in 2015 and he worked until 2018. (T. 98) In August, 2018, he was laid off. The Petitioner's job title was Sheet Metal Worker and he paid him his union wages according to union scale. (T. 99)

John Harmon testified that his company performed residential new construction with add-on replacements such as replacing furnaces and air conditioners. Builder's Heating did not do larger commercial projects but smaller ones, like Starbucks or a 4-story building with floor retails. 40% of their work was add-on residential replacement service; 50% residential new construction; and 10% light commercial new construction. (T. 100) In addition to Mr. Vicik, the Respondent employed between three to five sheet metal workers.

The Respondent produced a Time Reporting Report marked as Rx. 3. These were time reports for Martin Vicik for the dates of 4/21/2015 – 8/24/2018. (T. 103) In addition to the dates and times he worked, it also gives a job code showing whether it is new construction or job labor. For example, between 11/29/2016 – 6/2/2017, he was a labor sales advisor at Home Depot. (Px. 3, pp. 13-16; T. 105) Starting 6/5/2017, he picked up job labor again almost every day for a year until he was laid off on 8/24/2018. (T. 105) This document was kept in the regular course of business and was expected to be accurate for accounting and union purposes. (T. 106)

When the Petitioner returned to work with restrictions on June 5, 2017, he was told that his restrictions were not to work on roofs or scaffolds and they accommodated him in those respects. John Harmon was never told of a restriction of no ladders, so he expected Petitioner to work on step ladders. Step ladders are folding ladders opening up in the shape of the pyramid that you can walk up on. (T. 107) But a sectional ladder was sections of a ladder strung together with perhaps pullies and ropes to get to a second floor or higher. Mr. Harmon did not have Mr. Vicik use the sectional ladder after his accident. (T. 109) Mr. Harmon knew that Mr. Vicik never used a sectional ladder after his accident because the Respondent was required to deliver the ladder to the jobsite, which he never did while Mr. Vicik worked following his work accident. (*See*, T. 111) During that period, Mr. Harmon was aware of the Petitioner's restrictions of no working on scaffolding or on rooftops and between that period of 6/5/2017 – 8/24/2018, he paid him sheet metal workers scale and Petitioner worked with those aforesaid restrictions. (T. 113) Also, materials like ductwork would be brought by the jobsite and then the installer, like Petitioner, would install that material either at the residence, or if it was an add-on replacement, he would go to someone's home, take out the old equipment and put in the new equipment. (T. 114)

John Harmon testified that he spoke to the Petitioner on March 8, 2019 and made him a job offer. (T. 115) He knows that he called him because Petitioner's number is in the Verizon phone bill for Builder's Heating. (Rx. 4) During the call on March 8, 2019, Mr. Harmon orally told Petitioner he had work for Petitioner. Mr. Vicik's response was he was out of town for a couple of weeks and he would call Mr. Harmon when he got back. Mr. Harmon testified that he was given the impression that the Petitioner would be coming back to work. (T. 116) Besides his testimony that he spoke to Mr. Vicik in March, 2019, Respondent also has phone records in Rx. 4, the Verizon bill and log of phone calls dated April 18, 2019. (T. 117; *See*, Rx. 4) This phone bill contains John Harmon's phone number (708-473-8305) and calls to the Petitioner's number (219-213-1081) on March 8, 2019 at 2:35 p.m. (T. 118) (Rx. 4, p. 73 of 91) Mr. Harmon knows that this is Mr. Vicik's cell phone number because it was the same number which Mr. Harmon used to call Mr. Vicik for jobs. Additionally, a phone call was placed on March 11, 2019 to Petitioner's home number at 219-365-1698. He spoke with the Petitioner who said he was

on vacation and out of town and he would call him in two weeks. (T. 119) Mr. Harmon said that he never heard before March, 2019 that the Petitioner had permanently moved. (T. 120) This Verizon phone bill statement (Rx. 4) is kept in regular course of the Respondent's business and is kept as a history of calls and required accurate dates and times in the reliance of these records. Mr. Harmon has never seen that these Verizon statements have been inaccurate. (T. 120-21) The job offer that he orally gave to Mr. Vicik on March 8, 2019, was a permanent job offer. (T. 122) Mr. Harmon testified that some of his workers are afraid of heights and will not go on roofs, so he has other sheet metal workers who will. If this is the case, Mr. Harmon said one sheet metal worker will do the "rough" which is putting in the material and then will send another sheet metal worker to do the roof work. (T. 124)

In addition to the two phone calls placed to the Petitioner with offers of employment, Mr. Harmon also testified that he sent a letter signed by him and addressed to Mr. Vicik in Tennessee. The letter dated February 2, 2023, confirmed his prior offer to him around March 8, 2019 with work available within his restrictions of no work on scaffolding and no work requiring sectional ladders. It was his understanding at that point that Petitioner had moved to Tennessee. (T. 125) (*See*, Rx. 2) But again, when he made a phone call on March 8 and March 11, 2019, he did not know that he had moved to Tennessee. And to date, Mr. Vicik has never accepted his offer. Mr. Harmon has not heard from Mr. Vicik since March of 2019.

Respondent continues to employ sheet metal workers, currently employing six of them. Mr. Harmon would hire Mr. Vicik today or in the future if he is available. Mr. Harmon considers the Petitioner to be an excellent worker (T. 140). The work of a sheet metal worker is essential to the Respondent's business. (T. 128) Mr. Harmon agreed that the Respondent's attorney encouraged him to write this letter confirming the prior offer made in March of 2019. (*See*, T. 131) Mr. Harmon called and spoke to the Petitioner on the 8th, but cannot remember if he talked to him on March 11, 2019. Likewise, he cannot remember if he left a voicemail message on the 11th or if it was a text. Mr. Harmon called the number that ends in -1698, which Mr. Harmon confirms is Petitioner's residence contact in Indiana. (T. 135)

Mr. Harmon was never told of any restriction on the Petitioner's right- or left-hand grip based on his medical records. (T. 141)

Testimony of Matthew Smith, IT Director and Ancel Glink, P.C.

Matthew Smith, the Information Systems Director of the law firm of Ancel Glink, P.C. testified about Rx. 1 and Rx. 6, the e-mail exchange between the e-mail addresses held by Britt Isaly, Respondent's Counsel, and by Mark Weissburg, Petitioner's counsel. (See, T. 149-170) Mr. Smith testified that Rx. 1 is a business record, kept in the regular course of business at the law firm. (T. 156-157) The subject of the e-mails between March 11, 2019 and April 10, 2019 is the March 8, 2019 job offer from Respondent to the Petitioner.

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision with respect to Paragraph "F", Whether Petitioner's Current Condition of Ill-Being Is Causally Related to the Injury, the Arbitrator makes the following conclusions:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a cause or effect of his ensuing injuries. A work-related injury may not be the sole or principal cause or effect, as long as it was a cause or effect in the resulting effect of ill-being. *Sisbro, Inc. v. Industrial Comm'n*., 207 Ill. 2d 193, 205 (2003)

The Arbitrator concludes that the Petitioner established the causal connection between the accident of September 21, 2016 and his current right ring finger condition of ill-being. In so finding, the Arbitrator relies on the medical treatment records of Dr. John Pomponi and the surgical records which resulted in no complication with healing process after his right ring finger surgery. (T. 24) The Arbitrator notes that the evidence demonstrates consistent complaints and continued symptomology of his right ring finger following the work accident and that the Petitioner was given permanent restrictions of no work on roofs and no work on scaffolds in his final medical visit on May 30, 2018 with Dr. Pomponi. As discussed in disputed Issue L, below, as to the nature and extent of the injury, the Arbitrator expressly finds that this ring finger injury does not rise to a Section 8(d)1 wage differential claim as the Petitioner's permanent restrictions were accommodated by the Respondent for one year

after the accident between 2017 and 2018, and testimony and evidence show that the same job offer with permanent work restrictions was offered again in March of 2019.

In support of the Arbitrator's Decision with respect to Paragraph "J", Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator makes the following conclusions:

Petitioner offered medical bills with a balance of $8,579.09. *(See*, Rx. 7, Medical Bill List) These balances were from Walgreens, Franciscan Alliance, Alverno Laboratories and PTSIR Industrial Rehabilitation. Subject to the parties' stipulation that they agree that if any of the bills are paid, the parties will honor any paid bills, the Arbitrator awards any unpaid balances as listed in Rx. 7 under Section 8.2 of the Act. These bills relate to treatment of the Petitioner's right ring finger injured in this compensable work accident.

In support of the Arbitrator's Decision with respect to Paragraph "K", whether Petitioner is entitled to TTD, TPD and maintenance, the Arbitrator makes the following conclusions:

The Arbitrator, after hearing testimony and receiving medical evidence, finds that the Petitioner was temporary totally disabled after the September 21, 2016 accident from September 22, 2016 to December 3, 2016, or 10 3/7 weeks. Petitioner then testified he took a light duty job with Home Depot from November 29, 2016 through June 2, 2017 and was paid workers' compensation to make up the difference in salary. (T. 50) On the Request for Hearing sheet, the Respondent confirms it paid $14,686.14 in TPD benefits, agreed upon by the Petitioner. (Arb. Ex. 1) Following his work at Home Depot, through June 2, 2017, the Petitioner testified he returned to work on June 5, 2017 performing his regular work as a sheet metal worker at regular union scale with restrictions of no roofs and no work on scaffolding. (T. 50-51) Then he was laid off on August 24, 2018. (T. 54) The Petitioner was off work from August 25, 2018 until Respondent offered him employment with the same restrictions on March 8, 2019. Therefore, the Arbitrators awards maintenance between August 25, 2018 through March 7, 2019, just before he was offered his job again. The Arbitrator finds that the offer of employment on March 8, 2019 was legitimate, and made in good faith, but the Petitioner did not accept the offer and has never accepted any job offers with Respondent since. Petitioner admits he would be a sheet metal worker again, but for

his hand and permanent restrictions. John Harmon credibly testified, and Rx.4 the Verizon Phone Statement, supported his testimony that Mr. Harmon made the job offer and the offer was confirmed by Respondent's legal counsel via his March 11, 2019 e-mail to Petitioner's legal counsel. (Rx.1)

In support of the Arbitrator's Decision with respect to Paragraph "L", as to the nature and extent of the injury, the Arbitrator makes the following conclusions:

On May 30, 2018, the Petitioner was given permanent restrictions by his treater, Dr. John Pomponi of no work on roofs or on scaffolds. (*See*, Px. 1, 5/30/18 Progress Note) The Petitioner did a job search in Tennessee between January 14 – March 16, 2019. But the Petitioner never sought work as a sheet metal worker. (Px. 4, Job Logs) The Respondent provided sworn testimonial evidence from John Harmon, the owner of the Respondent, that he verbally offered Petitioner a sheet metal worker job with permanent restrictions on the phone on March 8, 2019; An email was sent on March 11, 2018 from Respondent's counsel to Petitioner's counsel with a job offer; and a letter confirming the job offer was mailed February, 2023 verifying the job offer. In these ways, the Arbitrator is persuaded that the Petitioner was given a legitimate job offer consistent with his May 30, 2018 permanent restrictions of no work on roofs and no work on scaffolds. Petitioner admitted that he and his wife had always planned on moving to Tennessee but if it were not for his hand injury and for his permanent restrictions, he would be working as a Sheet Metal Worker. (*See*, T. 47) The Arbitrator notes that the Petitioner never attempted to seek work in Tennessee as a Sheet Metal Worker. (*See*, T. 60-61; 67-68) The Petitioner never said he had permanently moved or that he was in Tennessee. (T. 120, 126, 138-139) John Harmon testified that his job offer was a Sheet Metal Worker with restrictions of no working on roofs or scaffolds. (T. 112) Mr. Harmon said that the offer is still good today into the future for the Petitioner whom he considered an excellent worker. (T. 127-128; 140) Mr. Harmon currently employs six Sheet Metal Workers and the Sheet Metal Worker is essential to Respondent's business. (T. 128-129) The Arbitrator is persuaded that Respondent made a legitimate job offer on March, 2019, which was the same job Petitioner had worked for Respondent in 2017-2018. (*See*, Rx. 1)

The Petitioner and Respondent testified often about the distinction between "step ladders" and "sectional ladders". (See, Eg, T. 51, 103, 112) However, the Arbitrator finds these distinctions without relevance since the Petitioner was not restricted by Dr. Pomponi from work on ladders. But John Harmon never asked the Petitioner to work on a sectional ladder after his September 21, 2016 work accident. (T. 109) He knew this because he never delivered a sectional ladder to Mr. Vicik on the jobsite. Mr. Vicik did not have a vehicle that could support a sectional ladder since they can be 12 ft., 14 ft. or 16 ft. up to 40 ft. (T. 110-112) The Petitioner never accepted the Respondent's March, 2019 job offer (T. 126) and through the date of trial, never testified that he was interested in returning to his job subject to the offer restrictions.

The Arbitrator takes note of admitted Rx. 1, an e-mail exchange between Mr. Isaly and Mark Weissberg, between the dates of March 11, 2019 – April 10, 2019. In that time, Attorney Isaly sent the following e-mail on March 11, 2019:

> "Mark, John Harmon Jr. of Builder's Heating contacted Mr. Vicik on Friday, 3/8 that they have work available to him within his restrictions. Vicik texted him today (3/11/19) that he is out of town for the next couple of weeks.
>
> Please let your client know that when he returns, there is work ready for him, working for the Respondent within his restrictions. Once he returns to work for a few weeks, then I suggest we discuss settlement. Britt"

(See, Rx. 1)

> On April 10, 2019, an e-mail belonging to Mark Weissberg responded with the following e-mail:
>
> "[a]apparently, he has moved permanently to Tennessee. Let me know if there is a settlement offer to convey to him. Thanks."

(*See*, Rx. 1)

Phone calls made from John Harmon to the Petitioner, in which Mr. Vicik said he would be out of town for a couple of weeks, is consistent with e-mail about his being out of town for two weeks, sent at the same time by Respondent's counsel on March 11, 2019. (Rx. 1) Based on this, the Arbitrator finds that the offer was made in good faith and was a legitimate job offer. As the Petitioner testified, if it were not for his hand injury and

permanent restrictions, he would be working as a Sheet Metal Worker. (See, T. 47) Indeed, he could be working for the Respondent in the same job he had before.

Petitioner's move to Tennessee was not due to Petitioner's employment but was his own choice. The Arbitrator takes note that because the Petitioner made this choice, he is also attempting to avail himself under Section 8(d)1 to a wage differential theory of recovery instead of an 8(e) theory of recovery for a nature and extent of his right ring finger injury. Petitioner's opportunities for employment and higher wages were much better near Chicago than in Tennessee. Petitioner did not look for a Sheet Metal Worker job in Tennessee though it paid $25.00 per hour. Petitioner moved from a high wage area and this minimized his wage differential award. Such a result would be contrary to the purpose of the Act. *Dominick's Finer Foods, Inc. v. Industrial Comm'n. and John K. Barnes*, 95L 50107, 1995 Ill. Wrk. Comp. LEXIS 211, p. 24 (Judge Alexander P. White, Circ. Ct. Opin. of 95 IIC 16, 88WC 35607) (1995) A claimant's permanent job restriction does not, by itself, permit the claimant from moving himself from the job market and claiming a wage differential, without seeking suitable employment commensurate with his skills and abilities. *Id*. The claimant made a personal choice to accept a lower paying job, he failed to prove that he could not obtain a better paying position, and he made no attempt to return to his former job. *Copperweld Tubing Prods. Co. v. Illinois Workers' Comp. Comm'n.,* 402 Ill. App. 630, 931 N.E. 2d, 762, 766, 341 Ill. Dec. 865, 869 (2010) citing *Durfee v. Industrial Comm'n*., 195 Ill. App. 3d 886, 553 N. E. 2d (1990) Here, Petitioner never looked for work as a sheet metal worker either in Illinois or Tennessee. (*See*, T. 61) The Petitioner cannot now be awarded an 8(d)1 since his former job and former union wages were offered to him, he made no attempt to return to his former job, and he did not search for work as a sheet metal worker in Tennessee.

The Arbitrator concludes that as a result of the work-related accident of September 21, 2016, Petitioner sustained permanent partial disability to the extent of 55% loss of use of the right ring finger. The Arbitrator relies on the credible testimony of Petitioner and the medical records admitted into evidence at hearing.

The Arbitrator's finding is consistent with the factors and criteria set forth in Section 8.1(b) of the Act. 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 55% loss of use of the right ring finger. 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 was employed as a sheet metal worker. Petitioner did not seek employment thereafter in this field based on his permanent restrictions. However, the Arbitrator finds that he was offered an accommodated position by the Respondent. Petitioner relocated to Tennessee during the pendency of this process. Had he attempted to find work at the new location, the Arbitrator would have considered the relevance of this in terms of his occupation. The Petitioner did not accept the accommodated position, nor did he seek a similarly accommodated position in Tennessee. Accordingly, the Arbitrator accords great weight to this factor.

C. Age of Petitioner

Petitioner is 62 with a work life expectancy of 67. No evidence was presented as to how Petitioner's age affected his disability. It is more likely than not that his age increases Petitioner's disability. In support of this

finding, the Arbitrator relies on the holding in *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability).

D. Future Earning Capacity

There was evidence of whether Petitioner's future earning capacity was impacted. However, Petitioner's failure to look for work in this field, along with the refusal of the accommodated job offer impacts the Arbitrator's analysis. The Arbitrator accords this factor great weight based on these two factors.

E. Evidence of Disability Corroborated by the Treating Medical Records

The Arbitrator relies on the medical treatment records of Dr. John Pomponi and the surgical records which resulted in no complication with healing process after his right ring finger surgery. (T. 24) The Arbitrator notes that the evidence demonstrates consistent complaints and continued symptomology of his right ring finger following the work accident and that the Petitioner was given permanent restrictions of no work on roofs and no work on scaffolds in his final medical visit on May 30, 2018 with Dr. Pomponi document Petitioner's ongoing complaints and current level of permanent disability and Petitioner also testified regarding his condition.

The Arbitrator accords this factor great weight. The Arbitrator finds it significant that Petitioner has had consistent and significant ongoing subjective complaints, objective findings and has reached MMI with a permanent restriction. Based on the medical evidence and considering the above factors, the Arbitrator finds that Petitioner sustained the permanent and partial disability to the extent of 55% loss of use of the right ring finger.

With respect to Paragraph "M", as to whether penalties and fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator declines to award penalties under Sections 19(k) and 19(l), or fees under Section 16. Respondent proved it made a good faith effort in March of 2019 through phone calls and through its legal counsel's e-mails to bring the Petitioner back to work within his permanent restrictions. This modified job as a

sheet metal worker with restriction of no roofs and no scaffolds was offered and accepted by the Petitioner, and the Petitioner worked the modified job for Respondent between June 5, 2017, until he was laid off on August 24, 2018. The Respondent should not be penalized for offering the identical job in March of 2019. Petitioner testified that he never looked for work as a sheet metal worker again either in Illinois or in Tennessee, even though the Respondent was offering a sheet metal worker union scale wages in its job offer of March, 2019. Based on the totality of the evidence, the Arbitrator declines to award penalties.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017653
Case Name	Carl Carpenter v. State of Illinois - Dept of Human Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0430
Number of Pages of Decision	10
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Peter Lekas
Respondent Attorney	Rufus Barner

DATE FILED: 9/9/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0430

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

CARL CARPENTER,

Petitioner,

vs. NO: 21 WC 017653

STATE OF ILLINOIS,
DEPARTMENT OF HUMAN SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary disability, causal connection 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 modifies the Arbitrator's Decision solely to correct the scrivener's errors. In the Findings section, above the Order, the Commission adds the word "not" to the Finding, so the sentence now reads, "Petitioner's current condition of ill-being ***is not causally*** related to the accident."

On page four of the Arbitrator's Decision, in the first sentence of the first paragraph, the Commission strikes "2024" and substitutes "2021." Also on page four of the Arbitrator's Decision, the Commission strikes "2024" from the first sentence in the second paragraph, and substitutes "2021."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on March 6, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that all benefits are denied because Petitioner failed to sustain his burden of proving an accidental injury that arose out of and in the course of Petitioner's employment by Respondent.

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

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

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

September 9, 2024
O081324
KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017653
Case Name	Carl Carpenter v. State of Illinois, Department of Human Services
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Peter Lekas
Respondent Attorney	Rufus Barner

DATE FILED: 3/6/2024

/s/ Rachael Sinnen, Arbitrator
Signature

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

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

March 6, 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

Carl Carpenter
Employee/Petitioner

v.

State of Illinois, Department of Human Services
Employer/Respondent

Case # **21** WC **017653**

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 **December 6, 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 **February 7, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $***22,091.54***; the average weekly wage was $***424.83***.

On the date of accident, Petitioner was ***70*** years of age, ***single*** with ***0*** dependent children.

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

Respondent shall be given a credit of $***13,190.88*** for TTD, $***0*** for TPD, $***0*** for maintenance, and $***0*** for other benefits, for a total credit of $***13,190.88***.

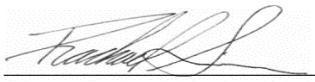
Respondent is entitled to a credit of $***0.00*** under Section 8(j) of the Act.

ORDER

All benefits are denied as the Arbitrator finds that Petitioner's accident did not arise out of and in the course of Petitioner's employment by Respondent.

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

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



Signature of Arbitrator

March 6, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Carl Carpenter, Petitioner, v. State of Illinois, Department of Human Services, Respondent.	)	Case No. 21WC017653

FINDINGS OF FACT

This matter proceeded to hearing on December 6, 2023 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, causal connection, temporary total disability "TTD" benefits, and the nature and extent of the injury. Arbitrator's Exhibit "Ax" 1.

Petitioner's Job Duties

On February 7, 2021, Petitioner was working as a personal assistant through the Illinois Department of Human Services ("DHS") caring for his client, Carolyn Deramus.

Petitioner testified that Ms. Deramus struggled with mental illness requiring medication. His responsibilities involved bathing her, assisting her with standing, cooking for her, cleaning for her, taking her shopping, and taking her to her medical appointments. Petitioner further testified that his responsibilities included providing Ms. Deramus her medications, but it did not extend to him ensuring she took her medications. (See Rx E.)

Petitioner cared for Ms. Deramus since 2013 and previously had a romantic relationship with Ms. Deramus. Petitioner knew her adult children (Lawrence and Robert) since they were in their minority. Petitioner testified that Ms. Deramus lived in his house and occupied the first floor. He testified that she spent most of her time in the living room. Petitioner testified that he slept in one of the bedrooms in his basement.

Although Ms. Deramus resided with Petitioner, he did not provide care for her around the clock. Petitioner testified his client would direct him when to clock in and clock out. He performed his personal errands when he was not clocked in. Petitioner reported his working hours to the DHS. (See Rx B.)

Alleged Accident of February 7, 2021

Petitioner testified that Ms. Deramus was recently released from Ingalls Memorial Hospital due to her mental illness and on February 7, 2011 was volatile due to consuming beer. Ms. Deramus' adult children were staying in Petitioner's home over night from February 6, 2021 to February, 7, 2021, which was Superbowl Sunday.

He testified that Ms. Deramus started cursing him out and was yelling and threatening him. Petitioner testified that he asked Ms. Deramus' sons to leave the house and Petitioner went to his basement to fry some fish in his deep fryer. Petitioner testified that Ms. Deramus told her adult children to "kick his [Petitioner's] ass" and Petitioner was then attacked in the basement. Petitioner's daughter, Sade, was in the basement and recorded the incident on her phone. A recording of the incident was not entered into evidence.

Petitioner testified that he recalls Lawrence horse collaring him, causing his head to strike the concrete floor in his basement. Petitioner testified that Lawrence also put him in a headlock and began beating him in his face. Petitioner testified that he was knocked unconscious for a period of time. Petitioner testified he did not know why they wanted to "kick his ass" and that "it surprised him."

Police officers were dispatched to Petitioner's residence where responding officers discovered Petitioner and his client's adult child in the basement. An incident report from Markham Police Department indicates that responding officers arrested Ms. Deramus and her adult children. (Px 1, p. 3).

Summary of Medical Treatment

Petitioner was treated at the scene of the altercation by ATI Ambulance, Inc. (Px 2.) Petitioner was observed by ATI personnel as suffering from no apparent distress. *Id.* Petitioner stated to ATI personnel he was hit in the face with a fist; and the nurse on scene observed a left orbital fracture. (Px 2.) Petitioner was transported to Ingalls Hospital. *Id*. Upon arrival, Petitioner gave a history of being attacked by an unknown number of unknown individuals. (Px 4 at 3.) He sustained injuries to his face and had a dressing over his left eye and was placed on a cardiac monitor. (Px 4 at 3.) Petitioner underwent CT scans of his head, chest, cervical spine, and thoracic spine. *Id.* He was diagnosed with a fracture of the left orbital floor and medial wall. *Id*. He was prescribed an erythromycin ointment and advised to follow up with ophthalmology. (Px 4 at 46). Petitioner was discharged from the emergency department on February 8, 2021. *Id*.

Petitioner followed up with Dr. Dan Wong at Plastic & Reconstructive Surgery at University of Chicago Hospital on February 16, 2021. (Px 6 at 16.) Petitioner complained of diplopia, a "grainy" sensation in his left eye, and difficulty breathing out of his left nostril. *Id.* Dr. Wong discussed the need for surgery. (Px 6 at 16.) On February 26, 2021, the Petitioner underwent a left medial orbital wall fracture repair with Dr. Hassan Shah from Ophthalmology and Dr. Russel Reid from Plastic Surgery at University of Chicago Hospital. (Px 6 at 24-25). Upon discharge, he was prescribed Tobradex and Clindamycin. (Px 4 at 198.)

Petitioner returned to University of Chicago for a one-month post-operative visit on March 30, 2021. (Px 6 43.) Petitioner complained of intermittent headaches, eye pain with movement, and intermittent double vision which were worse with when driving. (Px 6 at 43.) He was recommended to massage the area and to follow up with Dr. Shah (Ophthalmology) in one month. *Id*. Petitioner underwent no further treatment until July 6, 2021 when he visited Dr. Red (plastic surgery). (Px 6 at 107.) Petitioner complained of constant left periorbital soreness, seeing double, and frequent headaches when using his eye for long periods of time. (Px 6 at 108.) He was referred for a CT scan on July 13, 2021. *Id.* The CT scan revealed expected post-operative changes. (Px. 6 at 109.) Petitioner was recommended to continue follow up visits with Dr. Shah for vision exams and tear duct evaluations and to undergo additional surgery to address excessive tearing and double vision. *Id.*

Dr. Shah conducted a dacryocystorhinostomy and left lacrimal duct probing procedure with a Crawford tube implant on October 7, 2021. (Px 4 at 309.) Petitioner was prescribed hydrocodone and advised to follow up with Dr. Shah. (Px 4 at 389.) Although the visit notes from October 13, 2021 are not in evidence, based upon the discharge instructions provided (Px 5), it appears the Petitioner's symptoms improved after the October 7, 2021 surgery. The Crawford Tube was removed on November 30, 2021 by Dr. Shah. (Px 5 at 81.) At the post-operative follow up on December 2, 2021, the Petitioner was diagnosed with age-related cataracts in both eyes and was prescribed full-time wear of his reading glasses. (Px 5 at 95.)

Petitioner's Current Condition

Petitioner testified he resumed working as a personal assistant for the same client with DHS approximately two months after the attack. He now works as a personal assistant for the client's grandchild. However, he continues to suffer from pain in his left eye, headaches, and his visual depth perception remains impaired. He now wears reading glasses full time.

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:

A claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). 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 between the employment and the accidental injury. *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 116 (1st Dist. 2007). If the injury results from a hazard to which the employee would have been equally exposed apart from the employment, then it does not arise out of it. *Greene v. Industrial Com*., 87 Ill. 2d 1, 4 (1981). When a fight at work arises out of a purely personal dispute, the resulting injuries do not arise out of the employment. *Castaneda v. Industrial Comm'n*, 97 Ill. 2d 338, 342 (1983). On the other hand, fights arising out of disputes concerning

the employer's work are risks incidental to the employment, and resulting injuries are compensable. *Fischer v. Industrial Comm'n*, 408 Ill. 115, 119 (1951).

The events of February 7, 2024 and the resulting injuries Petitioner sustained are saddening. Petitioner's long-standing relationship with Ms. Deramus was not purely that of a caretaker but personal as well. The two lived together and at one point their relationship had been romantic. Petitioner was also familiar with Ms. Deramus' adult children, knew them since they were children, and initially allowed them to stay over and spend Superbowl Sunday together.

While there is evidence to suggest that Ms. Deramus could be violent as a result of her mental illness, Petitioner's testimony regarding why he was attacked lacked clarity. There are references to Ms. Deramus having gone to Ingalls Memorial Hospital's psychiatric unit prior to February 7, 2024 but there is not enough evidence in the record to support the notion that the attack was some form of retaliation. There is also insufficient evidence to show by a preponderance of the evidence that Petitioner was attacked because of some concern with his work, such as cooking.

Petitioner testified that he had asked Ms. Deramus' adult children to leave the house before the attack. No statements from Ms. Deramus and her children were obtained by the police that were submitted into evidence. Petitioner testified that Ms. Deramus commanded her adult children to "kick his ass" but Petitioner testified that he was unsure why.

Overall, Petitioner has failed to meet his burden by a preponderance of the evidence and the Arbitrator finds that the accident did not 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:

Having found for Respondent on the issue of accident, all other issues are moot, and no benefits are awarded to Petitioner.

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

Having found for Respondent on the issue of accident, all other issues are moot, and no benefits are awarded to Petitioner.

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

Having found for Respondent on the issue of accident, all other issues are moot, and no benefits are awarded to Petitioner.

It is so ordered:

Arbitrator Rachael Sinnen

March 6, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC035070
Case Name	Javier Anaya v. Last Stop Roofing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0431
Number of Pages of Decision	19
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Craig Mielke, Peter Currie
Respondent Attorney	Peter Havighorst

DATE FILED: 9/9/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEGAGO)

☐ 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

JAVIER ANAYA,

Petitioner,

vs. NO: 21 WC 035070

LAST STOP ROOFING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment relationship, benefit rates, average weekly wage calculation, causal connection, temporary disability, medical expenses, prospective medical, 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.

In the Conclusions of Law section of the Arbitrator's Decision, the Commission strikes the third paragraph under "Issue L. What is the nature and extent of the injury?"

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on November 6, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $833.88 per week for a period of 16 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $750.00 per week for a period of 58.45 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 35% loss of the left foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical services, pursuant to the medical fee schedule, of $2,281.71 for Cherry Valley Fire Protection District, $67,019.30 for St. Anthony Hospital, and $19,896.50 for Dr. Earhart and Ortho-Illinois, as provided in Sections 8(a) and 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.

September 9, 2024

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KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC035070
Case Name	Javier Anaya v. Last Stop Roofing
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Craig Mielke, Peter Currie
Respondent Attorney	Peter Havighorst

DATE FILED: 11/6/2023

/s/ Paul Seal, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 31, 2023 5.32%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Javier Anaya
Employee/Petitioner

v.

Last Stop Roofing
Employer/Respondent

Case # **21** WC **035070**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **September 29,2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☒ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **November 18, 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 $**65,000.00**; the average weekly wage was $**1,250.00**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**0.00** 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 reasonable and necessary medical services, pursuant to the medical fee schedule, of $2,281.71 for Cherry Valley Fire Protection District, $67,019.30 for St. Anthony Hospital, and $19,896.50 for Dr. Earhart and Ortho-Illinois, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $833.88/week for 16 weeks, commencing 11/19/21 through 3/10/22, as provided in Section 8(b) of the Act.

Based on the Section 8.1b(b) factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner permanent partial disability benefits of $750.00/week for 58.45 weeks, because the injuries sustained caused the 35% loss of the left foot, 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.

Signature of Arbitrator **November 6, 2023**

Statement of Facts and Conclusions of Law

I. Statement of Facts

Efren Cervantes was present at the Last Stop Roofing job site on November 18, 2021. (T13) This was a residential roofing job at 6162 Deepwood Drive in Cherry Valley. (T13) Efren Cervantes testified that he did Last Stop Roofing for two years prior to this job. (T14) He would do about 2 jobs per week with Last Stop Roofing. (T14)

Cervantes would get a crew together do to the actual work for the roof and this is what he did for the job on November 18, 2021. (T15) The Petitioner, Javier Anaya, was part of that crew. (T15) Cervantes was to pay Anaya $250 per day for this work. (T16) The job was to last 2 days. (T16) In the year before the accident Anaya did roofing jobs for Cervantes Monday through Friday and was paid $250 per day. (T16)

Last Stop Roofing would contact Cervantes about a roofing job and he would put together a crew to perform the work. (T16-17) At this job on Deepwood Drive, Last Stop Roofing had signs out in the yard. (T17) Last Stop Roofing had a truck on the site earlier in the day on November 18, 2021 to check out the job. (T17) Last Stop Roofing provided the roofing and all the material for the job and Cervantes would provide the labor. (T18)

Cervantes became aware of the accident involving Anaya through a phone call from Last Stop Roofing and was told to go check it out. (T18) By the time Cervantes arrived at the job site, Anaya had already been taken to the hospital. (T19) At the time of the accident, Cervantes did not have workers' compensation insurance. (T20) At this time, Cervantes was not working for any other companies. (T21) Cervantes understood that the property owner of the Deepwood Drive property had hired Last Stop Roofing to do the job. (T21) And, then Last Stop Roofing would contact Cervantes to get a crew together for the work. (T22)

Cervantes did not have a business license to operate jobs at time of the accident. (T23) Cervantes would pick the crew and drive them to the job site. (T24) Cervantes was in charge of the crew. (T24) Cervantes last did work for Last Stop Roofing about 6 months after the accident. (T24-25)

The Petitioner, Javier Anaya, testified that he was born on December 17, 1991, and was 29 years old at the time of the accident on November 18, 2021. (T28) Anaya has worked construction his entire life remodeling and roofing. (T28) He started working for Cervantes in 2018 and was paid $250 per day. (T29)

On November 18, 2021, he was working on a job for Cervantes that was a residential roofing job in Cherry Valley for Last Stop Roofing. (T29) Anaya was a laborer on the roofing crew that was 6 people. (T30) For the year prior to this job he worked consistently for Cervantes Monday to Friday, every week and was paid $250 per day in cash. (T30)

Prior to November 18, 2021, Anaya had no history of an injury to his left ankle or foot and was working full time. (T30)

Anaya did not bring any of his own tools to the Cherry Valley job from Last Stop Roofing. (T31) The tools were provided by Cervantes and the materials (shingles, nails, plywood and roofing paper) were all provided by Last Stop Roofing who delivered the materials to the job site. (T31-32) Anaya would see trucks from Last Stop Roofing deliver the materials and check on his work. (T32) Last Stop Roofing had someone on the job every 3 to 4 hours. (T32-33) They would check to see if more materials were needed and to see if the plywood was put in correctly. (T33) If something was not done right, Last Stop Roofing would tell him to do it right. (T33)

At the time of the accident on November 18, 2021, Anaya was on the roof and his feet slipped and he fell but could not get back up because his foot was all twisted. (T34) His bone came out and he was in great pain. (T35) The fire department came and got him off the roof with a harness and put him in an ambulance. (T35) Last Stop Roofing found out about the accident because the homeowner came out and they called them. (T36)

Anaya was taken to St. Anthony Medical Center. (T36) Anaya had suffered a tri-malleolar fracture. (T36) He followed up with Dr. Jeffery Earhart at Ortho-Illinois and had surgery on December 6, 2021. (T37) He was non-weight bearing after the surgery. (T37) In January 2022 he was placed in a walking boot. (T37) By March 9, 2022, he was released to go back to work without restrictions. (T38) Anaya was off work from November 19, 2021, through March 9, 2022. (T38) He was last seen by Dr. Earhart on June 8, 2022, and released from care. (T39) That was his last medical visit. (T39)

None of his medical bills have been paid. (T40) He has not been paid for any of his time off work. (T40) Prior to the accident he would play soccer with his son but now if he runs just a little bit his foot swells up. (T40) His ankle is still painful, and he no longer plays soccer with his son. (T41) Sometimes his ankle will lock up when he walks and he trips over himself. (T41) He has stiffness in his ankle. (T42) He did not have any of these problems prior to the accident. (T42) At present, he works for a tree service and makes $20 per hour. (T42)

Anaya occasionally takes Advil for his ankle when it swells. (T43) On the day of the accident, he was driven to the job by another crew member, not Cervantes. (T44)

The arbitrator finds the testimony of Anaya and Cervantes to be credible and unrebutted.

Petitioner offered into evidence Petitioner's exhibits 1 through 6 consisting of the medical records, bills and NCCI certification of no coverage for Cervantes. Petitioner's exhibits were admitted without objection. (T45) Respondent offered no exhibits.

PX1 is the Cherry Valley Fire Protection District bills and records. These records show the EMS crew found 29 y/o male on the roof up against the chimney alert and oriented x4. He stated he was walking up a couple pallet of shingles and he twisted his ankle and heard a pop. The EMS crew helped place him in a stokes basket and lowered him down to ground via a rope. Carried him to ambulance and placed him on stretcher and secured him with all straps and rails. Removed left boot and sock to examine foot. Pt had a possible dislocated left ankle. Patient rated pain a 8/10 sitting and a 10/10 on movement. Gave him 50mcg of Fentanyl via IV for pain management. Radio inbound was given to OSF prior to arrival with no questions or orders. Continued to monitor his vitals and pain to hospital. (PX1 page 7) The bill totaled $2,281.71 (PX1 at page 6)

PX2 are the records and St. Anthony bills and records. Left ankle XR confirmed a tri-malleolar ankle fracture and posterior dislocation of the tibiotalar joint and referred to orthopedics. (PX2 page 26) The left ankle CT scan of 12/02/21 confirmed acute fractures of the lateral malleolus with an anterior displaced fragment at the inferior fracture site exhibits maximal fracture displacement of 8-9 mm. PX2 page 141)

The hospital bills for the ER visit of 11/18/21 total $5,936.30 (PX5 page 520) and the bills for the subsequent surgery on 12/6/2021 total $57,979.00; pre-op labs on 12/6/21 total $415.00 and CT scan of 12/2/21 total $2,689.00 (PX2 pages 17 to 21)

PX3 and PX4 are the bills and records from Dr. Earhart and Ortho Illinois. Surgery was performed on 12/06/2021 for the displaced left ankle tri-malleolar ankle fracture. The procedure consisted of an open reduction and internal fixation for the ankle fracture. (PX4 pages 497) Petitioner was seen for follow-up on 12/22/21 and was to remain non weight bearing. (PX3 pages 462-464) Petitioner was next seen on 1/12/22 at which time he was placed in a CAM walker book. (PX3 pages 465-466) At the next visit of 2/09/22 Petitioner was doing well and was to continue the CAM for boot. (PX3 pages 468-469) By the visit of 3/10/22 Dr. Earhart released Petitioner to return to work without restrictions. (PX3 pages 471-472) Petitioner was last seen by Dr. Earhart on 6/08/22 at which time Petitioner had some swelling, numbness and minor pain about the medial aspect of the left ankle with pain of 4/10 and was advised to follow up as needed. (PX3 pages 474-475) Total bills rendered by Ortho Illinois total $10,414.25 for dates of service 12/06/21 through 6/21/22 (PX3 pages 485-488) and total an additional $9,482.25 for dates of service 11/24/21 through 12/06/21. (PX4 pages 511-513)

PX6 is the certification from NCCI confirming that Cervantes was not insured on the accident date of 11/18/21. (PX6 page 527)

II. Conclusions of Law

The Arbitrator notes that while Respondent disputed all issues, Respondent presented no witnesses and no exhibits. Having found the witnesses presented by Petitioner to be credible and their testimony unrebutted, the Arbitrator finds Petitioner has carried his burden of proof on all disputed issues.

A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

The evidence proved the Respondent, Last Stop Roofing, was a roofing contractor who dealt directly with the homeowner to provide the homeowner with a roof replacement. Respondent in turn engaged the services of an uninsured and unlicensed contractor, Efren Cervantes, to provide the labor for the job. Respondent delivered with its own trucks all materials including shingles, nails, flashing and whatever else was needed to complete the job. Respondent posted its signs at the job site and was at the job site daily to check on the progress of the work and to make sure the work was done in a proper manner. After the accident occurred and the paramedics arrived, the homeowner contacted Respondent directly to advise Respondent that the accident had occurred.

There is no serious question that Respondent is an "employer" as defined by Section 1 (a) of the Act who was "engaged in" the type of work enumerated in Section 3 of the Act which includes in subparagraph 1 "maintaining … any structure" and in subparagraph 2 "construction… work."

The Arbitrator finds Respondent was operating under and subject to the Illinois Worker's Compensation Act.

B. Was there an employee-employer relationship?

Although Petitioner was not directly employed by Respondent, Petitioner was employed by Efren Cervantes who was engaged by Respondent to provide the labor for this job. Therefore, Respondent is a "statutory employer" of Petitioner pursuant to Section 1 of the Act which provides: "Any one engaging in any business or enterprise referred to in subsections 1 and 2 of Section 3 of this Act who undertakes to do any work enumerated therein, is liable to pay compensation to his own immediate employees in accordance with the provisions of this Act, and in addition thereto if he directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he is liable to pay

compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor has insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act, or guaranteed his liability to pay such compensation." 820 ILCS 305/1(a)3.

Here, it was shown by the NCCI certification (PX6) that Efren Cervantes was uninsured at the time of the accident. Therefore, the Arbitrator finds Respondent is engaged in a business enumerated in Section 3 of the Act and has directly or indirectly engaged a contractor, Efren Cervantes, to do such work and is liable to pay compensation to Petitioner as an employee of Cervantes.

Illinois law is clear that for construction site accidents the Act makes the general contractor liable for compensation to the employee of the subcontractor based on the uninsured status of the subcontractor and not on common law employee/employer issues such as right to control the manner of work. In the case of *Statewide Ins. Co. v. Brendan Const. Co.,* 218 Ill. App. 3d 1055, 1060, 578 N.E.2d 1264, 1266 (1991) the court acknowledged that the general contractor who "had no right to control the manner and method of the work … had no right to discharge… did not pay (the employee), and…did not provide… materials or equipment" was nonetheless liable for compensation based on Section 1(a)(3) of the Act. The Act does not convert an uninsured subcontractor's employees into employees of the general contractor rather the Act makes the general contractor liable for compensation to the uninsured subcontractor's employee.

Commission decisions typically find the general contractor is the statutory employer of a subcontractor's employee when the accident occurs at the construction site: *Juan Carlos Luna, Petitioner*, 07 IL. W.C. 014076 (Ill. Indus. Com'n Dec. 8, 2008); *Kai Ren Chen,*

Petitioner, 99 I.I.C. 0446 (Ill. Indus. Com'n May 18, 1999); *Roman Grzybowski, Petitioner,* 10 IL. W.C. 2495 (Ill. Indus. Com'n Jan. 6, 2016); and *Cameron v Mathis Real Estate*, 02 I.I.C. 1031 (Ill. Indus. Com'n Dec. 31, 2002). In all of these cases, the Commission found the respondent was acting as a general contractor and was, therefore, the statutory employers of the subcontractor's employee within the meaning of Section 1(a)(3) of the Act.

The Arbitrator finds that a contractor subcontractor relationship existed between Respondent and Cervantes and that Respondent is the statutory employer of Petitioner. In support of this finding the Arbitrator notes the following facts:

1. Last Stop Roofing would contact Cervantes about a roofing job and he would put together a crew to perform the work. (T16-17)
2. At this job on Deepwood Drive, Last Stop Roofing had signs out in the yard. (T17)
3. Last Stop Roofing had a truck on the site earlier in the day on November 18, 2021 to check out the job. (T17)
4. Last Stop Roofing provided the roofing and all the material for the job and Cervantes would provide the labor. (T18)
5. Cervantes understood that the property owner of the Deepwood Drive property had hired Last Stop Roofing to do the job. (T21)
6. And, then Last Stop Roofing would contact Cervantes to get a crew together for the work. (T22)
7. Cervantes did not have a business license to operate jobs at time of the accident. (T23)
8. Anaya would see trucks from Last Stop Roofing deliver the materials and check on his work. (T32)

9. Last Stop Roofing had someone on the job every 3 to 4 hours. (T32-33)
10. They would check to see if more materials were needed and to see if the plywood was put in correctly. (T33)
11. If something was not done right, Last Stop Roofing would tell him to do it right. (T33)
12. Last Stop Roofing found out about the accident because the homeowner came out and they called them. (T36)

The Arbitrator finds that Respondent was a statutory employer of Petitioner and that there was an employee-employer relationship.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The credible and unrebutted testimony proves that Petitioner was on the roof of Respondent's job site performing labor for re-roofing the customer's residence when he slipped on the roof and suffered severe injuries to his left foot. The Arbitrator finds that this an accident arose out of and in the course of Petitioner's employment by Respondent.

D. What was the date of the accident?

The credible and unrebutted testimony proves that the date of the accident was November 18, 2021. The Arbitrator finds that the date of the accident was November 18, 2021.

E. Was timely notice of the accident given to Respondent?

The credible and unrebutted testimony proves that Respondent was notified of the accident immediately by the homeowner upon arrival of the paramedics at the job site. The Arbitrator finds that timely notice of the accident was given to Respondent.

F. Is Petitioner's current condition of ill-being causally related to the injury?

The credible and unrebutted testimony and the consistent histories provided in Petitioner's medical records prove that Petitioner had no condition of ill being in regards to his left foot prior to the accident and that as a direct result of the accident suffered a severe tri-malleolar fracture to his left ankle. Petitioner's testimony and the records of his surgeon, Dr. Earhart, prove that as a result of the tri-malleolar fracture to his left ankle Petitioner underwent surgery and continues to experience pain and discomfort in regard to his left ankle. The Arbitrator finds that Petitioner's current condition of ill-being regarding his left ankle is causally related to the accidental injury of November 18, 2021.

G. What were Petitioner's earnings?

The credible and unrebutted testimony proves that Petitioner in the year preceding the accident worked Monday through Friday as a laborer for Cervantes and was paid $250 per day. The Arbitrator finds that Petitioner's earnings in the year preceding the accident were $65,000 and that his average weekly wage was $1,250.

H. What was Petitioner's age at the time of the accident?

The credible and unrebutted testimony proves that Petitioner was 29 years old at the time of the accident. The Arbitrator finds that Petitioner was 29 years old at the time of the accident.

I. **What was Petitioner's marital status at the time of the accident?**

The credible and unrebutted testimony proves that Petitioner was not married at the time of the accident. The Arbitrator finds the Petitioner was single 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?

The credible and unrebutted testimony and the Petitioner's medical records prove the medical services provided to Petitioner consisting of paramedic services at the job site; emergency medical services provided at St. Anthony's Hospital on the date of the accident and subsequent surgery and follow up care provided by Dr. Earhart of Ortho-Illinois were reasonable and necessary medical care for Petitioner's accidental injuries. The Respondent has not paid for any of this medical care. The Arbitrator finds that the medical services provided to Petitioner as set forth in PX1 through PX5 were reasonable and necessary and further finds that Respondent has not paid for any of these charges.

K. What temporary benefits are in dispute?

The credible and unrebutted testimony and the Petitioner's medical records prove the Petitioner was totally disabled from work immediately following the accident on November 18, 2021, until he was released to return to work by Dr. Earhart on March 10, 2022. The Arbitrator finds that Petitioner is entitled to TTD benefits at the weekly rate of $833.33 from November 18, 2021, through March 10, 2022, for a period of 16 weeks.

L. What is the nature and extent of the injury?

The Arbitrator adopts the facts set forth in the above Statement of Facts and finds that as a result of the accidental injuries on November 18, 2021, Petitioner suffered a tri-malleolar fracture to his left ankle, underwent open reduction and internal fixation surgery and continues to suffer pain and discomfort about his left ankle, which is consistent with the records of his surgeon, Dr. Earhart.

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 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). The doctor noted Petitioner was last seen by Dr. Earhart on 6/08/22 at which time Petitioner had some swelling, numbness and minor pain about the medial aspect of the left ankle with pain of 4/10. 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 notes that the record reveals that Petitioner was employed as a laborer performing roofing work at the time of the accident and that he was released to full duty and was able to return to work in his prior capacity as a result of said injury. However, the Arbitrator notes that Petitioner did not in fact return to work as a laborer. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 29 years old at the time of the accident. Because of fact that Petitioner suffered a several tri-malleolar fracture thru his left ankle he is at risk of developing osteoarthritis in his left ankle over his life time 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 no evidence was presented on this issue. 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's current complaints of pain,

swelling and discomfort about his left ankle are consistent with the discharge note of Dr. Earhart. 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 35% loss of use of left foot pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC016576
Case Name	Donnie Passmore v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0432
Number of Pages of Decision	27
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Heather Calvert
Respondent Attorney	Kayla Koyne

DATE FILED: 9/9/2024

/s/Amylee Simonovich, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

24IWCC0432

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

Donnie Passmore,

Petitioner,

vs. NO: 20 WC 16576

State of Ill. / Ill. Dept. of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of causal connection and temporary total disability (TTD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

In the interest of efficiency, the Commission relies on the detailed recitation of facts in the Arbitration Decision. The Commission affirms the Arbitrator's conclusions regarding Petitioner's credibility, causal connection, and TTD benefits. However, the Commission makes certain modifications to the Arbitration Decision.

Corrections to the Decision of the Arbitrator

In the Findings section of the Arbitration Decision Form, the Arbitrator wrote that Respondent shall receive a credit of $28,943.55 for TTD benefits, but then mistakenly wrote the total credit is $0. The Commission modifies this sentence to reflect a total credit of $28,943.55. In the same section, the Commission strikes the following sentence: "Respondent is entitled to a credit of $any and all amounts paid under Section 8(j) of the Act." The parties stipulated that medical expenses were not at issue.

In the first paragraph on page one of the Decision, the Arbitrator mistakenly identified "Penalties/Attorney's Fees" as an issue in dispute. Pursuant to stipulation by the parties, the issue

of penalties and fees was addressed during the hearing. Thus, the Commission strikes "Penalties/Attorney's Fees" from the above-referenced sentence. In the first full paragraph on page 3 of the Decision, the Arbitrator wrote that "Petitioner had his left hip replaced on November 10, 2020." The Commission strikes "left" from this sentence and replaces it with "right." In the seventh paragraph on page 7 of the Decision, the Arbitrator wrote that in May 2018, physical therapy "…was recommended for his knee and hip…" The Commission strikes "and hip" from this sentence.

Finally, the Commission modifies the Arbitrator's various references to "IMEs" throughout the Decision. In the final paragraph on page one and the first sentence on page 2 of the Decision, the Arbitrator refers to Dr. O'Leary's IME report and addendum. The Commission strikes "IME" from this sentence. The Commission strikes the fourth full paragraph on page three of the Decision and replaces it with the following:

> Petitioner testified that he underwent Section 12 examinations performed by Drs. O'Leary, Ackerman, and Farley at Respondent's request. (Tr. pp. 42-43).

In the first paragraph on page 6 of the Decision, the Arbitrator wrote: "…IDOT does not handle IMEs for the state…" The Commission strikes "IMEs" from this sentence and replaces it with "Section 12 examinations." In the third paragraph on page 13 of the Decision, the Arbitrator wrote that Petitioner "…underwent an IME with Dr. O'Leary." The Commission strikes this sentence and replaces it with the following:

> Dr. O'Leary examined Petitioner at Respondent's request.

In that same paragraph, the Arbitrator refers to "an IME addendum." The Commission strikes "IME" from this sentence. Similarly, in the fourth and sixth paragraphs on the same page, the Arbitrator refers to "an IME report" and "his IME report" respectively. The Commission strikes this language and replaces it with "a report" and "his report" respectively. Also in the fourth paragraph, the Arbitrator wrote "…the basis for obtaining an IME on Petitioner's knee…" The Commission strikes "IME" from the sentence and replaces it with "expert opinion." Finally, in the fifth paragraph on page 13 of the Decision, the Arbitrator wrote that Petitioner "…underwent an IME with Dr. Ackerman…" The Commission strikes this sentence and replaces it with the following:

> On April 25, 2022, Dr. Ackerman examined Petitioner at Respondent's request.

Assessment of Petitioner's Credibility

The Commission generally agrees with the Arbitrator's assessment of Petitioner's credibility. However, the Commission also finds the discrepancies between Petitioner's testimony and the credible evidence regarding the pre-accident condition of his right hip significantly impact Petitioner's credibility. During his testimony and in the history he gave various medical professionals, Petitioner denied any prior symptoms or issues with his right hip. Petitioner testified that Dr. Proehl ordered the December 2019 right hip MRI due to Petitioner's complaints of pain in his right thigh. Petitioner also denied any pre-accident right hip pain to his doctors and

Respondent's Section 12 examiners.

The December 12, 2019, office visit note stands in stark contrast to Petitioner's repeated denials of experiencing any right hip symptoms prior to the January 2, 2020, work accident. Petitioner complained to Dr. Proehl of right groin pain that radiated down his right anterior thigh. Notably, Petitioner reported pain in his right hip and difficulty with rotation of the hip. Dr. Proehl's examination revealed limited external rotation of the right hip due to pain. Dr. Proehl even believed Petitioner's groin and right thigh complaints were coming from his right hip. In light of this credible evidence that Petitioner experienced limited mobility and pain in his right hip before the work accident, the Commission finds Petitioner's testimony and reports to various doctors regarding his pre-accident condition lack credibility.

Causal Connection

The Arbitrator concluded that Petitioner failed to prove his current condition of ill-being is causally related to the January 2, 2020, work accident. The Commission affirms this conclusion. The Commission notes that Petitioner testified that neither his left knee nor his low back conditions are causally related to the work accident. The Commission reiterates that the credible evidence shows Petitioner suffered from longstanding right hip symptoms prior to the work accident.

The medical records show that on December 12, 2019, Petitioner complained to Dr. Proehl of pain affecting his right groin, right anterior thigh, and right hip. Petitioner reported that rotating the right hip was difficult and painful. Dr. Proehl's examination revealed Petitioner's right hip had limited external rotation due to pain. Perhaps most importantly, while Dr. Proehl ordered diagnostic studies to rule out an inguinal hernia, he believed Petitioner's groin and thigh complaints were coming from his right hip. While the December 14, 2019, x-rays of Petitioner's pelvis and right hip did not reveal any significant hip arthritis, the December 24, 2019, right hip MRI revealed significant findings. The right hip MRI revealed partial tearing of the distal right iliopsoas tendon and mild to moderate chondromalacia of the hip. Notably, the December 2019 right hip MRI note Petitioner's complaint of chronic right groin pain for several years.

The January 2, 2020, work accident occurred before Petitioner's January 9, 2020, follow up with Dr. Proehl regarding his right hip complaints. Thus, the Commission does not find the lack of any pre-accident treatment for the preexisting right hip condition compelling. After all, while Petitioner did not complain of right hip pain on January 9, 2020, Dr. Proehl prescribed physical therapy for the right hip based on the MRI findings. He also told Petitioner to follow up with his orthopedic surgeon regarding his right hip condition.

Finally, the Commission notes that none of Petitioner's treating doctors opined that his hip condition or the need for the total hip replacement are related to the work accident. Instead, Dr. Kinzinger, Petitioner's orthopedic surgeon, opined that Petitioner's right hip condition was not caused or exacerbated by the work accident. Additionally, Drs. O'Leary and Ackerman, Respondent's Section 12 examiners, did not review the December 12, 2019, office visit note and relied on Petitioner's denial of any pre-accident right hip pain when forming their opinions. Thus, any indication that they believed the work accident may have aggravated Petitioner's underlying right hip arthritis is based on their inaccurate understanding of Petitioner's history and is not

persuasive.

Credit to Respondent

The parties stipulated that Respondent paid $28,943.55 in TTD benefits to Petitioner. The Arbitrator correctly concluded Petitioner failed prove his current condition is causally related to the January 2, 2020, work accident. The Arbitrator also correctly concluded that Petitioner is not entitled to any TTD benefits relating to the work accident. The Commission finds Respondent is entitled to a credit in the amount of $28,943.55 for TTD benefits it previously paid to Petitioner in this matter. The credit shall be applied to any future award of permanent disability benefits.

Admissibility of Dr. O'Leary's Section 12 Report

The Arbitrator correctly admitted Dr. O'Leary's August 13, 2020, narrative report into evidence over Respondent's objection. The Commission explicitly rejects Petitioner's argument that a Section 12 report qualifies as a party admission. *See, e.g., Greaney v. Indus. Comm'n*, 358 Ill. App. 3d 1002, 1010-11 (1st Dist. 2005) (finding a Section 12 narrative report is not admissible as an admission against a party's interest.). However, while narrative reports are hearsay, they are admissible pursuant to an agreement by the parties. A review of Dr. O'Leary's deposition reveals Respondent did not object to Petitioner's request to admit the doctor's report into evidence. (RX 6 at 16-17). After failing to object to the report's admission during the deposition, Respondent cannot belatedly object to its admission at the arbitration hearing.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 12, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that benefits are denied as Petitioner failed to prove his current condition of ill-being is causally related to the January 2, 2020, work accident.

IT IS FURTHER ORDERED that Respondent is entitled to a credit in the amount of $28,943.55 for temporary total disability benefits it previously paid Petitioner. This credit shall be applied to any future award of permanent disability benefits in this case.

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

IT IS FURTHER ORDERED that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

September 9, 2024

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

o: 7/9/24
AHS/jds
51

/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 believe Petitioner met his burden of proving his right hip condition is causally related to the January 2, 2020, work accident.

On the date of accident, a car rear-ended the attenuator Petitioner was operating. Petitioner testified that a pizza delivery truck rear-ended the sedan behind the attenuator and caused the sedan to rear-end the attenuator. The impact was so forceful that the attenuator was totaled. Before this accident, Petitioner was working without any restrictions and had passed all work physicals. However, the credible evidence shows that Petitioner's physical condition noticeably worsened following the accident.

Contrary to the majority, I do not find the contents of the December 12, 2019, office visit note compelling. The note reflects that Petitioner complained primarily of right groin pain radiating down to the right thigh. Related to his groin pain, Petitioner also complained of somewhat painful and limited right hip mobility. Dr. Proehl ordered x-rays of the right hip and pelvis to rule out a right inguinal hernia. The x-rays revealed no significant right hip arthritis. The December 24, 2019, right hip MRI revealed partial tearing of the distal right iliopsoas tendon and mild to moderate chondromalacia of the right hip. Notably, the reason identified for both examinations was Petitioner's complaint of chronic right groin pain for several years.

Despite the findings on the diagnostic studies of the right hip, it is undisputed that Petitioner continued to work full duty and without restrictions from December 12, 2019, until the January 2, 2020, accident. Thus, it is clear that any right hip symptoms Petitioner might have experienced prior to the work accident were not debilitating. They certainly did not affect his ability to perform his job duties. Additionally, prior to the work accident, no doctor prescribed any treatment related to Petitioner's right hip and there was absolutely no contemplation of surgery. Dr. Proehl did not even recommend Petitioner see an orthopedic surgeon for his hip condition until after the work accident. The work accident clearly altered both the severity of Petitioner's right hip symptoms and the trajectory of his preexisting right hip condition. Petitioner's testimony that his complaints changed following the work accident is corroborated by the contemporaneous medical records. Perhaps most importantly, less than a year after the work accident, Petitioner underwent a right total hip replacement surgery.

The opinions of Drs. O'Leary and Ackerman, Respondent's Section 12 examiners, also support a finding that Petitioner's right hip condition and subsequent total hip replacement are

causally related to the work accident. Petitioner told Dr. O'Leary that while he had pre-accident groin pain, he developed new pain in the right lateral hip area immediately following the accident. Petitioner also reported his pre-accident right anterior thigh pain worsened after the accident. Dr. O'Leary did not review the December 12, 2019, office visit note; however, he was aware that the December 2019 right hip MRI revealed partial tearing of the iliopsoas tendon. Dr. O'Leary opined that the work accident "aggravated…previously existing hip arthritis and made his condition worse." (PX E).

Similarly, Dr. Ackerman reviewed the December 2019 right hip x-rays and MRI. Dr. Ackerman compared the April 2020 right hip MRI to the earlier study and noted the April 2020 study revealed subchondral edema within the femoral head adjacent to the underlying chondrosis. Dr. Ackerman opined that while the Petitioner's right hip arthritis was preexisting, "…the work-related accident may have caused a[n] aggravation of this underlying degenerative condition…" (RX 5). Dr. Ackerman testified that while chondral loss was seen on the December 2019 MRI, there was no finding of the full thickness chondral loss seen on the April 2020 study. Dr. Ackerman testified, "…if anything, it would be an aggravation of the pre-existing arthritis." (RX 6 at 27). Finally, the doctor testified that the work accident caused a permanent aggravation "…because [Petitioner] had persistent pain and symptoms despite structured physical therapy, multiple pain medications, and an intra-articular injection, with persistent pain and symptomatology." (RX 6 at 42).

I believe the majority does not properly consider the ways in which the work accident subjectively and objectively worsened Petitioner's right hip condition. Instead, the majority focuses solely on the fact that Petitioner complained of right hip pain before the work accident. After considering the totality of the evidence, I believe Petitioner met his burden of proving his right hip condition and the need for the total hip replacement surgery are causally related to the January 2020 work accident.

For the forgoing reasons, I would reverse the Decision of the Arbitrator in its entirety.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC016576
Case Name	Donnie Passmore v. SOI/IDOT
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Heather Calvert
Respondent Attorney	Kayla Koyne

DATE FILED: 6/12/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

/s/ Bradley Gillespie, Arbitrator

Signature

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

June 12, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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)

Donnie Passmore
Employee/Petitioner

v.

SOI/IDOT
Employer/Respondent

Case # **20** WC **016576**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Springfield**, on **April 6, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 2, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**4,375.00**; the average weekly wage was $**1,009.61**.

On the date of accident, Petitioner was **63** years of age, ***married*** 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 $**28,943.55** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**any and all amounts paid** under Section 8(j) of the Act.

ORDER

PETITIONER HAS FAILED TO PROVE THAT HIS CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENT ON JANUARY 2, 2020. THEREFORE, ALL BENEFITS ARE DENIED.

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

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

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

Bradley D. Gillespie **JUNE 12, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DONNIE PASSMORE,	)	
	)	
Petitioner,	)	
vs.	)	**Case No.: 20WC016576**
	)	
ILLINOIS DEPARTMENT OF TRANSPORTAION,	)	
	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

On July 17, 2020, Donnie Passmore, [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to his hip and shoulder from a January 2, 2020, motor vehicle accident while working for the Illinois Department of Transportation, [hereinafter "Respondent"]. (PX #1) This claim proceeded to hearing on April 6, 2023, in Peoria, Illinois pursuant to 19(b) of the Act. (Arb. Ex. 1) The following issues were in dispute at arbitration:

- Causal Connection;
- Temporary Total Disability; and
- Penalties/Attorney's Fees.

FINDINGS OF FACT

As mentioned above, Petitioner filed an Application for Adjustment of Claim alleging an accident occurred on January 2, 2020, when he was rear ended while sitting in parked vehicle. The affected body parts were listed as the hip and shoulder. The nature of the injury was described as "Tear in hip labrum."

Prior to this trial, Petitioner's counsel filed another claim, 22WC027251, on October 18, 2022, alleging a repetitive trauma injury to Petitioner's right hip on January 28, 2020, and indicated that the nature of the injury was a hip replacement. (RX #14).

While Petitioner filed a Penalty Petition the afternoon before trial, and it was presented as an exhibit, the parties agreed that, due to the late filing, the penalty petition would be continued until a future hearing on permanency and medical bills, if necessary. The only issue raised at the time of trial was Temporary Total Disability benefits from August 16, 2021, through February 21, 2023.

Prior to Petitioner's testimony at trial, Respondent interposed a hearsay objection to the admission of Dr. O'Leary's IME report, as he had not been deposed, and had provided an opinion regarding Petitioner's hip, despite not being a hip expert, and despite refusing to do an

IME addendum on the hip, as he was not a hip specialist. Dr. O'Leary's report was allowed into evidence over Respondent's objection.

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that he was employed as a "snowbird" or a highway maintainer for the State of Illinois on January 2, 2020. (Tr. p. 16). Petitioner had worked for IDOT for three or four years before his accident. (Tr. p. 17). On the date of accident, Petitioner was operating an attenuator, which is a trailer on the back of a truck with flashers and warning signs, noting that "depending on what truck you use, it can be a tandem or just a regular truck. The idea is that it will collapse down if hit by a semi doing 70 miles per hour. The idea is to protect the workers in the work zone." (Tr. pp. 17-18, 19).

While Petitioner was operating the attenuator, he had to back up in the work zone and while sitting in his work truck with his seatbelt on, a Butch's Pizza truck hit his vehicle. (Tr. pp. 18, 20). Petitioner indicated that before this incident, he did not have any physical limitations or work restrictions and passed his physicals, which were annual, but are now required every other year. (Tr. pp. 20-21). Petitioner testified that as a result of the accident, the attenuator was totaled. (Tr. p. 22).

Prior to the accident, Petitioner had an MRI taken in December of 2019. (Tr. pp. 22-23). Petitioner testified that the MRI was done due to "pain in my [right] thigh." (Tr. p. 23). Petitioner indicated that while surgery was not yet recommended, physical therapy was recommended before January 2, 2020, for an iliopsoas tear in his thigh, noting that he could not do physical therapy after the accident, due to pain. (Tr. pp. 23-24).

Petitioner testified that he sought treatment with Dr. Proehl after his injury, and that he was put on Meloxicam, then Tramadol, then Vicodin. (Tr. pp. 24-25). Petitioner testified that Tristar did not authorize medical treatment initially, until he got into Hopedale for his MRI for his back (Tr. p. 26). Petitioner was referred to Dr. Kinzinger. Petitioner began testifying about his first treatment with Dr. Kinzinger, when the Arbitrator stopped the trial to go off the record. (Tr. p. 26-27). After the off-record discussion, Petitioner testified that he first saw his treating physician prior to this injury due to his spouse treating with him. (Tr. pp. 32-33).

Petitioner testified that he first treated with Dr. Kinzinger in March but did not discuss his accident in detail until June. (Tr. p. 33). The Arbitrator notes that this was approximately six months after his accident.

Petitioner testified that he underwent another MRI on or about April 14, 2020. (Tr. p. 34). Petitioner indicated that at this point, he had already done some physical therapy and was presented with the option of whether to do his knee or hip surgery first. (Tr. p. 34). Petitioner was unsure who recommended physical therapy, but thought it was Dr. Proehl. (Tr. p. 35). Petitioner testified that he had a left knee replacement and a right hip replacement. *Id*. Petitioner

testified that his left knee is not related to his work accident, as he treated with his physician long before his accident. *Id*.

Petitioner testified that he had his left hip replaced on November 10, 2020. (Tr. p. 36). Petitioner was presented with Petitioner's Exhibit J, which included four off work slips. Petitioner testified that the April 7, 2021, off work slip indicated that he could return to work with restrictions including sit down work. (Tr. pp. 36-37). Petitioner testified that he presented the off work slip to Diana Isaia. (Tr. p. 37). Petitioner testified that he also provided his next off work slip, dated July 26, 2021, to Ms. Isaia. *Id*. Petitioner's September 1, 2021, off work slip included "a lot of detail about what I can drive and cannot drive…It says here no large trucks like tandems or bob trucks. Patient able to drive cars, pickup tricks, and SUVs; and it also says here I should mainly be required to do sit-down work again." (Tr. p. 38). Petitioner's last off work slip is from January 3, 2022. (TX 38).

Petitioner indicated that he told his treating physician, Dr. Kinzinger, what he does for a living. (Tr. p. 39). Petitioner indicated that Dr. Kinzinger recommended water therapy for him at Hopedale, which Petitioner estimated was approximately 25 miles from his house. (Tr. pp. 40-41). Petitioner indicated that he did not describe to Dr. Kinzinger that he would be driving to and from therapy because "that conversation never came up." (Tr. p. 41).

Petitioner testified that his understanding of the July 26, 2021, work restriction was to include "tandem truck, a semi-truck, you know anything larger than a pickup or as he stated an SUV later." (Tr. p. 41).

Petitioner testified that his IME was requested by IDOT. (Tr. p. 42). Petitioner testified that he underwent IMEs with Dr. O'Leary, Dr. Ackerman, and Dr. Farley. (Tr. pp. 42-43).

Petitioner was paid TTD from November 15, 2020, through August 15, 2021, noting that it was "sporadic." (Tr. p. 43). Petitioner received TTD from February 22, 2023, through March 31, 2023. (Tr. p. 44).

Petitioner was asked if he had called his state rep, state senator and the governor's office regarding his claim, but never answered the question subsequent to Respondent's objection. (Tr. p. 45)

Petitioner testified that prior to this accident, he did some work for FS hauling chemicals to the fields in vehicles "like tandem trucks." (Tr. pp. 45-46). Petitioner testified that since his accident, he has not volunteered or driven any tandem trucks for anybody other than the State. (Tr. p. 46). Petitioner testified that he has not driven any tandem trucks since his July 26, 2021, off-work slip. *Id*.

Petitioner testified that he received return to work forms in 2022, but that he received them "Very, very late," noting that he did not receive the forms until late July, but usually received them in March or April (Tr. pp. 47-48). Petitioner testified that he completed and returned the forms to return to work. (Tr. p. 48). Petitioner testified that he usually starts the season as a snowbird on November 16th. *Id*. Petitioner agreed that he indicated he could return to

work, assuming that IDOT had his restrictions, but noted that he was not returned to work, testifying that "only thing I know, I took a physical; and, per the doctor, I passed the physical; but because of my Insulin usage, I had to fill out this form…" (Tr. p. 49). Petitioner alleged that the State refused to give him a copy of this form, despite him completing and returning it. (Tr. pp. 49-50).

Petitioner testified that he has to use a stair lift at home "because of my hip pain…steep steps and high steps really aggravate my hip." (Tr. p. 50). Petitioner indicated that he did not use a stair lift before his work accident. *Id*. Petitioner also has a chair lift at home, which was a gift from his family "because of the pain I was having," and noted that he did not have this lift before his accident. (Tr. p. 51). Petitioner agreed that he recently underwent a functional capacity evaluation with Athletico. *Id*.

When asked if he was taking any prescribed medication for this injury, Petitioner responded "Tylenol Arthritis, basically." (Tr. p. 53). When asked if his condition in relation to his hip had improved since his surgery, Petitioner testified "Well, yeah, I can move my leg side to side without crying and screaming." *Id*. Petitioner does not use tobacco. Petitioner's physician did not order, recommend, or prescribe the stair lift or chair lift in his house. *Id*.

Petitioner initially testified that he had not filed another workers' compensation claim involving the hip at issue in this claim, but when asked if he would have any reason to dispute it if the record showed that his attorney filed another claim alleging a work accident by repetitively climbing in and out of his work truck, and listed the right hip and noted the nature of the injury as being a hip replacement, Petitioner indicated he would not to his knowledge. (Tr. p. 54).

Petitioner confirmed that medical treatment for his knee and back had nothing to do with his work injury. (Tr. p. 55). Petitioner testified that he has diabetes, which he was diagnosed with in 2009 and now takes insulin for. (Tr. pp. 55-56).

Petitioner has worked for IDOT since 2017 and applied to return to IDOT as a snowbird in 2021. (Tr. p. 56). Petitioner did not undergo a preemployment screening and physical at that time. Petitioner testified that "you hand fill those [forms] out" (Tr. pp. 56-57). Petitioner again applied to return to IDOT as a snowbird in 2022 and filled out the packet by hand and signed it. (Tr. p. 57). Petitioner confirmed he underwent a preemployment screening and physical for the 2022 application. *Id*.

Petitioner testified that he has not followed up with his physician since he released him, and that his last date of treatment was January 3, 2022. (Tr. p. 57). When asked if, since his physician gave him the release form, Petitioner had ever tried to find another job or do a self-guided job search, Petitioner testified that "I've looked online, but I haven't applied." (Tr. p. 59). Petitioner testified that he has not worked for anywhere else besides IDOT since his accident, noting that he had applied at IDOT for a full time position. (Tr. p. 59).

On redirect, Petitioner testified that he was not an insulin dependent diabetic prior to this accident, and that his diabetes was controlled by "pills and diet," and felt that because of this accident, he is Insulin dependent. (Tr. p. 60). Petitioner testified that he called Tristar weekly or

biweekly to attempt to get medical treatment. (Tr. p. 64). Petitioner testified that as of the time of trial, he had not been hired for the full time IDOT job he applied for. (Tr. p. 64). The Arbitrator notes that Petitioner did not testify or clarify when he applied for this full time position.

Tommy Fenton

Mr. Fenton testified that he is currently employed by FRASCO Investigations and has been employed there for a little over six years. (Tr. p. 66). Mr. Fenton is a senior surveillance investigator and investigator trainer for the Southern Illinois region. *Id*. Mr. Fenton testified about the process of responding to a request for surveillance and confirmed that there was a request to do in-person surveillance on Petitioner regarding this claim. (Tr. p. 67). Mr. Fenton confirmed that a report was generated from the surveillance, and that the report is kept in the normal course of business. (Tr. p. 68). Mr. Fenton reviewed the surveillance report dated August 31, 2021. *Id*.

Over the course of the six days of surveillance that was done on Petitioner, three investigators were involved, totaling approximately 32 hours of surveillance. (Tr. p. 70). Mr. Fenton was unsure where the restrictions were provided from or what the specific driving restrictions were. (Tr. p. 71). Mr. Fenton agreed that 29 of the 74 miles Petitioner drove that day were for a one-way drive to Hopedale Wellness Center. (Tr. p. 72). Mr. Fenton agreed that the report noted that Petitioner walked with a noticeable limp. (Tr. p. 73). Mr. Fenton confirmed that no one involved in the investigation observed Petitioner driving any vehicles other than his personal vehicles, which were listed on the first page of the report. (Tr. pp. 73-74).

Glendon Bradley

Mr. Bradley has been employed with IDOT since June of 2022, as a Region 2 claims manager. (Tr. p. 75). Mr. Bradley explained that "there are two general application practices, one for brand new employees who have never applied with IDOT before and a separate process for what they call callbacks or snowbird employees who have previously been employed with IDOT." (Tr. p. 76). For employees who are out with restrictions related to a workers' compensation claim, they would go through the callback application process and their "position is held for them for a period of three years or three seasons." *Id*. Mr. Bradley confirmed that Petitioner would have still been able to return to his snowbird position, had he been released midway through a snowbird season. (Tr. p. 77).

Mr. Bradley confirmed that Petitioner filled out an application in 2022 and underwent a preemployment physical and screening (Tr. pp. 77-78). He testified that the reason why Petitioner did not return was 'there were requirements that remained outstanding from the physical that required additional items, one of which was a diabetes waiver and Insulin waiver; and that was never returned to IDOT. So, the physical process was never completed." (Tr. p. 78). When asked if Petitioner could have returned to work if his diabetes waiver had been completed and returned, Mr. Bradley testified that "as long as the physical was passed and he was cleared to return to work, then, he would have moved along through the process; but it was on hold because we did not receive…the requisite documentation to complete the actual physical." (Tr. pp. 78-79).

Mr. Bradley confirmed that IDOT does not handle IMEs for the state, and that this would be handled through the third party administrator, which at the time was Tristar. (Tr. p. 79). When asked about Petitioner's restrictions, Mr. Bradley indicated that "IDOT has historically made every attempt to accommodate physical restrictions; and if—that would have been discussed at this time and is entirely likely that that would have been considered." (Tr. pp. 79-80).

When asked if Petitioner would have until November of this year to still to return within the three years, Mr. Bradley stated "that sounds correct." (Tr. p. 82). Mr. Bradley clarified that everyone's 2022 callback notices were sent out late last year, not just Petitioner's, as "statewide, there was a delay in sending callbacks out to the previous snowbirds. So, that matter affected everyone." (Tr. p. 83).

Petitioner

Petitioner testified that he believed the late notice for the 2022 season application process was "because they had just released me from workman's compensation…I told them that they needed to talk to you and you might remember the email, because you had certain requirements that I had to do." (Tr. p. 85). Petitioner indicated that there was initially an issue with the diabetes waiver form and claimed he was only provided with the first page of the form. (Tr. p. 86). Petitioner testified that he hand delivered a copy of the diabetes waiver back to the proctor. (Tr. p. 88).

Exhibits

Petitioner began testifying about his medical treatment during trial, at which time the Arbitrator stopped the trial to have an off-record discussion. After an off-record discussion took place, Petitioner's counsel moved to amend Petitioner's Exhibit List and introduced additional medical records: Petitioner's exhibit L, Dr. Proehl's medical records; Petitioner's exhibit M, records from OSF orthopedics/Dr. Kinzinger; and Petitioner's Exhibit N, records from OSF Medical Complex. These medical records, totaling approximately 1,000 pages, were admitted over Respondent's *Ghere* objection, over Respondent's objection as to there being no certification for Exhibit M, and Respondent's objection as to the off-record discussion—"I know that we had a discussion off record as to whether or not the medical records were required for Petitioner to prove up this case, and I would still like to restate what I said off record that I don't think it is appropriate for the records to come in at this point because Petitioner had intended to proceed without them until the offer or discussions…I had specifically asked last week if medical records were going to be presented as part of this trial along with the off work slips and I was presented with no records to prepare for them being presented today prior to this trial…I strongly object to them going in especially in light of the discussion off record as to whether or not Petitioner could prove his claim without them." (Tr. pp. 29-31). The Arbitrator noted, regarding the *Ghere* objection, that "I do believe that you probably have received these records previously in this matter. Whether or not you have anticipated them going into the record today." (Tr. p. 31).

Despite Petitioner's Exhibit M not containing a certification page, it was entered into evidence. However, despite this, the Arbitrator notes that no medical records were introduced by Petitioner to cover the time period for which Petitioner has requested TTD benefits. Therefore, there is nothing to support

Respondent's Exhibit 7 is Petitioner's 2021 IDOT application. Petitioner filled out and signed this application on July 16, 2021, noting that he was available to work from October 2021 to May 2022, and indicated that he was able to meet all requirements of the job, including "the ability to lift 50 lbs. or more, as well as perform other labor intensive duties on a repetitive basis."

Respondent's Exhibit 8 is the FRASCO Surveillance report, dated August 31, 2021, which reflects surveillance done on August 26, 27, and 28, 2021.

Respondent's Exhibit 9 is Petitioner's 2022 IDOT application. Petitioner filled out and signed this application on July 18, 2022, again indicating that he was able to complete the requirements of the job, including "the ability to lift 50 lbs. or more, as well as perform other labor intensive duties on a repetitive basis."

Respondent's Exhibit 10 is the pre-employment testing documents. Page 1 of this exhibit indicates that Petitioner was placed on a medical hold on 11/14/2022. The medical examiner, on page 4 of this document, noted that their opinion of the maximum workload capacity of the applicant was in the "heavy" capacity.

Respondent's Exhibit 15 establishes that the FRASCO surveillance information was provided to Petitioner's attorney on August 30, 2021.

MEDICAL EVIDENCE

Pre-accident medical:

Petitioner sought treatment on May 23, 2018 for his left knee. A series of PT was recommended for his knee and hip, and it was noted that Petitioner reported intermittent use of narcotic pain medication had helped him in the past. (RX #13). Additional medical records regarding Petitioner's knee were placed into evidence. However, with Petitioner's testimony that the knee was unrelated, these records will not be included in this decision, as they are not relevant.

The Arbitrator does note that Petitioner's knee injury was already impacting his mobility in 2019; on October 23, 2019, he reported only being able to walk 4 blocks without stopping and that he had to use a stair rail going up and down stairs. (RX #13).

On March 4, 2019, Petitioner's medical record from Dr. Proehl regarding his diabetes states "Patient presents…with a number of complaints. His primary complaint is that the doctor[s]…[do not]…talks each other [sic]. He states that he is very upset with the medical system. **He is upset because he was placed on insulin by his endocrinologist. He does not**

think he needs insulin. He states that he cannot take insulin and perform the job working for the State of Illinois. (RX #13, *emphasis added*).

On November 14, 2019, Petitioner asked if he could take anything other than meloxicam for his knee pain. (RX #13). On December 12, 2019, Petitioner reported that Voltaren gel did not help with his knee pain and requested Tramadol as well as "Requesting refill on Basaglar insulin." (RX #13).

On December 14, 2019, Petitioner reported right sided groin pain and lower back pain for a couple of months and underwent an X-ray of his spine and hip and an MRI of his hip. The X-ray showed no significant hip arthritis; the MRI of the hip showed a partial tearing of the distal right iliopsoas tendon, mild-moderate chondromalacia of the right hip, but noted no evidence of fracture or avascular necrosis. (RX #13).

Post-accident medical:

Petitioner's first date of treatment is January 9, 2020, approximately one week after his accident. At this time, Petitioner reported that "his truck was rear-ended while working last week. He twisted during the accident and has had right flank pain and lower back pain as well as left shoulder pain. He states his left shoulder hurts when he moves it. He also has lower back pain with movement. He has no radicular symptoms down his right lower extremity." (PX M). Chief Complaint listed is "3 week follow up, go over x-rays, labs, MRI for right thigh/hip pain. Patient was rear ended in a MVA last week, now has low back pain on the right side and left shoulder pain." (PX M). MRI of the lumbar spine "prior to his accident reveals multilevel disc degeneration and facet arthritis. There is significant disease at L2 and L3 with mild to moderate spinal stenosis. There's some disc protrusion without nerve impingement noted. There is some foraminal disc protrusion on the right with possible mild contact of the right nerve root. MRI of the right hip reveals partial tearing of the distal right iliopsoas tendon. There's mild-to-moderate chondromalacia present of the right hip." (PX M). At this time, physical therapy for the right hip was recommended and a referral for a spine surgeon was offered, but Petitioner "does not want to see this physician at this time." (PX M).

Petitioner treated at OSF on January 29, 2020; and "presents [to] office to discuss a left total knee arthroplasty. The Arbitrator notes that no mention of the hip is present in this record. (RX #13)

Medical records from Dr. Kinzinger, contained in Petitioner's Exhibit L, begin on February 5, 2020. No mention of his hip or work accident is contained in therein. Instead, the record notes "He is back today following up for his left knee pain osteoarthritis. He says that his knee pain is severe. He is having trouble all the time with it. It is bothering him at work. It is reducing his ability to work. He has pain at night, pain at rest. He has pain going up and down the stairs. He is not having to use an assistive device yet most of the time…He has not had therapy, but does not think he can tolerate additional physical therapy. He says that the pain is severe and feels like it is really restricting his life." (RX #13, PX L).

On February 24, 2020, Petitioner returned to Dr. Proehl, noting that his right leg and groin pain was getting worse. It was noted that Petitioner was going to physical thereapy and had not seen his orthopedic doctor since having an MRI done of his right hip. Dr. Proehl noted that "he underwent an MRI of his right thigh. He was found to have a iliopsoas tendon tear. He was instructed to see his orthopedic surgeon but did not follow through with this. After the MRI, he was involved in a motor vehicle accident. He states his pain got worse after that. He has been in therapy." (PX M). At this time, Dr. Proehl recommended that Petitioner follow up with his orthopedic surgeon, noting that his hip "is a more pressing issue" and that "I do think this is orthopedic or back in nature." (PX M).

Petitioner had an X-ray of his lumbar spine taken on March 31, 2020, which showed mild retrolisthesis L2-3 and L3-4, and facet sclerosis noted in the lower lumber spine with mild multilevel degenerative disc disease, but no acute fractures were found. (PX M). An MRI was taken the same day and showed redemonstration of spondylosis and degenerative disc disease of the lumbar spine as above, noting multilevel variable compromise of lateral recesses, spinal canal stenosis, neural foraminal stenosis and the impression noted that "findings not significantly progressed as compared to December 2019 MRI." (PX M).

On April 2, 2020, Petitioner treated with Dr. Proehl. At this time, it was noted that Petitioner had "profound issues with his right hip and thigh areas. He was scheduled to see his orthopedic surgeon, but this has been deferred due to the COVID-19 pandemic. Donnie has developed worsening symptomatology with regards to his right thigh. He states that he has pain radiating down his right lateral thigh and moving distally across his anterior thigh and then back up to his groin area. This occurs whenever he tries to move his right thigh or put weight on it. Workman's Compensation allowed us to do an MRI of the back, but the hip and thigh were not accessed. Now he is wondering if he can get an MRI of his hip." (PX M). It was noted that Petitioner was wearing a hip brace at this time. (PX M). Regarding Petitioner's diabetes, it was noted that "Donnie needs to make lifestyle changes that he has not been willing to undertake." (PX M). An MRI of the hip was recommended, as Dr. Proehl did not feel that Petitioner's back would cause his ongoing symptoms. (PX M).

Petitioner treated with Dr. Proehl on April 17, 2020, noting his MRI study of his hip and noting continued pain in his right hip, and pain in his upper back. (PX M).

Petitioner followed up on June 3, 2020, approximately six months after his date of accident; this is the first mention of his work injury that is documented in Dr. Kinzinger's medical records. At this time, Dr. Kinzinger noted that the MRI shows a worsening picture, but opined that "**I do not believe that the hip osteoarthritis is caused by the previous trauma. There is no evidence based on the MRI findings that that is the cause. He has chronic labral tear among other things that does not show acute exacerbation. The knee seems to be the bigger problem.** He would like to go ahead and proceed with a total knee arthroplasty. He does not think he can tolerate additional nonoperative management." (PX L, p. 12, *emphasis added*). The Arbitrator notes that no mention was made about whether Petitioner's hip condition was causally related to his work accident at this time, nor does there appear to be any depiction of the work accident contained in this record. Additionally, the date of accident was noted as 2/2/20 in this record.

On June 19, 2020, Petitioner underwent an injection to his hip "Due to chronic pain," with a noted history of an iliopsoas tendon partial tear. At this time, Petitioner reported that "1 week" after the accident "x rays and MRI" were taken. Patient reported pain from his hip going into his right knee and the right side of his back. (PX L, p19)

A large portion of Petitioner's Exhibit M covers Petitioner's knee surgery and his significant complications post-operatively. As that is not at issue, those records, while having been reviewed by the Arbitrator, will not be included in this decision. Specifically, records from June 25, 2020, through September 2, 2020, are not relevant at this time, with the following two exceptions: a mention of right hip pain and a Norco request as a result on August 20, 2020, and a reference that Petitioner asserted "he is retired" on June 25, 2020. (PX M).

A large portion of Petitioner's Exhibit N also covers Petitioner's unrelated knee surgery on July 7, 2020, and contains correlating hospital records for the same. The Arbitrator notes that it was indicated after Petitioner's knee replacement surgery that Petitioner already had a stair lift in his house. (PX N).

Unrelated medical records were included with dates of treatment of August 12, 2020, and September 9, 2020. (PX L).

On September 23, 2020, Petitioner followed up with Dr. Proehl after his knee surgery; at this time, Petitioner's diabetes was discussed, and it was noted that Dr. Proehl would contact Petitioner's nephrologist. (PX M). At this time, Petitioner discussed his hip and Dr. Proehl noted "he would like to have surgery prior to the end of the year. I explained to him that I did [sic] know if this was a good idea based on the fact he almost died after his knee surgery. We talked about renal insufficiency. We talked about his fragile kidney status. We also talked about his comorbidities. He will follow-up with a nephrologist as well as his orthopedic surgeon to have discussed some regarding these issues." (PX M).

Petitioner underwent surgery for his hip on November 10, 2020. (PX N). The operative note indicates that the surgery was a right total hip arthroplasty. (PX N). Findings noted in the operative report were "osteoarthritis of the hip joint." (PX N). The operative report states that Petitioner "has severe, recalcitrant right hip osteoarthritis. Conservative options have failed." (PX N).

Occupational therapy was recommended for two to three times per week. (PX N). Petitioner was discharged from the hospital on November 11, 2020, following his hip replacement. (PX N). Petitioner followed up post-surgery for his right hip arthroplasty on November 25, 2020. (PX L p. 40). X-rays of Petitioner's hip were taken on January 6, 2021 and showed a "stable right total hip arthroplasty." (PX L p. 48). Petitioner next followed up on February 10, 2021, and it was noted that his incision was well healed with "some continued mild pain in the right going and lateral aspect of the hip. Primary aspect has been pain in the left knee…would like water therapy." (PX L p. 44). It was noted that Petitioner reported "some mild continued pain in the Right groin as well as the lateral aspect of the Right hip. States that his primary issue has been pain in his left knee along with stiffness and mild edema of the Left foot

that has made ambulation difficult. States that he has begun to have difficulty traversing Stairs As well as intermittent instability of the left knee." (PX L p. 45). X-rays of the knee were taken at this time and water therapy was ordered.

On June 3, 2020, Petitioner underwent x-rays of his right hip, at which time the impression was "moderate to severe right hip osteoarthritis." (PX L p. 61).

During Petitioner's pre-op for his hip replacement on October 23, 2020, Petitioner noted that his blood sugars have been above 200. (PX M). Petitioner's physician noted his concerns about Petitioner's hip surgery, specifically that "I am concerned given the patient's complicated course after his last surgery about his morbidity and possibly mortality for his hip surgery…He states that 'he can not bear the pain in his right hip.' Medically the patient is moderate to severe risk for hip surgery." (PX M). Regarding Petitioner's diabetes, it was noted that Dr. Proehl "asked the patient to put himself back on an insulin sliding scale. He had questions about new medications he seen on commercials on TV. I advised him against trying these new medications." (PX M)

On November 25, 2020, Petitioner underwent x-rays of his right hip, which showed a stable right total hip arthroplasty. (PX L, p 64).

On November 30, 2020, Petitioner began physical therapy at Hopedale after his hip replacement. At this time, it was noted that Petitioner was "diagnosed with painful right hip and now s/p total hip replacement by Dr. Kinzinger presents with decreased gait, transfers, endurance, balance, strength and function and would benefit from skilled PT intervention." (PX M).

Petitioner underwent additional PT on December 2, 2020, December 4, 2020, December 7, 2020, December 11, 2020, December 14, 2020, December 16, 2020, December 18, 2020, and December 21, 2020. (PX M). On December 7, 2020, Petitioner reported "being sore today…Reports he was busy at home over the weekend." (PX M). On December 21, 2020, Petitioner stated he is "happy with his progress, states his rehab will be set back because he needs to have surgery on his penis area before the end of the year and will be holding PT for ~2 week at that time. States he has not been walking as much as he should and PT issued walking pass to use wellness center. Patient reports his right hip still aches at times and his left knee still bothers him at times." (PX M).

Unrelated medical records from December 22, 2020, and January 22, 2021, involving Petitioner's penile surgery were introduced into evidence. (PX M). The January 22 note does reference Petitioner's diabetes and at this time a "very strict diet" was discussed, as Petitioner's medication options for his diabetes were "limited at this time…due to his renal insufficiency." (PX M).

Petitioner underwent additional x-rays on January 6, 2021, which showed a stable right total hip arthroplasty. (PX L, p 65).

Petitioner began PT again on January 12, 2021, and underwent additional PT sessions on January 14, 2021, January 19, 2021, January 26, 2021, January 28, 2021, and February 1, 2021, at which time Petitioner was discharged. (PX M).

On January 12, 2021, Petitioner "Reported that he saw Dr. Kinzinger and he is supposed to be getting into the pool for the right hip and left knee." (PX M). On January 14, 2021, Petitioner reported that he "is really struggling with right hip/groin pain and left leg edema today after walking at OSF yesterday with his spouse who was having a procedure and feels like his left knee range of motion is very restrictive today." (PX M). On January 19, 2021, Petitioner reported "increased edema in his left knee bothering his motion and tolerance to standing and walking movement patterns." (PX M). On January 28, 2021, Petitioner reported "That his left knee if more sore and is having some posterior R hip discomfort." (PX M). On February 1, 2021, Petitioner "states he is so much better then [sic] he was last summer but wishes he could be further along." (PX M).

Petitioner sought a second opinion regarding his diabetes on February 10, 2021. (PX M). Petitioner was directed to use his insulin on a scheduled basis and not as needed. (PX M).

Physical therapy records from Hopedale, dated February 17, 2021, indicate that Petitioner underwent PT, with the assessment noting that Petitioner had "painful thoracic spine and radiating symptoms around to lateral rib cage." (PX M). Petitioner's hip was not referenced in this record.

Petitioner presented a work restriction on July 26, 2021, including the following: "1.) should not be put in situations where he needs to bend his knee more than 90 degrees. 2.) no driving 3.) he should mostly be sit down work with very limited requirements to ambulate/lift/carry." (RX 13; PX J). No medical record was entered into evidence at the time of trial to support this off-work slip.

Petitioner's next off-work slip was authored on September 1, 2021. (RX #3, PX J). These restrictions include: "1.) Should not be put in situations where he needs to bend his knee more than 90 degrees. 2.) No driving large trucks like tandems and Bob trucks. Patient able drive cars, pickups [sic] trucks and SUV's. 3.) He should mostly be sit down work with very limited requirements to ambulate/lift/carry." (RX #13, PX J). No medical record was entered into evidence at the time of trial to support this off-work slip.

Petitioner's last date of treatment is January 3, 2022. At this time, his physician notes that Petitioner "says he has intermittent aching in the inner trochanter aspect and posterior, worse intermittently in the trochanter aspect radiating down the thigh, intermittent radiating to his knee. He is doing exercises at the gym, walking, does feel like he has made progress." (RX #13). Physical examination shows Petitioner "in no acute distress…he has full extension of the hip, about 90-95 degrees of flexion. He is able to walk with a cane. Strength and sensation appears to be grossly intact in the right leg." (RX #13). Imaging showed a stable total hip arthroplasty. *Id*.

Petitioner's January 3, 2022 off work slip states that Petitioner is to return in about a year and gave permanent restrictions of "no driving large trucks [and] no walking more th[a]n 150 feet without 10-15 minute break." (RX #13, PX J).

The Arbitrator notes that the treating physician's deposition was not taken in this claim.

Petitioner underwent an IME with Dr. O'Leary. There is nothing in evidence to establish that Dr. O'Leary is a hip specialist and the majority of the emphasis in Dr. O'Leary's report appears to be focused on the lower back and low back pain reported after this accident. (PX E). The Arbitrator finds it noteworthy that Petitioner reported to Dr. O'Leary that he was a noninsulin dependent diabetic when Petitioner's treating records note otherwise. Ultimately, Dr. O'Leary opined that "I do not think the accident caused any condition of ill-being with regard to his lumbar spine." The Arbitrator does note that Dr. O'Leary stated that "I do believe that there is a change in his symptoms about his hip and that it aggravated an underlying condition previously existing hip arthritis and made his condition worse." The Arbitrator again notes that it appears that Dr. O'Leary is not a hip specialist, evidenced by Respondent's assertion that he refused to do an IME addendum regarding Petitioner's hip.

Based on Petitioner's testimony that only his hip is at issue in this claim, the Arbitrator notes that Dr. Farley produced an IME report and was deposed on October 3, 2022, after Petitioner submitted an off-work slip on July 26, 2021, which noted restrictions involving his knee. This off-work slip illustrates the basis for obtaining an IME on Petitioner's knee, but the Arbitrator finds Dr. Farley's opinions to be unhelpful, as Petitioner's knee is no longer at issue in this claim, based on Petitioner's testimony at trial.

Petitioner underwent an IME with Dr. Ackerman on April 25, 2022. (RX #5) Petitioner's description of the accident was "sitting in his work truck on January 2, 2020 and felling a 'jostle' and thought he was rear ended. He describes being hit by a pizza truck which was going 70 mph. He describes progressive increasing right hip pain following this injury." (RX #5 p. 4). Upon review of the 12/24/2019 MRI, Dr. Farley opined that the MRI showed "moderate right hip degenerative changes with significant chondrosis of the superior cartilage. There is edema within the superior medial acetabulum. There is evidence of degenerative labral tearing. There is evidence of the partial thickness psoas tear." (RX #5 p. 6). Regarding the post-accident MRI, Dr. Ackerman noted "there is redemonstration of the moderate right hip degenerative changes with significant chondrosis of the superior cartilage. There is subchondral edema within the femoral head adjacent to the underlying chondrosis. There is degenerative labral tearing." *Id*. Dr. Ackerman referred to a note from Dr. Kinzinger, dated June 3, 2020, which stated "I do not believe that the hip arthritis is caused by the previous trauma. There is no evidence based on the MRI findings that this is the case. He has chronic labral tear among other things that does not show acute exacerbation." (RX #5 p. 7).

Dr. Ackerman noted in his IME report that "the work-related accident may have cause a[n] aggravation of this underlying condition per the patient's report." (RX #5 p. 8). Dr. Ackerman recommended an FCE to determine work capabilities, noting that "I feel that the permanent restrictions posed by Dr. Kizinger are quite conservative, especially no walking more than 150 feet. After my evaluation of the patient in the office he is certainly capable of

performing more than this." (RX #5 p. 9). Dr. Ackerman felt that any further restrictions recommended by an FCE would be permanent. *Id*.

Petitioner underwent an FCE on March 15, 2023. (RX 12). The FCE found that Petitioner's physical demand level was "within the heavy physical demand level." (RX #12 p. 1). Under the "Demonstrated and Projected Physical Tolerances," Petitioner had several restrictions unrelated to his work injury, and the only noted restriction was to avoid squatting and sustained squatting. (RX #12 p. 2). It was noted that Petitioner could occasionally climb stairs, climb ladders, and step onto a high surface. *Id*. It was noted within the report that "overall test results are valid representation of client's functional abilities based on client demonstrating consistent effort…The evaluator is confident in projecting full time abilities and limitations." (RX #12 p. 3). The FCE noted that Petitioner "is functionally employable at this time." *Id*.

Under the "subjective data" portion of the FCE, it was noted that "Client took a work physical in Oct 2022 and states he passed it, **but was told he could not take insulin at work so he did not return**. To this date, client has not returned to work." (RX #12 p. 4, *emphasis added*). The Arbitrator finds it particularly noteworthy that even after going off record and allowing Petitioner to enter hundreds, if not over a thousand, pages of medical records into evidence at trial, Petitioner failed to put in a single additional medical record for the time period that he is requesting TTD benefits for. The only medical record placed into evidence to support any of the off-work slips is that of January 3, 2022, which released Petitioner with permanent restrictions. It appears that not one single medical record was included in evidence at trial between February 1, 2021, and January 3, 2022.

DEPOSITION TESTIMONY OF DR. ACKERMAN

The deposition of Dr. Ackerman was taken on October 3, 2022. During the deposition the following questioning took place:

> Q: "Doctor, do you believe that this motor vehicle accident that he described to you made a permanent change to Mr. Passmore's condition of his hip?
>
> A: "No. I mean, from the records I reviewed, he has documentation of pre-existing hip pain, pre-existing arthritis, that may have caused an aggravation. But again, the patient pursued other treatment, including surgery for his left knee and a subsequent left knee replacement, before the hip.." (RX #6 p. 12).

When asked about restrictions and whether Petitioner could drive large trucks, Dr. Ackerman testified that "I would defer to a functional capacity evaluation to objectively determine that." (RX #6 p. 14). When asked "if it's shown later in this trial that Mr. Passmore has stated that he is able to drive large Illinois Department of Transportation snow trucks, would that kind of surprise you?," Dr. Ackerman noted "No, I think it's reasonable that he would be able to do that." *Id*.

When asked on cross if the full thickness chondral loss was present on the prior MRI of 12/24/2019, Dr. Ackerman testified in part that "…I would say that the patient had pre-existing

significant degenerative changes based on that MRI, indicative of the chondral loss that he described and the similar bone marrow edema that is described in the acetabulum." (RX #6 p. 27). However, upon specific questioning, Dr. Ackerman agreed that there was no statement of a full thickness tear or a full thickness chondral loss about the femoral head and acetabular surface in the December 24, 2019 report. *Id*.

When asked "…Dr. Kinzinger doesn't address whether that aggravated the pre-existing condition, does he?" Dr. Ackerman replied "No." (RX #6 p. 30).

Dr. Ackerman indicated that it's "not necessarily correct" that when a patient needs both a hip replacement and a knee replacement that the proper approach is to do the knee replacement first, and noted that he typically recommends a hip replacement before a knee. (RX #6 pp. 31-32).

When asked on redirect:
Q: "…did the motor vehicle accident that we are here today about, did that make a permanent change to Mr. Passmore's condition?"
A: "It did not make a permanent change—structural change. It made a change in his symptomatology." (RX #6 p. 41).

Ultimately, Dr. Ackerman opined that he "classified it as a permanent aggravation because he had persistent pain and symptoms despite structured physical therapy, multiple pain medications, and an intra-articular injection, with persistent pain and symptomatology," yet, when asked if Petitioner would have needed the same course of treatment had the motor vehicle accident not occurred, Dr. Ackerman opined "quite possibly." (RX #6 p. 42).

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner

Petitioner, while seemingly answering questions in a forthright manner, appears to be a very poor historian. Petitioner testified in detail about how he felt his diabetes had become insulin dependent as a result of this work injury when his medical records clearly indicate otherwise. Petitioner was wholly unaware that another worker's compensation claim had been filed putting this same hip and hip replacement at issue. The Arbitrator finds Petitioner to be somewhat credible.

The Arbitrator finds it particularly noteworthy that Respondent's Exhibit 15 establishes that the FRASCO surveillance information was provided to Petitioner's attorney on August 30, 2021, and Petitioner's restrictions were suddenly changed on September 1, 2021, with no medical records entered into evidence to show what had changed regarding Petitioner's condition to justify this change in restrictions.

Tommy Fenton

While unable to add much to the claim in his testimony, other than laying foundation for the FRASCO investigative report, the Arbitrator finds Mr. Fenton to otherwise be a credible witness.

Glendon Bradley

Mr. Bradley, while unable to answer all questions, answered questions he had knowledge of in an honest and forthcoming manner. The Arbitrator finds Mr. Bradley to be a credible witness.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being is causally related to the accident of January 2, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated by reference herein.
The findings in regard to accident, above, are incorporated herein.

Petitioner has the burden to prove by a preponderance of the credible evidence that his injury arose out of and in the course of his employment with Respondent. When determining whether an injury arose of out employment, one looks to whether there is a causal connection between the injury and the claimant's work.

It is well accepted that Petitioner bears the burden of proof to establish the elements of the right to compensation, including that the condition of ill-being was causally connected with employment, rather than a cause unrelated to employment. *Rice v. Industrial Comm'n*, 81 Ill. 2d 544, 547 (1980). Indeed, to meet the burden of establishing elements by a preponderance of the evidence, a petitioner must "prove by positive evidence or by reasonable inference" that his condition of ill-being is the causal result of the injury at bar. *Mirific Products Co. et al. v. Industrial Comm'n*, 356 Ill. 645, 650 (1934). Indeed, such evidence must outweigh evidence or the absence thereof which favors the opposite conclusion. *Id*. As such, liability cannot rest upon imagination, speculation, or conjecture. *Finch v. Industrial Comm'n*, 08 IL.W.C. 39483, 12 I.W.C.C. 0638 (2012).

The burden is on Petitioner to prove the injury caused the need for the hip replacement. The Arbitrator finds that Petitioner's own treating physician found no connection between Petitioner's preexisting hip arthritis and appears to have provided no further causation opinion regarding the work accident specifically. The Arbitrator finds that Dr. O'Leary, a spinal surgeon who briefly examined Petitioner once, said there was a change in symptoms, but did not specify the nature of the change and whether it was temporary or permanent. The Arbitrator also notes that Petitioner sought no clarification from Dr. O'Leary or his own physician. The Arbitrator notes that Dr. Ackerman opined that Petitioner would have "quite possibly" needed the same course of treatment had the motor vehicle accident not occurred. Petitioner failed to meet his burden of proof regarding causation.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of January 2, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

The findings in regard to accident and causal connection, above, are incorporated herein.

Having found that Petitioner's injuries are not compensable under the Act, all other issues are declared moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002867
Case Name	Robert Fulcher v. City of Bloomington
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0433
Number of Pages of Decision	18
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	R Mark Cosimini

DATE FILED: 9/9/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT FULCHER,
Petitioner,

vs. NO: 21 WC 2867

CITY OF BLOOMINGTON,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability benefits ("TTD"), manifestation date, and medical expenses both current and prospective, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds that Petitioner proved a compensable repetitive traumatic injury manifesting itself on April 20, 2020, which caused his current condition of ill-being of bilateral carpal tunnel syndrome ("CTS"). The Commission further remands this case to the Arbitrator for further proceedings for a determination of an 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).

Findings of Facts - Testimony

Petitioner testified that on April 20, 2020 he worked for Respondent as a firefighter/paramedic. He staffed an ambulance and responded to emergency calls. ¾ of his calls were EMS calls. His duties also included "duties in the station; cleaning, lifting, maintenance." "Everything" he does requires the use of his hands. Petitioner explained that every morning he would get his gear from the storage area to the engine, put the gear on, check the equipment on the engine, including air tanks, chainsaws, and fire extinguishers, check batteries on battery-operated cutters. He and the engineer inspect the truck together. Petitioner thought "fully dressed" he had over 100 pounds on his body. He averaged eight to 12 calls per day; the most he had was 22 calls in a 24-hour period.

Petitioner explained that there are three types of calls. First, there is a typical fire response. On those if he was in "the firefighter position on the engine," he would put on his turnout gear, put on his SCBA on route, gets off, gets a 2&1/2 gallon fire extinguisher and a halogen and eight-pound axe, and carry them into the building. Second, there is a structural fire call, in which he would enter the structure, "walking or crawling, while pulling this hitch three-quarters line" trying to put out the fire, searching/extracting victims, and opening walls. He used the axe to chop drywall and open up ceilings. The third call is an EMS call when he gets out their intubation kits that weigh 50 pounds at least. He would carry it with his hands. The "shoulder straps are broken." Sometimes they had to carry victims out. "Everything is as hard as you can. Everything is as fast as you can."

Petitioner referenced a "very, very large man" that had a stroke. He was not ambulatory. They had to force open the door, assess him, roll him onto a tarp, and carry him out. It was like a hoarder situation and there was not much room. By the time he got back to the station he could not feel the left side of his hand.

Petitioner testified that on April 20, 2020, he "woke up in the middle of the night" at shift with "one of the worst pains" he ever had all the way up his arm. He thought he was having a heart attack. When he reported it he was informed that it sounded more like CTS. He reported it on the next shift. Petitioner was able to see Dr. Seidl on May 28, 2020.

Petitioner had an EMG and he discussed his work activities with Dr. Seidl. He last saw Dr. Seidl on July 2, 2020. Dr. Seidl was in the process of scheduling CTS release surgery. However, Respondent cancelled the scheduled surgery and sent Petitioner for a §12 examination. That examination lasted less than 10 minutes.

Petitioner testified that his symptoms had progressively worsened and have "absolutely" affected his ability to perform his jobs duties. He would not be able to take a person's pulse if he were symptomatic. He drove to Florida and experienced numerous occasions of numbness on the way down. He had less on the way back because his symptoms improved while not working. The symptoms never resolved and he wanted to have the recommended CTS release surgery.

On cross examination, Petitioner agreed that his symptoms were intermittent and he worked 24 hours on duty and 48 hours off duty. The symptoms do not resolve in the 48 hours off duty. When off duty he does laundry, dishes, and additionally testified that he has four teenage children. He saw Dr. Seidl previously for his shoulder. Petitioner then testified he had numbness/tingling in his hand prior to the shoulder injury. He first noticed it in 2018 driving down to Florida for the first time. The pain he had was "super sharp" in the "whole entire am." There are either at least two and up to six people on a dispatch. There would be 12 people on a structural fire.

Even if they are not on structural fire calls, they have to use their tools in training. While there is not a structural fire on every shift, there was also planned maintenance, they had to perform. He rarely is symptom free for more than an hour. He believed Dr. Seidl's assessment took about 20 minutes.

On redirect examination, Petitioner described an incident in which they "plucked 5 people out" in a large boat a couple of years ago during flooding. They had to pull the boat back and forth on a rope "towing this overloaded boat." When he was doing this procedure, he had "instantaneous pain." Petitioner testified that RX4, Respondent description of Petitioner's job refers only to the firefighter aspect of the job. When he was hired in 2009 all of them were firefighter/paramedics.

On re-cross examination, Petitioner testified the rescue of the stroke victim he referred to was a one-time deal. It occurred sometime after April 20, 2020. Three to five people are involved in taking everything off the truck to clean up.

Findings of Fact – Doctor Depositions

Dr. Seidl testified by deposition on March 17, 2022. The first time he saw Petitioner was on May 28, 2020 for symptoms in his left AC joint and bilateral numbness/tingling in his hands; he had suffered a fall in which he injured his shoulder. Petitioner reported that since that fall, his numbness/tingling worsened. Dr. Seidl ordered an EMG which showed mild-to-moderate CTS on the left and less symptomatic CTS on the right. When Petitioner returned on July 2, 2020, his chief complaint was CTS symptoms on the left. He reported it was after the fall but it also was associated with work activities. He believed Petitioner needed CTS release surgery to improve his symptoms and resolve most of the pain. Specifically, Petitioner related an example of carrying a person with other firemen which exacerbated his symptoms, and the symptoms worsened and persisted. Dr. Seidl opined that periodically lifting heavy people, moving heavy gear in and out of the truck with his hands would either cause CTS or cause it to become symptomatic. He also opined that at the very least, the activities Petitioner described would have "at a minimum," exacerbated his symptoms and made them worse.

On cross examination, Dr. Seidl agreed that the causes of CTS are multifaceted but he believed that more than 50% of CTS patients "relate increasing symptoms due to certain activities that are done." Petitioner may have had hand numbness/tingling prior to his fall. The shoulder injury could have exacerbated his hand condition because he was using the injured side differently. The condition was worse on the left side, both electrodiagnostically and symptomatically. Petitioner is right-hand dominant.

Dr. Seidl then opined that there was not necessarily a direct causal relationship between the shoulder injury and the CTS. Petitioner mentioned as aggravating factors lifting a person, loading/unloading trucks, and repetitive activities. Dr. Seidl considered doing something more than once "repetitive." He did not recall when Petitioner reported lifting the individual.

Dr. Seidl thought Petitioner related "multiple repetitive activities" in his history. Because the report of the extreme lifting incident was after his EMG, Dr. Seidl could not know whether that incident aggravated Petitioner's condition.

Dr. Cohen testified by deposition on November 9, 2022 that he was a board-certified orthopedic surgeon, with an added qualification in hand surgery. His practice was limited to hands and upper extremities. CTS was probably the condition he saw the most. Prior to COVID, he probably did about three §12 examinations a week, and did a bit fewer since COVID. He examined Petitioner, reviewed his medical records, and issued a report dated December 1, 2020.

Petitioner reported numbness/tingling in his hands on April 20, 2020, which had been going on at least since 2018. He related no trauma to the onset of symptoms. He had a fall in 2019 when he injured his left AC joint. However, the hand numbness/tingling predated that accident. At the time of the examination, Petitioner was working full time as a paramedic/firefighter. His symptoms improved, but did not resolve, while he was off work and got worse when he returned to work. He was considerably overweight, at 6 feet/225 pounds, and he stated he smoked less than a pack of cigarettes a week.

On examination, Dr. Cohen found no deficit in sensation. His diagnosis was mild CTS. He would have tried more conservative treatment than that recommended by Dr. Seidl, including injection and splinting. If that were not successful, he may be looking at CTS release surgery. Petitioner was working full duty at the time of the examination, and had no problem with that.

Dr. Cohen testified he was familiar with the duties of firefighter/paramedic, which involves "a large variety of activities." Dr. Cohen did not believe Petitioner's mild CTS was causally related to his work as a firefighter/paramedic because he was not doing any high risk activity for CTS or anything on a highly repetitive basis. Doing a variety of activities reduces the risk of developing CTS.

After his examination, Dr. Cohen was provided the transcript of Dr. Seidl's deposition, and Dr. Cohen issued an addendum report. He agreed with Dr. Seidl that Petitioner had CTS. However, Dr. Cohen would treat him more conservatively. Nevertheless, basically, their main disagreement was on the issue of causation. Dr. Cohen noted that Dr. Seidl seemed to believe that if somebody does an activity more than once, it becomes repetitive, which is clearly "not the case." There is nothing in the literature or the AAOS, American Association of Orthopedic Surgeons, guidelines that support the association between lifting and CTS.

On cross examination, Dr. Cohen testified that the AAOS Guidelines are generally treatment guidelines. However, it also included some relationships between CTS and various activities. He could not cite literature indicating that a variety of activities is protective against CTS, but "you can find it easily." He did not believe he reviewed a specific description of Petitioner's job activities.

On redirect examination, Dr. Cohen testified the AAOS Guidelines are broken down by topic. There are a "whole bunch of categories of different stuff, different articles," on CTS. The actual link is almost 1,000 pages.

Conclusions of Law

The Arbitrator found that Petitioner failed to prove he sustained accidental injuries which arose out of and in the course of his employment or that his work activities caused his condition of ill-being of bilateral CTS. In so doing, he cited inconsistencies between Petitioner's testimony and the medical records. Specifically, he noted that the medical record indicates that Petitioner began to experience symptoms in 2018, either while driving to Florida, or after injuring his left shoulder. In addition, there was no evidence that Petitioner's condition had deteriorated so that he was unable to perform his work activities as of that date. Therefore, the Arbitrator did not consider the alleged manifestation date of April 20, 2020 to be a legitimate manifestation of accident date.

On the issue of causation, the Arbitrator noted that Petitioner testified that "everything he does at work involves the use of his hands." However, "significantly" he also testified that his job involved a wide variety of activities. He also found Dr. Seidl's testimony unpersuasive that any activity performed more than once was repetitive, and noted that Dr. Cohen testified that "Dr. Seidl's opinion was obviously incorrect." In that regard, the Arbitrator found the causation opinion of Dr. Cohen more persuasive than that of Dr. Seidl. Finally, the Arbitrator found that Petitioner failed to establish that his job entailed "constant repetitive activity" or even that even though he testified his symptoms increased while working, he also testified that the condition did not hamper his ability to perform his job duties.

Petitioner argues the Arbitrator erred in finding Petitioner did not prove accident and causation. He stresses that the April 20, 2020 date is an appropriate manifestation date because that was when he was told that his symptoms sounded like CTS. He also argues that the Arbitrator erred in finding no causation noting that certain activities do not need to be repetitive if they are involve "heavy gripping and pinching on a regular basis." Finally, Petitioner argues the causation opinions of Dr. Seidl were more persuasive than those of Dr. Cohen.

First, we disagree with the Arbitrator that April 20, 2020 is not an appropriate date of manifestation. There is no strict rule to determine an appropriate manifestation date. The Commission has consistently held that the determination of an adequate manifestation date is based on the concepts of fairness and flexibility. Generally, an appropriate manifestation date for a repetitive trauma injury is considered the date when the claimant knew, or should have known, that he had a condition of ill-being that was likely caused by their work activities. Even though the record indicates, and Petitioner testified, that he had numbness and tingling in his hands prior to April 20, 2020, he also testified that was date he was told his symptoms appeared to be CTS. His testimony was not rebutted. Therefore, we find April 20, 2020 to be an appropriate manifestation date.

On the issues of accident/causation, we do not find any inconsistencies in Petitioner's testimony and the medical records to be as problematic as the Arbitrator did. We find Petitioner to be a credible witness and his testimony was not rebutted.

Petitioner testified to multiple activities that required forceful gripping/grasping, and that these activities exacerbated his symptoms. We disagree with Dr. Seidl's assumption that any activity done more than once becomes a "repetitive activity," at least regarding the issue of determining causation to a repetitive traumatic injury. Nevertheless, the Commission has held that bilateral CTS can be caused by a claimant's work that involved constant use of the hands that involved intense gripping, grasping, and flexion of the wrists, even when such actions are done in performance of multiple different activities. *See, Salallisch v Vulcan Materials, Co.,* 18 IWCC 474. We believe this rationale applies to Petitioner's condition.

In this instance, we find both Dr. Seidl's and Dr. Cohen's causation opinions to be reasonable. However, we note that Dr. Cohen did not explain how he was particularly "familiar" with the duties of firefighter, he did not review the job description of firefighter, and Petitioner was also a paramedic as well as a firefighter, which changed his job activities considerably. It appears to the Commission that Dr. Seidl based his opinions more on his understanding of Petitioner's specific work activities rather than those of a generic firefighter, as Dr. Cohen understood those activities. Therefore, we find the opinions of Dr. Seidl more persuasive than those of Dr. Cohen.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 10, 2023 is hereby reversed and the Commission finds Petitioner sustained his burden of proving a repetitive traumatic accident which caused the current condition of ill-being of bilateral CTS.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all reasonable and necessary medical bills presented in PX4 pursuant to §8(a), subject to the applicable medical fee schedule in §8.2, of the Act.

IT IS FURTHER ORDERED BY THE COMMISISON that Respondent authorize and pay for prospective medical treatment that may be recommended by Dr. Seidl, pursuant to §8(a), and subject to the applicable medical fees schedule pursuant to §8.2, of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Commission remands this case to the Arbitrator for further proceedings for a determination of an 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 FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

The 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.

September 9, 2024

O-7/24/24
DLS/dw
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	21WC002867
Case Name	Robert Fulcher v. City of Bloomington
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	R Mark Cosimini

DATE FILED: 5/10/2023

THE INTEREST RATE FOR THE WEEK OF MAY 9, 2023 4.89%

/s/Kurt Carlson, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Robert Fulcher
Employee/Petitioner

Case # 21WC002867

v.

Consolidated cases: N/A

City of Bloomington
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 Kurt Carlson, Arbitrator of the Commission, in the city of Rock Island, on 04-11-23. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☐ What temporary benefits are in dispute?

☐ TPD ☐ Maintenance ☐ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On the date of accident, 4/20/2020, 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 not** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being **is not** causally related to the accident.

In the year preceding the injury, Petitioner earned **$84,834.88**; the average weekly wage was **$1,631.44**.

On the date of accident, Petitioner was **37** years of age, **married**, with **4** children under 18.

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

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

ORDER

Petitioner failed to prove he sustained accidental injuries which arose out of and in the course of his employment for Respondent.

Petitioner failed to prove a causal relationship between his current condition of ill-being and the alleged work accident.

Petitioner's claim for prospective medical treatment is denied.

All claims for compensation are denied.

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

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

Kurt A. Carlson **MAY 10, 2023**

Arbitrator

ICArbDec p. 2

FINDINGS OF FACT

Petitioner testified he works as a firefighter/paramedic for the City of Bloomington. He is staffed on an ambulance and responds to emergency calls. (T 8)

Petitioner testified about three-quarters of his calls are EMS related. He also performs duties at the station including, cleaning, lifting and maintenance. (T 9)

Petitioner testified everything he does requires the use of his hands. He explained when he arrives for his shift, he carries his gear from a storage area to the fire engine. He speaks with the co-worker that he is relieving. Petitioner then goes through his equipment and puts on his gear. Petitioner testified the gear weighs about 100 pounds. (T 10-11)

When describing his average day, Petitioner testified he responds to 8-12 calls per shift. (T 12) Petitioner described his job duties when he reports to a structure fire. He testified he carries a 2.5 gallon extinguisher containing pressurized water and a set of irons. After entering a structure, he searches for the smoke detector that went off and hopefully finds a panel with a map showing where the smoke detector is. (T 13) He further explained he carries a three-quarter inch line and does a preliminary search for victims. If necessary, he performs an extraction of a victim. Next, Petitioner performs salvage and overhall activities as well as ventilation operations. He opens walls by using an axe to chop out drywall. He breaks windows and uses a pipe pole to jam a hook through the ceiling. (T 14)

On an EMS call, Petitioner carries a 50 pound bag containing medications and an IV start kit. He carries the bag by handles. If it is necessary to carry a victim out to an ambulance, he uses a tarp which has small handles to drag the victim out of the building. (T 15)

Petitioner gave an example of having to drag a heavy patient out of a basement. He testified he could not feel the left side of his hand after that maneuver. (T 17-18)

With respect to his symptoms, Petitioner testified his left hand goes numb from the middle of his ring finger all the way through the thumb. (T 18)

Petitioner testified that on 4/20/2020, he woke up in the middle of the night at shift and had pain radiating up his left arm. (T 18-19) He finished his shift, and the next night he experienced severe pain all the way up his arm. Petitioner was concerned he was having a heart attack. (T 19)

When Petitioner reported for his next shift, he told his captain about his symptoms, and they called Medcor. (T 19) The Medcor incident report dated 5/1/2020 was admitted in evidence as Respondent's Exhibit 1. The report indicates Petitioner was at home sleeping and he started to feel pain in his left bicep all the way down to his left fingers. He also reported intermittent numbness to his left thumb, medial side of the left index finger, left middle finger and left ring finger. Petitioner also reported some numbness and pain in his right hand and fingers, but the left was worse than the right. Petitioner further advised that he consulted with Dr. Seidl who advised Petitioner to wear a wrist brace at night.

The employer completed a First Report of Injury 5/2/2020. The report was prepared by Lance Abel who was Petitioner's captain and was on the call to Medcor with Petitioner. The report indicates Petitioner was at home sleeping and he started to feel pain from his bicep all the way down to the fingers in his left hand. (Rx 2)

Petitioner testified he saw Dr. Seidl 5/28/2020. Petitioner testified he advised Dr. Seidl that both of his hands go numb from the middle of his ring finger over to his thumb and he also has associated arm pain at times.

Dr. Seidl's treatment note from 5/28/2020 contains a history of Petitioner complaining of bilateral numbness and tingling in his hands. The symptoms had been present for one and a half years since Petitioner had a fall and injured his shoulder. Dr. Seidl noted Petitioner reported his work makes his numbness and tingling worse. Dr. Seidl ordered an EMG study to confirm the carpal tunnel diagnosis. (Px 2)

On cross-exam, Petitioner testified the numbness and tingling in his arm and hand did not start with the shoulder injury. He testified he had the symptoms before the shoulder injury. He then testified he first began experiencing symptoms in 2018 when he was driving to Cocoa Beach. (T 28-29)

Petitioner underwent an EMG study at Christie Clinic 6/22/2020. The report indicates the findings were consistent with bilateral carpal tunnel syndrome which was moderate on the left and mild to moderate on the right. (Px 3)

Also on cross-exam, Petitioner testified he works 24-hour shifts and then has 48 hours off. He testified his symptoms do not completely go away during his 48 hours off duty. (T 27)

Petitioner testified that during his 24-hour shift, he sleeps if he can. (T 29-30) He also testified that at a minimum, two people report to an EMS call and 12 people report to the scene of a structure fire. (T 30-31) Petitioner acknowledged that not all of the calls require strenuous activities. He acknowledged a call may only involve helping up a small elderly woman. (T 31-32)

Petitioner also acknowledged that he has health insurance through the fire department. (T 35)

With respect to Petitioner's medical treatment, he returned to see Dr. Seidl 7/2/2020. Dr. Seidl's note indicates he spoke with Petitioner about having a carpal tunnel release. (Px 2)

At the request of Respondent, Dr. Michael Cohen evaluated Petitioner 11/20/2020. Based on his evaluation of Petitioner and review of the medical records and diagnostic studies, Dr. Cohen rendered an opinion Petitioner's bilateral carpal tunnel syndrome was not related to his work activities. (Rx 5, Dep. Ex. 2)

Both Dr. Seidl and Dr. Cohen testified by way of evidence deposition. Dr. Seidl provided his deposition testimony 3/17/22. (Px 1)

Dr. Seidl testified his first visit with Petitioner was 5/28/20. (Px 1, pg. 6)

He diagnosed carpal tunnel syndrome and ordered an EMG. (Px 1, pg. 6-7)

Following the EMG study, Dr. Seidl testified Petitioner's chief complaint as of 7/20/20 was with numbness and tingling in the left hand. Petitioner told Dr. Seidl his symptoms get worse with work activities. (Px 1, pp. 7-8)

Dr. Seidl also testified Petitioner reported he had to periodically lift heavy people and carry heavy stuff in and out of his truck. Petitioner also reported he had to move gear that weighed quite a bit. Dr. Seidl testified those activities would either cause carpal tunnel syndrome or cause symptoms. (Px 1, p. 10) Dr. Seidl further explained the activities Petitioner described would at a minimum cause an exacerbation of symptoms. (Px 1, pp. 10-11)

On cross-exam, Dr. Seidl acknowledged the causes of carpal tunnel are multifactorial. (Px 1, p. 11)

Dr. Seidl also testified Petitioner reported his symptoms began one and half years before the 5/28/2020 visit. Dr. Seidl testified Petitioner had an injury to his left shoulder and his symptoms were worse on the left side. (Px 1, p. 12)

Dr. Seidl further testified Petitioner's symptoms could be from the shoulder injury or from altered mechanics following the shoulder injury. (Px 1, pp. 12-13) Dr. Seidl then clarified his opinion noting there was no direct causal relationship between the shoulder injury and the carpal tunnel syndrome other than inadvertent things like using a sling or sleeping differently. (Px 1, pp.13-14)

When asked about repetitive activities, Dr. Seidl testified that if you do something more than once, it is repetitive. (Px 1, p. 15)

Dr. Cohen provided his deposition testimony 11/9/2022. (Rx 5)

Based on his evaluation of Petitioner and review of the medical records, Dr. Cohen diagnosed Petitioner with mild carpal tunnel syndrome. He recommended a cortisone injection as well as splinting before performing surgery. (Rx 5, p. 13)

Dr. Cohen also testified Petitioner did not need any restrictions on his activities. He noted Petitioner was working in a full-duty capacity and was not having any issue with that. (Rx 5, pp. 12-13)

When asked about Petitioner's job duties, Dr. Cohen testified Petitioner performs a large variety of activities ranging from cleaning vehicles, traveling to see injured individuals, lifting people, loading them on a stretcher, performing CPR, fighting a fire, holding a hose or an axe. He stated it all depends on what happens on a given day. He described the activities as a pretty large variety of activities. (Rx 5, p. 14)

Dr. Cohen rendered an opinion there is no causal relationship between Petitioner's job duties as a firefighter/paramedic and his carpal tunnel syndrome. He explained Petitioner did not perform any high risk activities for carpal tunnel. He did not perform any activities on a highly repetitive basis. Additionally, Dr. Cohen testified the medical literature shows that people who do a variety of activities are actually protected from developing carpal tunnel syndrome. (Rx 5, pp. 14-15)

Dr. Cohen also reviewed the deposition testimony of Dr. Seidl. Dr. Cohen testified he agrees with Dr. Seidl concerning the carpal tunnel diagnosis. However, he disagreed with Dr. Seidl with respect to the recommendation for surgery. Dr. Cohen recommended conservative care before proceeding with surgery. (Rx 5, p. 15)

Dr. Cohen further testified his main disagreement with Dr. Seidl relates to causation. Dr. Cohen noted Dr. Seidl feels that doing an activity more than once makes it repetitive. Dr. Cohen testified, "Clearly, that is not the case." Dr. Cohen also disagrees that lifting activities are a high risk for developing carpal tunnel. He further explained there is no medical literature to support that theory. Additionally, that theory is not in line with the American Academy of Orthopedic Surgery Guidelines. (Rx 5, pp. 16-17)

On cross-exam, a significant amount of time was spent sorting through the AAOS Guidelines. Dr. Cohen explained there is a section on carpal tunnel which sets forth activities which are at a higher risk or not at a higher risk for causing carpal tunnel syndrome. (Rx 5, pp. 21-25)

Dr. Cohen also testified the medical literature supports a conclusion that performing a variety of activities protects a person against developing carpal tunnel syndrome. (Rx 5, p. 25)

Following the completion of Petitioner's testimony at trial and the submission of each party's exhibits, the Arbitrator took the matter under advisement.

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to whether Petitioner sustained accidental injuries which arose out of and in the course of his employment for Respondent, the Arbitrator states as follows:

Petitioner is alleging his bilateral carpal tunnel syndrome is causally related to his job duties as firefighter/paramedic. He has alleged a manifestation date of 4/20/2020.

The Supreme Court of Illinois first accepted the idea of a repetitive trauma injury in *Peoria County Belwood Nursing Home vs. Industrial Commission*, 115 Ill.2d 524 (1987). In *Peoria County Belwood*, the Court held a claim involving a repetitive trauma injury must still meet the same standard of proof as other claimants alleging an accidental injury. *Peoria County Belwood*, 115 Ill.2d at 530. Additionally, the appellate court held an employee seeking benefits for gradual injury due to repetitive trauma must meet the same standard of proof as a Petitioner alleging a single, definable accident. *Three "D" Discount Store vs. Industrial Commission*, 198 Ill.App.3d 43 (4th Dist. 1989).

The Supreme Court's decision in *Peoria County Belwood* established the standard for an appropriate manifestation date. The court held the date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself." "Manifests itself" means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood*, 115 Ill.2d at 531.

Here, Petitioner testified he was sleeping at the fire station 4/20/2020, and he woke up with severe pain throughout his entire left arm. In contrast, the initial reporting to the employer and to Medcor indicate Petitioner was sleeping at home when he woke up with the symptoms.

Additionally, Petitioner testified he had been experiencing numbness and tingling in his left arm and hand since 2018. He testified he first experienced the symptoms when he was driving from Illinois to Florida. Contrary to Petitioner's testimony, Dr. Seidl's notes indicate Petitioner began experiencing symptoms in his left arm and hand after injuring his shoulder in 2018. During his deposition testimony, Dr. Seidl clarified his opinion by noting the relationship between the shoulder injury and Petitioner's numbness and tingling in Petitioner's left arm and hand would be due to using a sling or sleeping differently. Consistent with Dr. Seidl's testimony, Petitioner reported to the employer that his symptoms began while sleeping.

Based on Petitioner having symptoms which began either while driving in 2018 or following a shoulder injury, the Arbitrator finds 4/20/2020 when Petitioner woke up with symptoms throughout his entire arm is not an appropriate manifestation date. No evidence was presented demonstrating 4/20/2020 was the date on which the fact of the injury and the causal relationship of the injury to Petitioner's employment would have become plainly apparent to a reasonable person. Additionally, no evidence was presented suggesting Petitioner's arm, hand or wrist gave way so that he was unable to perform his job duties as of that time.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove he sustained accidental injuries which arose out of and in the course of his employment for respondent.

In support of the Arbitrator's Decision relating to whether Petitioner's condition of ill-being is causally related to his job duties, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Petitioner testified everything he does at work involves the use of his hands. He acknowledged during his 24-hour shift, he sleeps if he has a chance. Significantly, Petitioner testified his job duties require a wide variety of activities.

Dr. Seidl testified that if any activity is performed more than once, it is repetitive. Dr. Cohen testified Dr. Seidl's opinion was obviously incorrect. Dr. Cohen further testified the medical literature shows that when a person performs a wide variety of activities, he or she is actually protected from developing carpal tunnel syndrome. The Arbitrator finds the testimony of Dr. Cohen was more persuasive than the testimony of Dr. Seidl.

Petitioner's testimony at trial failed to establish his job duties involved "constant and repetitive activity." Additionally, the evidence submitted at trial does not establish Petitioner performed one activity over and over during his shift. Furthermore, the evidence submitted at trial does not establish Petitioner used his hands while repeatedly performing tasks requiring flexion or extension of the wrist. See *Jalil v. United Airlines*, 04 WC 005855, 09 IWCC 0014 (Carpal tunnel case denied when the Commission found the claimant's varied activities did not involve "constant and repetitive activity."); *Coultas v. IWCC*, 01 WC 050174, 06 IWCC 0807 (Repetitive trauma claim including carpal tunnel denied when the claimant testified she did not perform one activity over and over during her shift.); *Zubor v. Loyola University Medical Center*, 03 WC 006058, 05 IWCC 0320 (Carpal tunnel case denied when claimant failed to show she repeatedly performed tasks requiring flexion or extension of the wrist).

Petitioner further contends his symptoms are worse when performing his job duties. He also testified his ability to perform his job duties is impacted by his condition. The Arbitrator notes Petitioner has not missed any time from work as a result of his carpal tunnel condition. He has continued to perform his firefighting and paramedic duties without interruption. In fact, Petitioner testified to an incident in July 2020 when he assisted with a water rescue. He testified to extremely strenuous activities which he was capable of performing. Furthermore, Petitioner has health insurance, but he has not had the surgery despite his claims of nearly constant symptoms which impact his ability to perform his job duties.

Based on the totality of the evidence, the Arbitrator finds Petitioner failed to prove a causal relationship between his work activities and his carpal tunnel syndrome.

In support of the Arbitrator's Decision relating to whether Respondent is liable for the payment of medical bills, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Based upon the Arbitrator's findings on the issues of accident and causal connection, Petitioner's claim for the payment of medical bills is denied.

In support of the Arbitrator's Decision on whether Petitioner is entitled to prospective medical treatment, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Based upon the Arbitrator's decision on the issues of accident and causal connection, Petitioner's claim for prospective medical treatment is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007381
Case Name	Juan M. Iguel Cardenas v. CHS Acquisition
Consolidated Cases	21WC007382;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0434
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Natalia Olejarska
Respondent Attorney	Jason Stellmach

DATE FILED: 9/10/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0434

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

Juan M. Iguel Cardenas,

Petitioner,

vs. NO: 21 WC 7381

CHS Acquisition,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's conclusions and simply seeks to correct certain errors in the Decision. In the Findings section of the Arbitration Decision Form, the Arbitrator mistakenly wrote that Petitioner's current condition of ill-being is causally related to the work accident. The Commission modifies the above-referenced sentence to read as follows:

> Petitioner's current condition of ill-being is causally related to the accident only through March 26, 2021. Petitioner sustained an intervening accident on March 27, 2021.

In the seventh paragraph on page 3 of the Decision, the Arbitrator wrote that Petitioner attended the August 4, 2020, lumbar MRI "…at Dr. Tyndall's instance…" The Commission strikes "instance" from this sentence and replaces it with "insistence." In the third full paragraph on page 5 of the Decision, the Arbitrator wrote that Petitioner underwent a repeat MRI on "February 8, 2021." The Commission strikes "February 8, 2021, from this sentence and replaces it with "February 9, 2021." Finally, in the third paragraph on page 7 of the Decision, the Arbitrator wrote

that Petitioner, "…was again evaluated by Dr. Phillips for 10 minutes…" The Commission modifies this sentence to read as follows:

> Petitioner testified that Dr. Phillips' examination on April 30, 2021, lasted 10 minutes.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 14, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay for outstanding reasonable and necessary medical services provided through March 26, 2021, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that prospective medical treatment is denied.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 10, 2024

o: 8/13/24
AHS/jds
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/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007381
Case Name	CARDENAS, JUAN MIGUEL v. CHS ACQUISITION
Consolidated Cases	21WC007382;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Natalia Olejarska
Respondent Attorney	Jason Stellmach

DATE FILED: 8/14/2023

/s/Francis Brady, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

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)

Juan Miguel Cardenas
Employee/Petitioner
v.
CHS Acquisition
Employer/Respondent

Case # 21 WC 007381

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 Brady, Arbitrator of the Commission, in the city of **Chicago**, on June 8, 2023. After reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C, x☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. x☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. x☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. x☐ 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 **7/17/2020** 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.

Parties stipulate that at all times material the Petitioner's average weekly wage was $900.00.

On the date of accident(s), Petitioner was **41** years of age, **married** with **4** 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 $**NA** for TTD, $**NA** for TPD, $**NA** for maintenance, and $**NA** for other benefits, for a total credit of $**NA**.

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

ORDER

As detailed in the attached memorandum discussing the *Findings of Fact and Conclusions of Law*:

1) The Petitioner's July 17, 2020, accident arose out of and in the course of Petitioner's employment by Respondent.

2) The Petitioner's condition of ill-being prior to March 27, 2021 is causally related to the July 17, 2020 accidents

3) The Respondent shall pay to the Petitioner reasonable and necessary medical services pursuant to Section 8(a), Section 8.2, the medical fee schedule for the following medical treatment: Orthopedic Specialists of Northwest Indiana, Open MRI, Working Well/Chicago Heights/ Franciscan Health, Lakeshore Bone & Joint Institute, and Saint Mary Open MRI & CT,

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.

_____Francis Brady _____
Signature of Arbitrator

August 14, 2023

ICArbDec19(b)

STATEMENT OF FACTS:

Petitioner Juan Miguel Cardenas, "Cardenas" began working for Respondent, CHS Acquisition, "CHS", in 2003. (Tr. 11). CHS is a "metal company" and his job titles included 'machine operator", which required that he lift metal poles weighting between 20 and 50 pounds and straighten them on a table (Tr. 15-19).

In 2013 Cardenas underwent surgery performed by Dr Ghanayem for a lower back injury he sustained on the job. (Tr 12, 13, 44). He was able to return to full duty at CHS, and normal activities of daily living, "(a)round 2015" (Tr. 13, 14).

Thereafter, his health was "(v)ery good", and he "was able to work (his) job fine" until July 17, 2020, when, as he lifted and separated the metal poles, he felt a pain in his lower back. (Tr. 14, 19, 20, 45)

He presented at CHS's clinic on July 20, 2020, Working Well where he was seen by Dr. Kanayo Odeluga. (PX 5., p. 4). He reported through a Spanish interpreter that he hurt his low back lifting a sheet of metal at work. The pain radiated intermittently down petitioner's left lower leg and rated 7 on a pain scale of 10. Bending, lifting and twisting aggravated his symptoms ((Px 5., p 4) Dr. Odeluga assessed petitioner with a sprain of ligaments of the lumbar spine. An order was placed for an x-ray of the lumbar spine, and Dr. Odeluga prescribed Prednisone, Cyclobenzaprine and Acetaminophen. Petitioner was to return to work with the following restrictions: limited bending/twisting and lifting to 10 pounds. (Px 5., pps 4-6)

A CT of the lumbar spine completed that same day revealed no evidence of an acute fracture of the lumbar spine, with mild L5-S1 disc space narrowing and bilateral facet arthropathy (PX 5., p 7)).

On July 27, 2020, Cardenas was seen by Dr. Clifton Ward at Working Well, and reported that his pain remained unchanged. (PX 5 p. 9). Diagnosis remained sprain of ligaments of the lumbar spine and Cardenas, was referred to an orthopedic surgeon, Dr. Tyndall, for evaluation and further management. (Px 5., p 11, TR 20,21,22,59, 60)

Cardenas underwent a lumbar spine MRI on August 4, 2020, at Dr Tyndall's instance which disclosed, inter alia, disc bulging at L4-L5 and L5-S1 but exiting nerve roots were normal bilaterally. (Px 2. P2)

Dr. Tyndall saw Cardenas again on August 7, 2020, assessing him with low back pain and left leg radicular pain. (Px 1 p 6) The Doctor interpreted the 8/4/20 as revealing mild degenerative changes aa multiple lumbar levels as well as a left-sided L5-S1 disk herniation (and) to a smaller extent (a) disk herniation left. . . at L4-L5." He recommended an epidural steroid injection at the left L5-S1 level. (Px 1, p. 6)

On August 20, 2020, Cardenas underwent that epidural injection. (PX1, p. 20).

Cardenas followed up with Dr. Tyndall on August 31, 2020. (PX1., p. 5). He reported that the injection had helped significantly with his pain. Cardenas was assessed with left leg pain due to left L4-L5 and L5-S1 disk herniations. The plan included a left L5-S1 epidural steroid injections, Amitriptyline, and continued work restrictions.

On October 13, 2020, Cardenas received another epidural injection. (PX1.p19). His diagnosis, both pre and post procedure, was "Left leg radicular pain due to left L5 -S1 disk herniation. Note was made that he had "failed non-surgical management . . ." (Px 1 p 19)

Cardenas was next seen by Dr. Tyndall on October 21, 2020. (PX1.,p. 4). He reported no improvement with the recent left L5-S1 injection. Dr. Tyndall recommended additional time to see whether the injection helped his symptoms. Cardenas was to follow up in two weeks, at which point they would discuss if his condition required a left L5-S1 microdiscectomy.

During the November 4, 2020, visit with Dr. Tyndall, Cardenas reported continued left leg pain, stating no improvement following the injection. (PX1 p. 3). He was assessed with persistent left leg radicular pain due to left L4-L5 recurrent disc herniation. Dr. Tyndall recommended continued non-surgical treatment, prescribed Neurontin and Mobic, and issued a referral for physical therapy. Cardenas was to continue working with restrictions.

From November 10, 2020, to November 25, 2020, Cardenas underwent physical therapy upon referral of Dr Tyndall which proved largely unavailing. (Tr. 24; Px. 9)

When petitioner returned to Dr. Tyndall on November 25, 2020, he again reported no improvement in symptoms. (PX1, p. 2.). As petitioner had "tried and failed physical therapy, medications, and two epidurals. . ." the Doctor believed ". . . a revision microdiscectomy left L5-S1 is appropriate." (Px 1., p. 2)

On December 15, 2020, Cardenas attended an independent medical examination with Dr. Frank Phillips of Midwest Orthopaedics at Rush. (RX1). In his report, Dr. Phillips summarized a July 16, 2014 evaluation with Dr. Ghanayem which noted that petitioner has undergone a left-sided L5-S1 discectomy on April 17, 2013. Petitioner reported to Dr. Ghanayem occasional low back pain as well as shooting pain into his left leg and left foot numbness. Dr. Ghanayem recommended that petitioner continue working with restrictions and that said restrictions become permanent. When Cardenas was re-evaluated by Dr. Ghanayem on April 2, 2015, he reported intermittent left leg symptoms with a pain level of two out of ten. He was referred for physical therapy and was given work restrictions of no lifting greater than 40-lbs for three weeks.

Dr Phillips further recorded that even with his "history of lumbar diskectomy" Cardenas had been "doing very well until an injury in July 2020" when he was moving steel on a conveyor belt in a flexed position and developed an acute onset of low back and left leg radiating pain, associated with paresthesia down the left leg. (RX1., p 3, Rx 5 p 11). He told the Dr. he didn't have these symptom "in the period preceding the alleged injury. (Rx 2 p 3; Rx 5., p 11, 12). According to Dr Phillips, Cardenas described low back pain as well as left leg pain radiating pain in a sciatic distribution." Rx 2., p 3. Cardenas underwent an MRI on August 4, 2020 which was of exceptionally poor-quality. Dr. Phillips saw "some soft tissue in front of the nerves on the left" but could not "discern whether (it was) residual scar tissue from the prior surgery or a new disc protruding." (Rx 5 p 14.) He recommended Cardenas undergo a more sophisticated MRI. (id)

He concluded "that Cardenas' low back and radicular symptoms are a consequence of the work activity" and that Cardenas had "plateaued with conservative care." (Rx 2 p 4; Rx 5, p 15, 16). Dr. Phillips opined that a decision regarding possible surgical intervention must await review of higher caliber imaging; that is a gadolinium enhanced MRI in upgraded equipment. Pending a repeat MRI, Dr. Phillips did not recommend additional medical treatment including with a pain management specialist. Petitioner was deemed capable of working while avoiding lifting greater than 20 pounds, repetitive bending, and sitting for more than 40 minutes without a 10-minute rest period.

The evaluation Dr Phillips on December 15, 2020, lasted for 10 minutes. (Tr 24)

On December 16, 2020, when Cardenas presented "for further evaluation of his left L5-S1 disk herniation and left leg radicular pain, "Dr Tyndall once again prescribed lumbar spine surgery. (Px 1 p 1)

Another MRI was performed at Lakeshore Bone & Joint Institute on December 30. 2021. (P x 6., p 12) It was carried out due to Cardenas' low back ache since an injury at work in July 2020. Per the radiologist's report the study revealed disk herniations at multiple lumbar levels including L5-S1.

On January 11, 2021, Dr. Phillips authored an addendum report addressing the most recent MRI. (RX2). He had personally reviewed the MRI, noting it was not a contrast enhanced study. (Rx2., p1). Still, he found "a central disk protrusion, perhaps contacting the left S1 nerve root."(Rx 2 p 1). There was no "obvious", "clear cut" or "compelling evidence" of recurrent herniation to account for Cardenas symptoms and, given their non-dermatomal distribution, surgery offered only a "unpredictable chance" of relieving them (Rx 2 pps 1,2). Discectomy would be indicated for Cardenas only if he had "a recurrent disc pushing on the nerve and he was nonresponsive to conservative treatment . . . " (Rx 5., p 20) Doctor Phillips concluded Cardenas had reached maximum medical improvement regarding any aggravation of symptoms with his underlying condition, and there was no objective contradiction to resuming regular duty.

When he treated Cardenas on February 1, 2021, Dr Tyndall also noted that the imaging had been performed without contrast. He believed however, its findings were consistent with a recurrent L5-S1 disk herniation with moderate stenosis and compression of the exiting left S1 nerve root. (Px 6 p 15) If a switch in medications did not relieve his symptoms, a left L5-S1 microdiscectomy was in order. (P 6., p 16). The Doctor allowed Cardenas to continue working with restrictions and ordered him to return in one month. (P x 6., p. 16)

Cardenas underwent a repeat MRI on February 8, 2021 at Saint Mary Open MRI. (PX8 pps 3,4). The interpreting radiologist found evidence of the following:

- Multilevel spondylosis
- Posterior herniation at L3-4, L4-5, and L5-S1 level with annular tearing, causing mild stenosis of the central spinal canal and bilateral neural foramina
- Straightening of the normal lumbar lordosis, correlate for spasm versus strain

Dr. Phillips classified the MRI of February 9, 2021, a "contrast enhanced study" upon his personal review (Rx 3., p 1). He found no evidence of any "significant" recurrent herniation though there was bulging at multiple lumbar levels which was scar tissue. (Rx 5., pps. 21 – 23). Based on that and noting again Cardenas' "non-dermatomal findings on clinical exam" the Doctor restated his belief that surgery wound not have a "reliable" chance of relieving Mr. Cardenas symptoms. Cardenas' claimed work incident of July 17, 2017 had rendered symptomatic a mild underlying degenerative condition at L5-S1 but Cardenas had plateaued with conservative treatment regarding those symptoms and was capable of full duty work. (Rx 3, pps. 1, 2).

Cardenas' continued reporting pain radiating down his left leg when he presented to Dr Tyndall again on March 3, 21 (Px 6, 20). The Doctor did not comment on the 2/9/21 MRI but recorded that surgery had been denied based on the opinion of Dr Phillips, Dr Tyndall placed Cardenas at MMI and returned him to full duty. (Tr 24, 25).

Cardenas low back pain persisted as did pain in his buttocks and his left leg. (Tr. 25, 26). Still, he continued working as a machine operator according to Dr Tyndall's release of March 3, 2021. until March 27, 2021, when he twisted quickly at his workstation and felt low back pain (Tr. 26, 27, 28, 49).

CHS sent him for care right away at UC Franciscan Urgent where he told his examiner about his low back and left leg and buttocks pain (Tr 29; *PX* 11 at 10). UC Franciscan personnel recorded that Cardenas sustained an

injury on March 27, 2021, at work and that his job entails taking heavy objects and turning back to move them. (*PX* 11 at 10). Dr. Iftikhar performed a physical examination noting musculoskeletal tenderness and diagnosed acute left-sided low back pain with sciatica. (*TX* at 29; *PX* 11 at 12-12). Medication was prescribed. (*TX* at 29; *PX* 11 at 12).

Following this exam, Cardenas ended up at Dr Tyndall on March 29, 2021, "through the employer" where he again located the pain to his low back left buttocks and left leg, classifying these symptoms as "major" (Tr 29, 30; *PX* 6 at 24). He historicized an incident on March 27, 2021, when, while at work, he got hurt twisting his back. (*PX* 6 at 24). Cardenas felt his left-sided back and buttock pain after the 3/27/21 twisting injury was different than his previous leg pain. (Px. 6., 24). Dr. Tyndall's physical examination indicated positive straight leg raise on the left in the seated position, well-healed incision in the lumbar spine, no deformities, no motor or sensory deficits in the lower extremities, and limited range of motion of the lumbar spine with pain reproduced on lateral bending, extension, and flexion. (*TX* at 30; *PX* 6 at 24-25). Cardenas underwent lumbar spine X-rays. Dr. Tyndall's interpretation and comparison to previous radiographs showed diminished disk height especially at L5-S1, less so at L4-5, and no spondylolisthesis, fractures, or dislocation. (*PX* 6 at 25). Dr. Tyndall diagnosed Cardenas with a recent onset of back pain following a work-related injury on March 27, 2021. (*PX* 6 at 25). Dr. Tyndall recommended continuing with medications prescribed at Working Well and light duty restrictions. (*TX* at 30; *PX* 6 at 25). Cardenas testified that CHS continued to accommodate his restrictions. (*TX* at 30).

Cardenas followed up with Dr. Tyndall on April 5, 2021, and reported that his left-sided buttock, and back pain rated a 7 on a scale of 10. (Px. 6 p 29). Testing continued to reveal positive straight leg raise in the seated position. Dr. Tyndall diagnosed "left sided work-related low back pain"; prescribed physical therapy; ordered an MRI of the lumbar spine, and, recommended that Cardenas continue working light duty. (*TX* at 30-31; *PX* 6 at 29-30).

Cardenas underwent Physical Therapy at Atletico from April 9, 2021 to May 11. 2021 and that helped "a little" (Tr 32)

Cardenas found Dr Neckrysh, on his own through the internet (Tr 57). Dr. Neckrysh is a neurosurgeon who performs 15 to 20 lumber spine surgeries per month. (Px. 15 p. 5, 7. 8). He first examined Cardenas on April 8, 2021, in neurosurgical consult, and got his history, aided by a translator, (Tr. 31, Px. 15 p.9, 10) confirming he claimed one work accident on 7/17/20 where he jerked his body picking up bars weighing 20 to fifty pounds each and had back pain. (Px. 15 p 10) and another on 3/27/21 when he twisted grabbing metal plates. On this second occasion, he had leg pain and low back pain. (Px. 15 p. 10, 11). The Doctor sent Cardenas for an MRI and restricted him from work completely in the meantime. (Tr. 31, Px 15, p 13, 57)

Cardenas had the lumbar MRI performed on 4/13/21 at St. Mary Open MRI (Px 8 p 5) where the study disclosed, inter alia, "diffuse disc herniation" at L3-4; L4-5 & L5 with effacement of the exiting nerve root more on the left at L4-5 and L5.(Px. 8 p 6).

On April 15, 2021, when Cardenas next presented, Dr Neckrysh compared the imaging of 4/13/21 to Cardenas' earlier MRI's of 12/30/20 and 2/9/21 and felt there was acute re-herniation at L5-S1 most likely caused by Cardenas second accident of 3/27/21 superimposed on sequalae of his 2013 surgery which had also been aggravated by involvement in the 7/17/20. (Px 15. P 13 – 15). Based on his history of prior back surgeries, aggravated by recent accidents which had failed conservative care, Dr Neckrysh concluded Cardenas met "the textbook criteria for L5-S1 decompression and fusion (Px 15 pps 20 – 22) and thus prescribed he undergo the procedure. (Px 15 p 24) The purpose of the surgery is to alleviate Cardenas' back and leg pain as further non operative care would be useless. (Px 15 p 25)

In the meantime, Cardenas could work light duty. (Px 15 p. 19).

On April 15, 2021, Dr Neckrysh referred Cardenas to pain management and recommended he also undergo lumbar spine surgery (Tr 33, 58)

Cardenas was again evaluated by Dr Phillips for 10 minutes on April 30, 2021 (Tr 33). His long history of back and continued left leg pain was noted as was his claimed flare up of symptoms on March 21, 2021 when, while lifting objects weighing less than 5 pounds and putting them on a conveyor belt, he developed an increase in his familiar pain. (Rx. 4 pps 1-3) During his physical examination, Cardenas was quite pain focused with multiple Waddell signs and marked superficial tenderness to barely palpating the spine. He also had positive distraction straight leg raising, regional non-dermatomal findings, and obvious overreaction. Dr. Phillips reviewed the April 13, 2021, MRI and noted a small left paracentral disk bulge at L5-S1. He noted that the appearance was identical to that noted on the prior MRI. (Rrx 5., p 29) There was no work restriction or need for treatment "specifically" related to the March injury in question. (Rx. 4., p3). Cardenas wasn't a candidate for surgery because imaging disclosed no pathology for any procedure to address. (Rx.,5 p. 36) The surgery Cardenas pain complaints were, in the opinion of the Doctor, like the ones he was experiencing before March 27,2021. (R x 4 p 3)

Acting on Dr Neckrysh's 4/15/21 referral, Cardenas presented to Dr Xia for pain management on May 7, 2021. (Tr 33; PX10., p1). He complained of low back pain radiating down the left leg to the great toe. (*PX* 7 at 13-14; *PX* 10 at 1). On March 27, 2021, he had been bending over and lifting 30 pounds when he felt sharp back pain. (*TX* at 34; *PX* 10 at 1). His prior history consisted of treatment at the company clinic a day after the accident, medications, and treatment with Dr. Tyndall, who ordered an MRI and physical therapy. (*PX* 10 at 1). Dr. Xia noted Cardenas' previous low back injury on July 17, 2020, which was treated with medications, physical therapy, and 2 steroid injections. (*PX* 10 at 1). Cardenas acknowledged that at the time of the evaluation, he was undergoing physical therapy 3 times a week, taking Tylenol, and working light duty. (*PX* 10 at 1-2). Dr. Xia finally recorded that Cardenas had a prior history of low back disk decompression in 2013. (*PX* 10 at 2).

Dr. Xia's physical examination noted normal curvature of the lumbar spine, range of motion restricted with flexion to 30 degrees due to pain (normal is up to 90 degrees), extension limited to 10 degrees (normal is up to 30 degrees), right lateral bending limited to 10 degrees (normal is up to 25 degrees), and left lateral bending limited to 10 degrees (normal is up to 25 degrees). (*TX* at 34; *PX* 10 at 2). Additionally, Dr. Xia noted inability to heel toes walk and a positive Gaenslen's and FABER tests bilaterally, and positive straight leg raise on the right side in supine position at 30 degrees and on the left side, as well as tenderness noted over the bilateral sacroiliac spine and negative Waddell's signs. (*PX* 10 at 2).

Dr. Xia diagnosed Cardenas with lumbar radiculopathy and lumbar and lumbosacral disc displacement. (*PX* 10 at 2). Dr. Xia recommended medications, continuing physical therapy, and working with light duty restrictions, a lumbar back brace due to disk herniation, and a left L4-L5 and L5-S1 TFESI injection due to failure of conservative treatment. (*TX* at 34-35; *PX* 10 at 2).

CHS was continuing to accommodate Cardenas 'duty restrictions (Tr 34). While the back brace did not help injections and medications did control the pain some. (*TX* at 34-35).

Cardenas was miserable on July 2, 2021, when he next treated with Dr Xia. (Px 10., p. 7). He had "sharp pain" radiating from his low back, down his left leg, to his great toe. (id). Waddell signs remained negative (Px 10., p

8) Dr Xia reviewed all Cardenas' MRI's going back to 2020 and found them consistent with his current symptoms. He prescribed a a transforaminal epidural injection hoping Cardenas would respond, thus avoiding. Surgery (id). Light duty, meaning no lifting over 10 pounds was to remain in effect.

On July 24, 2021, Cardenas underwent a therapeutic fluoroscopic guided left L4-L5, L5-S1 transforaminal epidural injection with Dr. Xia. (*TX* at 35; *PX* 10 at 10; *PX* 12 at 2). The injection provided temporary relief; however, the pain returned. (*TX* at 35; *PX* at 15). Due to continuing symptoms, Dr. Xia recommended a repeat left L4-5, L5-S1 TFESI, which Cardenas underwent on August 21, 2021. (*TX* at 35; *PX* 10 at 18; *PX* 12 at 5). On September 3, 2021, Cardenas reported that the second injection provided three days of complete pain relief; nonetheless, the pain gradually returned. (*PX* 10 at 22).

Cardenas followed up with Dr. Neckrysh on September 16, 2021, and complained that his symptoms continued to progress and worsen, and that he had radicular pain in the left leg in an L5-S1 dermatomal distribution. (*PX* 7 at 13). Dr. Neckrysh reiterated that due to failure to respond to nonoperative care and his previous analysis of his imaging and symptoms, he continued to recommend an L5-S1 decompression and fusion for mechanical back pain and lumbar spondylotic radiculopathy. (*PX* 7 at 13).

Cardenas returned to Dr. Xia on October 1, 2021. (PX10., p 26)). He refilled his medications and recommended continued light duty work. Cardenas continued to follow up with Dr. Xia every one to two months, through May 12, 2023. (PX10., pps 30 - 94). As of that last date, he could not heel or toe walk. His straight leg testing was positive at 30 degrees in the supine position Waddell's signs remained negative. In pertinent part, diagnosis was lumbar radiculopathy and intervertebral disc displacement. He awaited approval of surgical resolution (Px 10., p 94 – 96)

Dr. Neckrysh last saw Cardenas on April 7, 2022, complaining of worsening symptoms, increasing radiculopathy going down his left leg and back pain. (*TX* at 35-36; *PX* 7 at 15; *PX* 15 at 27). Dr. Neckrysh determined the same distribution of symptoms, low back pain and left radicular pain at L5-S1, was getting progressively worse as expected. (*PX* 15 at 27). He reiterated that Cardenas would benefit from an L5-S1 decompression and fusion. (*TX* at 36, *PX* 7 at 15).

On March 14, 2023, Cardenas experienced "excruciating pain in (his) lower back and . . . left leg and buttocks, a pain that (he) couldn't even walk anymore": and he treated at Advocate South Suburban Hospital (Tr 36). Hospital personnel recorded there had been no recent injury, just a flareup. (Px 7., p 7) He was getting back pain, shooting down his left leg, sometimes causing numbness. (id) Straight leg raising weas negative. But range of motion was limited due to pain, He had an appointment with his back doctor on Friday but could not wait.as he needed pain medication (Px 14, p 8)

He saw Dr Xia most recently on May 12, 2023, with largely the same complaints.

At this juncture, his pain has become "actually shocking, like stabbing. . ." and his leg is "numb" (Tr 37,38, 39). He rated his pain at six on a scale of zero to ten and specified its frequency as daily. (Tr 39) He was treating the pain with medications prescribed by Dr Xia (Tr. 39).

Cardenas wishes to proceed with the recommended surgery. (*TX* at 36).

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:

There is absolutely no dispute that on July 17, 2020, Cardenas got hurt doing the job he was expected to do by virtue of his employment with CHS. The above review is replete with evidence demonstrating this statement. CHS offered no facts contradicting it.

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

The Arbitrator concludes the Petitioner's work accident on July 17, 2020, caused disk pathology at the L5-S1 level resulting in low back pain which traveled down his left leg requiring various treatment modalities and limited his physical functionality.

Proof of an employee's state of good health prior to the time of injury and change immediately following the injury is competent to establish that the impaired condition was due to the injury. *Old Ben Coal Co. v. Industrial Comm'n*, 555 N.E.2d 1201, 1206 (1990). Furthermore, a causal connection between the accident and injury 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*, 530 N.E.2d 1135, 1140 (1986).

That Cardenas was in good health from 2015 to July 17, 2020, cannot be denied given even a cursory reading of the record (see above Statement of Facts). CHS offers no proof that during this period he was in pain, treating or fettered in his functionality. More to the point, it's Section 12 expert, Dr Phillips determined on December 15, 2020, after examining Caredenas, that his low back and radicular symptoms were a consequence of his work activity on July 17, 2021, and that Cardenas had "plateaued with conservative care." (Rx 2 p 4; Rx 5, p 15, 16). Granted, the Doctor concluded there was no L5-S1 herniation, but his opinion on the subject fails to convince. While he classified the August 4, 2020, study as substandard, he nevertheless visualized soft tissue in front of the nerves on the left. (Rx5.,p 14) Relative to the imaging on February 9, 2021, which he characterized as more reliable, he saw a small central disk bulge at L5-S1 which he deemed to be preexisting scar tissue.(Rx 5., p 21, 22)

The weight of the medical opinion aligns contrary to Dr Phillips. The radiologist interpreted the films of the February 9, 2021, study to reflect a herniation at L5-S1. (Px 8., pps 3, 4). In addition to the radiologist, Dr Tyndall, opined that the December 30, 2020, MRI is consistent with recurrent left L5-S1 disk herniation with moderate stenosis and compression on the exiting left, moderate compression on the S1 nerve root. (*PX* 6 at 14-15). The opinion of Dr. Tyndall is particularly credible formed as it was over a period of regular treating presentations. (*PX* 1).

Another of Cardenas' treaters, Dr. Neckrysh, stated that the mechanism of injury for the July 2020 accident was rotation and lumbar spine extension, which is the textbook mechanism of disc herniation in the lumbar spine. (*PX* 15 at 23). He explained that this is because a sheer force is applied to the capsule of the disc, disrupting and 0065tending it. it, and extension increases pressure inside the disc and causes the nucleus of the disc to herniate through the tear in the disc capsule. (*PX* 15 at 23).

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:

Petitioner's Exhibits 1, 2, 5, 6, and 8, contain properly subpoenaed and certified medical records and bills incurred as a result of the July 17, 2020, work injury. Having determined that Petitioner's condition of ill-being is causally related, the Arbitrator finds all the treatment provided and bills submitted for these conditions as detailed in Petitioner's Exhibits 1, 2, 5, 6, 8, and 9 were reasonable and necessary for treatment of Cardenas's work-related injuries.

There are no records indicating that Cardenas' care was unreasonable or unnecessary following the July 17, 2020, injury. The Arbitrator notes that while IME Dr. Phillips found that Petitioner had plateaued with conservative treatment as of his December 15, 2020, evaluation, Dr. Phillips recommended further diagnostics to determine MMI. (*RX* 1 at 2). In the meantime, Cardenas continued to follow up with Dr Tyndall through March 3, 2021, with Dr. Tyndall noting his extreme consistency in presentation, the fact that he had failed conservative treatment and also that surgery was recommended. (*PX* 6 at 16, 20).

Having found causation, based on the above, and after reviewing the entire record, the Arbitrator finds Petitioner's Exhibits contain medical records and bills incurred as a result of the July 17, 2020, work injury. The Arbitrator awards Petitioner's medical bills to be paid by Respondent pursuant to Sections 8(a) and 8.2 of the Act. (*AGX* 1; *PX* 1, 2, 5, 6, and 8).

Except that the charge for the MRI at St Mary Open on April 13, 2021 (Px. 8 unnumbered page) is not awarded in this case but addressed under the decision entered in case 21 WC 007283

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

No prospective care is awarded to Cardenas in this case.to

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007382
Case Name	Juan M. Iguel Cardenas v. CHS Acquisition
Consolidated Cases	21WC007381;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0435
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Natalia Olejarska
Respondent Attorney	Jason Stellmach

DATE FILED: 9/10/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0435

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

Juan M. Iguel Cardenas,

Petitioner,

vs. NO: 21 WC 7382

CHS Acquisition,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's conclusions regarding accident, causal connection, and medical expenses; however, the Commission clarifies the award of prospective medical treatment. The Commission finds Petitioner is entitled to the L5-S1 lumbar decompression and fusion surgery recommended by Dr. Neckrysh. Thus, in the Order section of the Arbitration Decision Form, the Commission strikes the following sentence: "The Respondent shall authorize treatment recommended by Dr. Neckrysh…" The Commission replaces this sentence with the following:

> Respondent shall authorize the L5-S1 lumbar decompression and fusion surgery recommended by Dr. Neckrysh. Respondent shall pay for the recommended surgery pursuant to Sections 8(a) and 8.2 of the Act.

Additionally, the Commission corrects certain errors in the Decision. In the seventh paragraph on page 3 of the Decision, the Arbitrator wrote that Petitioner attended the August 4, 2020, lumbar MRI "…at Dr. Tyndall's instance…" The Commission strikes "instance" from this

sentence and replaces it with "insistence." In the sixth paragraph on page 5 of the Decision, the Arbitrator wrote that Petitioner underwent a repeat MRI on "February 8, 2021." The Commission strikes "February 8, 2021, from this sentence and replaces it with "February 9, 2021." Finally, in the third full paragraph on page 7 of the Decision, the Arbitrator wrote that Petitioner, "…was again evaluated by Dr. Phillips for 10 minutes…" The Commission modifies this sentence to read as follows:

> Petitioner testified that Dr. Phillips' examination on April 30, 2021, lasted 10 minutes.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 14, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay for outstanding reasonable and necessary medical services, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall authorize the L5-S1 lumbar decompression and fusion surgery recommended by Dr. Neckrysh. Respondent shall pay for the recommended surgery pursuant to Sections 8(a) and 8.2 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $58,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 10, 2024

o: 8/13/24
AHS/jds
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007382
Case Name	CARDENAS, JUAN MIGUEL v. CHS ACQUISITION
Consolidated Cases	21WC007381;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Natalia Olejarska
Respondent Attorney	Jason Stellmach

DATE FILED: 8/14/2023

/s/Francis Brady, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

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+

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)

Juan Miguel Cardenas
Employee/Petitioner
v.
CHS Acquisitions
Employer/Respondent

Case # 21 WC 007382

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 Brady, Arbitrator of the Commission, in the city of **Chicago**, on June 8, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C x☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. x☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. x☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. x☐ 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 dates of accident, **3/27/21**, 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 the average weekly wage was $**900.00**.

On the date of accident, Petitioner was **41** years of age, **married with 4** 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 $**NA** for TTD, $**NA** for TPD, $**NA** for maintenance, and $**NA** for other benefits, for a total credit of $**NA**.

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

ORDER

As detailed in the attached memorandum discussing the *Findings of Fact and Conclusions of Law*:

1) The Petitioner's March 27, 2021, accident arose out of and in the course of Petitioner's employment by Respondent.

2) The Petitioner's current condition of ill-being is causally related to the March 27, 2021, accident.

3) The Respondent shall pay to the Petitioner reasonable and necessary medical services pursuant to Section 8(a), Section 8.2, the medical fee schedule for the following medical treatment: Persistent Med (Integrated Pain Management), Persistent Med (Medmanagement), University Spine Surgeons, Saint Mary Open MRI & CT charges for the MRI on April 13, 2021 only (Px 8, unnumbered page), Integrated Pain Management/Dr. Xia, Franciscan Urgent Care Chicago Heights, Fullerton Kimball Surgical Center, EQMD (Integrated Pain Management), and Advocate South Suburban Hospital. ATHLETICO

4) The Respondent shall authorize treatment recommended by Dr. Neckrysh and the Respondent is further ordered to pay medical expenses for said treatment consistent with the Fee Schedule 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.

_Francis Brady_____
Signature of Arbitrator

August 14, 2023

ICArbDec19(b)

STATEMENT OF FACTS:

Petitioner Juan Miguel Cardenas, "Cardenas" began working for Respondent, CHS Acquisition, "CHS", in 2003. (Tr. 11). CHS is a "metal company" and his job titles included 'machine operator", which required that he lift metal poles weighting between 20 and 50 pounds and straighten them on a table (Tr. 15-19).

In 2013 Cardenas underwent surgery performed by Dr Ghanayem for a lower back injury he sustained on the job. (Tr 12, 13, 44). He was able to return to full duty at CHS, and normal activities of daily living, "(a)round 2015" (Tr. 13, 14).

Thereafter, his health was "(v)ery good", and he "was able to work (his) job fine" until July 17, 2020, when, as he lifted and separated the metal poles, he felt a pain in his lower back. (Tr. 14, 19, 20, 45)

He presented at CHS's clinic on July 20, 2020, Working Well where he was seen by Dr. Kanayo Odeluga. (PX 5., p. 4). He reported through a Spanish interpreter that he hurt his low back lifting a sheet of metal at work. The pain radiated intermittently down petitioner's left lower leg and rated 7 on a pain scale of 10. Bending, lifting, and twisting aggravated his symptoms ((Px 5., p 4) Dr. Odeluga assessed petitioner with a sprain of ligaments of the lumbar spine. An order was placed for an x-ray of the lumbar spine, and Dr. Odeluga prescribed Prednisone, Cyclobenzaprine and Acetaminophen. Petitioner was to return to work with the following restrictions: limited bending/twisting and lifting to 10 pounds. (Px 5., pps 4-6)

A CT of the lumbar spine completed that same day revealed no evidence of an acute fracture of the lumbar spine, with mild L5-S1 disc space narrowing and bilateral facet arthropathy (PX 5., p 7)).

On July 27, 2020, Cardenas was seen by Dr. Clifton Ward at Working Well, and reported that his pain remained unchanged. (PX 5 p. 9). Diagnosis remained sprain of ligaments of the lumbar spine and Cardenas, was referred to an orthopedic surgeon, Dr. Tyndall, for evaluation and further management. (Px 5., p 11, TR 20,21, 22, 59, 60)

Cardenas underwent a lumbar spine MRI on August 4, 2020, at Dr Tyndall's instance which disclosed, inter alia, disc bulging at L4-L5 and L5-S1 but exiting nerve roots were normal bilaterally. (Px 2. P2)

Dr. Tyndall saw Cardenas again on August 7, 2020, assessing him with low back pain and left leg radicular pain. (Px 1 p 6) The Doctor interpreted the 8/4/20 as revealing mild degenerative changes aa multiple lumbar levels as well as a left-sided L5-S1 disk herniation (and) to a smaller extent (a) disk herniation left. . . at L4-L5." He recommended an epidural steroid injection at the left L5-S1 level. (Px 1, p. 6)

On August 20, 2020, Cardenas underwent that epidural injection. (PX1, p. 20).

Cardenas followed up with Dr. Tyndall on August 31, 2020. (PX1., p. 5). He reported that the injection had helped significantly with his pain. Cardenas was assessed with left leg pain due to left L4-L5 and L5-S1 disk herniations. The plan included a left L5-S1 epidural steroid injections, Amitriptyline, and continued work restrictions.

On October 13, 2020, Cardenas received another epidural injection. (PX1.p19). His diagnosis, both pre and post procedure, was "Left leg radicular pain due to left L5 -S1 disk herniation. Note was made that he had "failed non-surgical management . . ." (Px 1 p 19)

Cardenas was next seen by Dr. Tyndall on October 21, 2020. (PX1., p. 4). He reported no improvement with the recent left L5-S1 injection. Dr. Tyndall recommended additional time to see whether the injection helped his symptoms. Cardenas was to follow up in two weeks, at which point they would discuss if his condition required a left L5-S1 microdiscectomy.

During the November 4, 2020, visit with Dr. Tyndall, Cardenas reported continued left leg pain, stating no improvement following the injection. (PX1 p. 3). He was assessed with persistent left leg radicular pain due to left L4-L5 recurrent disc herniation. Dr. Tyndall recommended continued non-surgical treatment, prescribed Neurontin and Mobic, and issued a referral for physical therapy. Cardenas was to continue working with restrictions.

From November 10, 2020, to November 25, 2020, Cardenas underwent physical therapy upon referral of Dr Tyndall which proved largely unavailing. (Tr. 24; Px. 9)

When petitioner returned to Dr. Tyndall on November 25, 2020, he again reported no improvement in symptoms. (PX1, p. 2.). As petitioner had "tried and failed physical therapy, medications, and two epidurals. . ." the Doctor believed ". . . a revision microdiscectomy left L5-S1 is appropriate." (Px 1., p. 2)

On December 15, 2020, Cardenas attended an independent medical examination with Dr. Frank Phillips of Midwest Orthopaedics at Rush. (RX1). In his report, Dr. Phillips summarized a July 16, 2014 evaluation with Dr. Ghanayem which noted that petitioner has undergone a left-sided L5-S1 discectomy on April 17, 2013. Petitioner reported to Dr. Ghanayem occasional low back pain as well as shooting pain into his left leg and left foot numbness. Dr. Ghanayem recommended that petitioner continue working with restrictions and that said restrictions become permanent. When Cardenas was re-evaluated by Dr. Ghanayem on April 2, 2015, he reported intermittent left leg symptoms with a pain level of two out of ten. He was referred for physical therapy and was given work restrictions of no lifting greater than 40-lbs for three weeks.

Dr Phillips further recorded that even with his "history of lumbar diskectomy" Cardenas had been "doing very well until an injury in July 2020" when he was moving steel on a conveyor belt in a flexed position and developed an acute onset of low back and left leg radiating pain, associated with paresthesia down the left leg. (RX1., p 3, Rx 5 p 11). He told the Dr. he didn't have these symptom "in the period preceding the alleged injury. (Rx 2 p 3; Rx 5., p 11, 12). According to Dr Phillips, Cardenas described low back pain as well as left leg pain radiating pain in a sciatic distribution." Rx 2., p 3. Cardenas underwent an MRI on August 4, 2020 which was of exceptionally poor-quality. Dr. Phillips saw "some soft tissue in front of the nerves on the left" but could not "discern whether (it was) residual scar tissue from the prior surgery or a new disc protruding." (Rx 5 p 14.) He recommended Cardenas undergo a more sophisticated MRI. (id)

He concluded "that Cardenas' low back and radicular symptoms are a consequence of the work activity" and that Cardenas had "plateaued with conservative care." (Rx 2 p 4; Rx 5, p 15, 16). Dr. Phillips opined that a decision regarding possible surgical intervention must await review of higher caliber imaging; that is a gadolinium enhanced MRI in upgraded equipment. Pending a repeat MRI, Dr. Phillips did not recommend additional medical treatment including with a pain management specialist. Petitioner was deemed capable of working while avoiding lifting greater than 20 pounds, repetitive bending, and sitting for more than 40 minutes without a 10-minute rest period.

The evaluation Dr Phillips on December 15, 2020, lasted for 10 minutes. (Tr 24)

On December 16, 2020, when Cardenas presented "for further evaluation of his left L5-S1 disk herniation and left leg radicular pain, "Dr Tyndall once again prescribed lumbar spine surgery. (Px 1 p 1)

Another MRI was performed at Lakeshore Bone & Joint Institute on December 30. 2021. (P x 6., p 12) It was carried out due to Cardenas' low back ache since an injury at work in July 2020. Per the radiologist's report the study revealed disk herniations at multiple lumbar levels including L5-S1.

On January 11, 2021, Dr. Phillips authored an addendum report addressing the most recent MRI. (RX2). He had personally reviewed the MRI, noting it was not a contrast enhanced study. (Rx2., p1). Still, he found "a central disk protrusion, perhaps contacting the left S1 nerve root."(Rx 2 p 1). There was no "obvious", "clear cut" or "compelling evidence" of recurrent herniation to account for Cardenas symptoms and, given their non-dermatomal distribution, surgery offered only a "unpredictable chance" of relieving them (Rx 2 pps 1,2). Discectomy would be indicated for Cardenas only if he had "a recurrent disc pushing on the nerve and he was nonresponsive to conservative treatment . . . " (Rx 5., p 20) Doctor Phillips concluded Cardenas had reached maximum medical improvement regarding any aggravation of symptoms with his underlying condition, and there was no objective contradiction to resuming regular duty.

When he treated Cardenas on February 1, 2021, Dr Tyndall also noted that the imaging had been performed without contrast. He believed however, its findings were consistent with a recurrent L5-S1 disk herniation with moderate stenosis and compression of the exiting left S1 nerve root. (Px 6 p 15) If a switch in medications did not relieve his symptoms, a left L5-S1 microdiscectomy was in order. (P 6., p 16). The Doctor allowed Cardenas to continue working with restrictions and ordered him to return in one month. (P x 6., p. 16)

Cardenas underwent a repeat MRI on February 8, 2021 at Saint Mary Open MRI. (PX8 pps 3,4). The interpreting radiologist found evidence of the following:

- Multilevel spondylosis
- Posterior herniation at L3-4, L4-5, and L5-S1 level with annular tearing, causing mild stenosis of the central spinal canal and bilateral neural foramina
- Straightening of the normal lumbar lordosis, correlate for spasm versus strain

Dr. Phillips classified the MRI of February 9, 2021, a "contrast enhanced study" upon his personal review (Rx 3., p 1). He found no evidence of any "significant" recurrent herniation though there was bulging at multiple lumbar levels which was scar tissue. (Rx 5., pps. 21 – 23). Based on that and noting again Cardenas' "non-dermatomal findings on clinical exam" the Doctor restated his belief that surgery wound not have a "reliable" chance of relieving Mr. Cardenas symptoms. Cardenas' claimed work incident of July 17, 2017, had rendered symptomatic a mild underlying degenerative condition at L5-S1 but Cardenas had plateaued with conservative treatment regarding those symptoms and was capable of full duty work. (Rx 3, pps. 1, 2).

Cardenas' continued reporting pain radiating down his left leg when he presented to Dr Tyndall again on March 3, 21 (Px 6, 20). The Doctor repeated that Cardenas needed to undergo surgery consisting of a "left L5-S1 microdiscectomy due to his continued left and right gluteal pain. (id) He did not comment on the 2/9/21 MRI but recorded that the necessary surgery had been denied based on the opinion of Dr Phillips, Dr Tyndall placed Cardenas at MMI and returned him to full duty. (Tr 24, 25).

Cardenas low back pain persisted as did pain in his buttocks and his left leg. (Tr. 25, 26). Still, he continued working as a machine operator according to Dr Tyndall's release of March 3, 2021 until March 27, 2021, when he twisted quickly at his workstation and felt low back pain (Tr. 26, 27, 28, 49).

CHS sent him for care right away at UC Franciscan Urgent where personnel (Tr 29; *PX* 11 at 10). UC Franciscan personnel recorded that Cardenas sustained an injury on March 27, 2021, at work where his job entails turning to move heavy objects. (*PX* 11 at 10). Dr. Iftikhar performed a physical examination noting musculoskeletal tenderness and diagnosed "(a)cute left-sided low back pain with sciatica. (*TX* at 29; *PX* 11 at 12-13). Medication was prescribed. (*TX* at 29; *PX* 11 at 12 - 13).

Following this exam, Cardenas ended up at Dr Tyndall on March 29, 2021, "through the employer" where he again located the pain to his low back left buttocks and left leg, classifying these symptoms as "major" (Tr 29, 30; *PX* 6 at 24). He historicized an incident on March 27, 2021, when, while at work, he got hurt twisting his back. (*PX* 6 at 24). Cardenas felt his left-sided back and buttock pain after the 3/27/21 twisting injury was different than his previous leg pain. (Px. 6., 24). Dr. Tyndall's physical examination indicated positive straight leg raise on the left in the seated position, well-healed incision in the lumbar spine, no deformities, no motor or sensory deficits in the lower extremities, and limited range of motion of the lumbar spine with pain reproduced on lateral bending, extension, and flexion. (*TX* at 30; *PX* 6 at 24-25). Cardenas underwent lumbar spine X-rays. Dr. Tyndall's interpretation and comparison to previous radiographs showed diminished disk height especially at L5-S1, less so at L4-5, and no spondylolisthesis, fractures, or dislocation. (*PX* 6 at 25). Dr. Tyndall diagnosed Cardenas with a recent onset of back pain following a work-related injury on March 27, 2021. (*PX* 6 at 25). Dr. Tyndall recommended continuing with medications prescribed at Working Well and light duty restrictions. (*TX* at 30; *PX* 6 at 25). Cardenas testified that CHS continued to accommodate his restrictions. (*TX* at 30).

Cardenas followed up with Dr. Tyndall on April 5, 2021, and reported that his left-sided buttock, and back pain rated a 7 on a scale of 10. (Px. 6 p 29). Testing continued to reveal positive straight leg raise in the seated position. Dr. Tyndall diagnosed "left sided work-related low back pain"; prescribed physical therapy; ordered an MRI of the lumbar spine, and, recommended that Cardenas continue working light duty. (*TX* at 30-31; *PX* 6 at 29-30).

Cardenas underwent Physical Therapy at Atletico from April 9, 2021, to May 11. 2021 and that helped "a little" (Tr 32)

Cardenas found Dr Neckrysh, on his own through the internet (Tr 57). Dr. Neckrysh is a neurosurgeon who performs 15 to 20 lumber spine surgeries per month. (Px. 15 p. 5, 7. 8). He first examined Cardenas on April 8, 2021, in neurosurgical consult, and got his history, aided by a translator, (Tr. 31, Px. 15 p.9, 10) confirming he claimed one work accident on 7/17/20 where he jerked his body picking up bars weighing 20 to fifty pounds each and had back pain. (Px. 15 p 10) and another on 3/27/21 when he twisted grabbing metal plates. On this second occasion, he had leg pain and low back pain. (Px. 15 p. 10, 11). The Doctor sent Cardenas for an MRI and restricted him from work completely in the meantime. (Tr. 31, Px 15, p 13, 57)

Cardenas had the lumbar MRI performed on 4/13/21 at St. Mary Open MRI (Px 8 p 5) where the study disclosed, inter alia, "diffuse disc herniation" at L3-4; L4-5 & L5 with effacement of the exiting nerve root more on the left at L4-5 and L5.(Px. 8 p 6).

On April 15, 2021, when Cardenas next presented, Dr Neckrysh compared the imaging of 4/13/21 to Cardenas' earlier MRI's of 12/30/20 and 2/9/21 and felt there was acute re-herniation at L5-S1 most likely caused by Cardenas second accident of 3/27/21 superimposed on sequalae of his 2013 surgery

which had also been aggravated by involvement in the 7/17/20. (Px 15. P 13 – 15). Based on his history of prior back surgeries, aggravated by recent accidents which had failed conservative care, Dr Neckrysh concluded Cardenas met "the textbook criteria for L5-S1 decompression and fusion (Px 15 pps 20 – 22) and thus prescribed he undergo the procedure. (Px 15 p 24) The purpose of the surgery is to alleviate Cardenas' back and leg pain as further non operative care would be useless. (Px 15 p 25)

In the meantime, Cardenas could work light duty. (Px 15 p. 19).

On April 15, 2021, Dr Neckrysh referred Cardenas to pain management and recommended he also undergo lumbar spine surgery (Tr 33, 58)

Cardenas was again evaluated by Dr Phillips for 10 minutes on April 30, 2021 (Tr 33). His long history of back and continued left leg pain was noted as was his claimed flare up of symptoms on March 21, 2021 when, while lifting objects weighing less than 5 pounds and putting them on a conveyor belt, he developed an increase in his familiar pain. (Rx. 4 pps 1-3) During his physical examination, Cardenas was quite pain focused with multiple Waddell signs and marked superficial tenderness to barely palpating the spine. He also had positive distraction straight leg raising, regional non-dermatomal findings, and obvious overreaction. Dr. Phillips reviewed the April 13, 2021, MRI and noted a small left paracentral disk bulge at L5-S1. He noted that the appearance was identical to that noted on the prior MRI. (Rrx 5., p 29) There was no work restriction or need for treatment "specifically" related to the March injury in question. (Rx. 4., p3). Cardenas wasn't a candidate for surgery because imaging disclosed no pathology for any procedure to address. (Rx.,5 p. 36)The surgery Cardenas pain complaints were, in the opinion of the Doctor, like the ones he was experiencing before March 27,2021. (R x 4 p 3)

Acting on Dr Neckrysh's 4/15/21 referral, Cardenas presented to Dr Xia for pain management on May 7, 2021. (Tr 33; PX10., p1). He complained of low back pain radiating down the left leg to the great toe. (*PX* 7 at 13-14; *PX* 10 at 1). On March 27, 2021, he had been bending over and lifting 30 pounds when he felt sharp back pain. (*TX* at 34; *PX* 10 at 1). His prior history consisted of treatment at the company clinic a day after the accident, medications, and treatment with Dr. Tyndall, who ordered an MRI and physical therapy. (*PX* 10 at 1). Dr. Xia noted Cardenas' previous low back injury on July 17, 2020, which was treated with medications, physical therapy, and 2 steroid injections. (*PX* 10 at 1). Cardenas acknowledged that at the time of the evaluation, he was undergoing physical therapy 3 times a week, taking Tylenol, and working light duty. (*PX* 10 at 1-2). Dr. Xia finally recorded that Cardenas had a prior history of low back disk decompression in 2013. (*PX* 10 at 2).

Dr. Xia's physical examination noted normal curvature of the lumbar spine, range of motion restricted with flexion to 30 degrees due to pain (normal is up to 90 degrees), extension limited to 10 degrees (normal is up to 30 degrees), right lateral bending limited to 10 degrees (normal is up to 25 degrees), and left lateral bending limited to 10 degrees (normal is up to 25 degrees). (*TX* at 34; *PX* 10 at 2). Additionally, Dr. Xia noted inability to heel toes walk and a positive Gaenslen's and FABER tests bilaterally, and positive straight leg raise on the right side in supine position at 30 degrees and on the left side, as well as tenderness noted over the bilateral sacroiliac spine and negative Waddell's signs. (*PX* 10 at 2).

Dr. Xia diagnosed Cardenas with lumbar radiculopathy and lumbar and lumbosacral disc displacement. (*PX* 10 at 2). Dr. Xia recommended medications, continuing physical therapy, and working with light duty restrictions, a lumbar back brace due to disk herniation, and a left L4-L5 and L5-S1 TFESI injection due to failure of conservative treatment. (*TX* at 34-35; *PX* 10 at 2).

CHS was continuing to accommodate Cardenas 'duty restrictions (Tr 34). While the back brace did not help injections and medications did control the pain some. (*TX* at 34-35).

Cardenas was miserable on July 2, 2021, when he next treated with Dr Xia. (Px 10., p. 7). He had "sharp pain" radiating from his low back, down his left leg, to his great toe. (id). Waddell signs remained negative (Px 10., p 8) Dr Xia reviewed all Cardenas' MRI's going back to 2020 and found them consistent with his current symptoms. He prescribed a a transforaminal epidural injection hoping Cardenas would respond, thus avoiding. Surgery (id). Light duty, meaning no lifting over 10 pounds was to remain in effect.

On July 24, 2021, Cardenas underwent a therapeutic fluoroscopic guided left L4-L5, L5-S1 transforaminal epidural injection with Dr. Xia. (*TX* at 35; *PX* 10 at 10; *PX* 12 at 2). The injection provided temporary relief; however, the pain returned. (*TX* at 35; *PX* at 15). Due to continuing symptoms, Dr. Xia recommended a repeat left L4-5, L5-S1 TFESI, which Cardenas underwent on August 21, 2021. (*TX* at 35; *PX* 10 at 18; *PX* 12 at 5). On September 3, 2021, Cardenas reported that the second injection provided three days of complete pain relief; nonetheless, the pain gradually returned. (*PX* 10 at 22).

Cardenas followed up with Dr. Neckrysh on September 16, 2021, and complained that his symptoms continued to progress and worsen, and that he had radicular pain in the left leg in an L5-S1 dermatomal distribution. (*PX* 7 at 13). Dr. Neckrysh reiterated that due to failure to respond to nonoperative care and his previous analysis of his imaging and symptoms, he continued to recommend an L5-S1 decompression and fusion for mechanical back pain and lumbar spondylotic radiculopathy. (*PX* 7 at 13).

Cardenas returned to Dr. Xia on October 1, 2021. (PX10., p 26)). He refilled his medications and recommended continued light duty work. Cardenas continued to follow up with Dr. Xia every one to two months, through May 12, 2023. (PX10., pps 30 - 94). As of that last date, he could not heel or toe walk. His straight leg testing was positive at 30 degrees in the supine position Waddell's signs remained negative. In pertinent part, diagnosis was lumbar radiculopathy and intervertebral disc displacement. He awaited approval of surgical resolution (Px 10., p 94 – 96)

Dr. Neckrysh last saw Cardenas on April 7, 2022, complaining of worsening symptoms, increasing radiculopathy going down his left leg and back pain. (*TX* at 35-36; *PX* 7 at 15; *PX* 15 at 27). Dr. Neckrysh determined the same distribution of symptoms, low back pain and left radicular pain at L5-S1, was getting progressively worse as expected. (*PX* 15 at 27). He reiterated that Cardenas would benefit from an L5-S1 decompression and fusion. (*TX* at 36, *PX* 7 at 15).

On March 14, 2023, Cardenas experienced "excruciating pain in (his) lower back and . . . left leg and buttocks, a pain that (he) couldn't even walk anymore": and he treated at Advocate South Suburban Hospital (Tr 36). Hospital personnel recorded there had been no recent injury, just a flareup. (Px 7., p 7) He was getting back pain, shooting down his left leg, sometimes causing numbness. (id) Straight leg raising weas negative. But range of motion was limited due to pain, He had an appointment with his back doctor on Friday but could not wait.as he needed pain medication (Px 14, p 8)

He saw Dr Xia most recently on May 12, 2023, with largely the same complaints.

At this juncture, his pain has become "actually shocking, like stabbing. . ." and his leg is "numb" (Tr 37,38, 39). He rated his pain at six on a scale of zero to ten and specified its frequency as daily. (Tr 39) He was treating the pain with medications prescribed by Dr Xia (Tr. 39).

Cardenas wishes to proceed with the recommended surgery. (*TX* at 36).

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:

Cardenas testimony that he had immediate low back and left leg pain after turning at work on March 27, 2021, stands unrebutted. CHS sent him for care right away to Franciscan Urgent Care where this trauma is substantiated. (Px 11., pps. 10 – 13)

Cardenas was attaching metal plates to posts when he was turning. (Tr 48). The Arbitrator notes from Respondent's 7 and 8 that these plates are small and light weight. But no evidence contradicts that he had to turn to do this job and because of the movement felt discomfort necessitating prompt care. There's no getting around it and, thus, he suffered a compensable accident.

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

On March 3, 2021, Dr Tyndall released Cardenas to full duty.(Tr. 24, 25) As of that date his last MRI (2/9/21), per the radiologist, in pertinent part, demonstrated posterior herniation at L3-4, L4-5, and L5-S1 levels with annular tearing, causing mild stenosis of the central spinal canal and bilateral neural foramina. (Px 8 pps 3, 4). The surgery prescribed for him was a left L5-S1 microdiscectomy. (Px 6 p. 16)

After his accident on March 27, 2021, he was placed on restricted work, his MRI revealed involvement of the nerve root at L5-S1 and the surgery recommendation had evolved into L5-S1 decompression and fusion. (Tr, 29, 30, Px 6 p 24; Px 8., p 5, Px 15 pps 13 – 15, 20 – 22, 24, 25)) What's more, he told Dr Tyndall on March 29, 2021, that the pain in the left side of his low back and down his left leg was different after the March 27, 21 incident and he testified it was then ",major". (Tr. 29, 30). Finally, after March 27, 2001, Cardenas treated in a new modality, pain medicine, on multiple occasions from May 7, 2021, through May 12, 2023. (Px 10). On that last visit, his back pain was aching in nature and radiating down in left leg to his foot, which was numb all day. The pain was constant and rated 5-7 on a scale of 10. (Px. 10, p 94)

The opinions of Dr. Tyndall, Dr. Neckrysh, and Dr Xia are more reliable than the opinions of Dr Phillips as they are based on treatment over periods of 9 months, 12 months and 24 months, respectively. (*PX* 1; *PX* 6; *PX* 7; *PX* 10). Dr. Neckrysh convincingly points out that Cardenas' complaints with respect to the lumbar spine and left leg pain have persisted from April 2021, through April 2022, (*PX* 15 at 28-30). Also, persuasive is the Doctor's testimony that Cardenas' subjective complaints have been consistent with physical examination findings as well as MRI results and that they were proportionate to objecting findings. (*PX* 15 at 28-30; *PX* 7 at 3; *PX* 15 at 12).

Granted Dr. Phillips' noted Cardenas' manifested positive Waddell signs, but this finding on his second examination in April 2021 is not impactful, considering the more consistent findings of negative signs from Dr. Neckrysh, as well as those of Dr. Xia, who also noted negative Waddell's. (*RX* 5 at 26; *PX* 15 at 12, 28-30; *PX* 7 at 3; *PX* 10 at 2).

Dr. Neckrysh's explanation that the surgery would eliminate Cardenas' leg pain and decrease the back pain once the incompetent disc was removed, and nerve decompressed, is clear and convincing. (*PX* 15 at 25, 37).

Finally, the Doctor's testimony regarding the mechanism of Cardenas' March 20201 injury is logical. He stated that a rotation and lumbar spine extension resulted in a sheer force being applied to the capsule of the disc, which then disrupted the capsule and increased pressure inside the disc causing the nucleus to herniate through the tear. (*PX* 15 at 23). He opined that the need for the decompression and fusion surgery was necessitated by the further progression in Cardenas' L5-S1 disk herniation caused by the March 27, 2021, incident, which he characterized as a third episode, second recurrence of disk herniation with radicular and low back pain. He concluded that, having failed non-operative care, Cardenas was a textbook case for the surgery. (*PX* 15 at 24, 30, 38).

The weight of the evidence compels the finding that Cardenas' job movement on March 27, 2021, resulted in his present condition diagnosed by Dr Neckrysh.

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:

Petitioner's Exhibits 3, 4, 7, 8, 9, 10, 11, 12, 13, and 14 contain properly subpoenaed and certified medical records and bills incurred because of the March 27, 2021, work injury. Having determined that Petitioner's condition of ill-being is causally related, the Arbitrator finds all the treatment provided and bills submitted for these conditions as detailed in Petitioner's Exhibits 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, and 14 were reasonable and necessary for treatment of Petitioner's work-related injuries.

Specifically, the Arbitrator relies on the opinion of Dr. Neckrysh in finding that Petitioner's treatment for the lumbar spine and left leg was reasonable and necessary as is the recommended surgery and care appurtenant... (*PX* 7; *PX* 15 at 28). The Arbitrator notes that the IME, Dr. Phillips, found that Petitioner did not require any specific therapeutic services, referrals or additional imaging studies as Petitioner did not sustain any structural injury on March 27, 2021, however the Arbitrator finds more persuasive the opinions of Dr. Neckrysh, Petitioner's treater over the course of a year. (*PX* 7; *RX* 4 at 3).

Having found causation, based on the above, and after reviewing the entire record, the Arbitrator finds Petitioner's Exhibits contain medical records and bills incurred because of the March 27, 2021, work injury.

The Arbitrator awards Petitioner's medical bills to be paid by Respondent pursuant to Sections 8(a) and 8.2 of the Act. (*AGX* 1; *PX* 3, 4, 7, 8, 9, 10, 11, 12, 13, and 14).

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Dr. Neckrysh's testified the surgery he has prescribed would eliminate Cardenas' leg pain, decrease and the back pain once the incompetent disc was removed and nerve decompressed. (*PX* 15 at 25, 37). Most of the Doctor's patients, about ninety-five percent, report improvement following this surgery and he expects it would alleviate Petitioner's back pain and eliminate leg pain, allowing Petitioner to return to meaningful occupation and activities of daily living. (*PX* 15 at 38). The L5-S1 fusion is the best treatment that can be provided to Petitioner. (*PX* 15 at 38).

In contrast, Dr. Phillips found no indication for surgery. (Rx 5 pps. 19, 20). He didn't know what the procedure was intended to fix; thus, he did not think Cardenas' "would likely have an optimal outcome "(Rx 5 p. 37). Still Doctor acknowledged Cardenas's symptoms persisted but as these were subjective findings only, he offered nothing other than a return to full duty. (Rx 5., p 20)

But Dr Phillips approach to Cardenas future course seems compromised. First, returning him to his job will likely prove deleterious. As Dr Neckrysh observed on April 15, 2021, his symptoms "are prone to aggravation upon his return to work . . . " (Px 7 pps 9, 10) . Indeed, he already suffered the trauma herein. Second, Doctor's Phillips laces his opinions with qualifiers. As above an optimal outcome is not "likely." At another place he theorized chances of a successful surgery were not "reliable" (Rx 3., pps 1,2). He stated the MRI of February 9, 2021, showed no "significant" recurrent herniation. (Rx 3. pps 1,2; Rx 5 pps 21-23). As of April 30, 2023, he concluded no treatment was "specifically" related to the March injury in question. (Px 4., p3). His commentary lacks definitiveness, it is equivocal.

Dr Neckrysch, on the other hand, does not shade his outlook in any fashion: the surgery is Cardenas' best hope. Thus, the surgery he prescribes, and the care appurtenant thereto, is reasonable and necessary.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009097
Case Name	Richard Johnson v. Cargill
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0436
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Daniel Jones
Respondent Attorney	Kenneth Bima

DATE FILED: 9/12/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD JOHNSON,

Petitioner,

vs. NO: 21 WC 009097

CARGILL,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 21, 2023, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(1)*. Based upon the denial of compensation herein, 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.

September 12, 2024
O09102024
KAD/as
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009097
Case Name	Richard Johnson v. Cargill
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Daniel Jones
Respondent Attorney	Kenneth Bima

DATE FILED: 2/21/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2023 4.84%

/s/ Dennis OBrien, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RICHARD JOHNSON
Employee/Petitioner

v.

CARGILL
Employer/Respondent

Case # **21** WC **009097**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Champaign**, on **December 16, 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 **May 9, 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.

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

In the year preceding the injury, Petitioner earned $**45,760.00**; the average weekly wage was $**880.00**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **1** dependent children.

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

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

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

Respondent is entitled to a credit of **all medical paid by its group medical insurer** under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove that he suffered an accident on May 9, 2018, which arose out of and in the course of his employment by Respondent.

Petitioner's current conditions of ill-being, hearing loss and tinnitus, are not causally related to the injury of May 9, 2019.

Compensation is therefore denied.

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

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

FEBRUARY 21, 2023

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified he is 52 years of age as of the date of arbitration. He said he has worked for the Respondent at its dry corn mill in Paris, Illinois since October 21, 1996. Petitioner said when hired he was a platform laborer, and he had not had any problems with his hearing prior to being hired. He said upon starting work for Respondent he had no problems with his hearing, nor had he experienced ringing in his ears before he started working for the Respondent. Petitioner testified that he was not around loud equipment before working for the Respondent.

Petitioner has always worked in the corn mill structure of Respondent's plant. He described the structure he worked in as consisting of 6 floors, as well as a basement. For his first 9 years, Petitioner said he worked as a platform laborer, loading rail cars, semis, and bulk bags. The platform was located on the first floor. As a platform laborer, Petitioner testified that he was exposed to a variety of noises including forklift trucks and train engines.

Petitioner testified that for the next 2-3 years, he worked as a sweeper. As a sweeper, Petitioner would provide sanitation throughout the mill. In this capacity, he would sweep up on every floor, including the basement. He said the basement has 8-foot ceilings and contains 45 blowers. Petitioner described the blowers as being 6-feet high and 3-4-feet wide. The blowers put pressure in lines to push product throughout all six floor of the building, and he said they made a lot of noise. Petitioner testified that he would spend the majority of his time in the basement on a lot of days. During this time, Petitioner worked a lot of 12-hour shifts.

Petitioner testified that he subsequently returned to a platform laborer and also worked as a forklift operator. He said he also trucked for a short period of time.

Petitioner testified in detail regarding each floor of the facility and the pieces of equipment located on each floor. Petitioner testified that each floor was noisy with some being noisier than others.

Petitioner testified that he has worked as a second miller for the last 12-14 years. He said the first miller is in the control room on the third floor, and as the second miller, Petitioner said as second miller he made rounds on each floor to make sure that everything was running smoothly, making sure any issues which came up were dealt with. He said he was in constant contact with the first miller, communicating via an FM radio that connects by wire to an earpiece which he typically kept in his left ear, talking to the first miller by pressing a button clipped on his collar. Petitioner testified that this earpiece has noise reduction capabilities. Petitioner testified that it is his left ear that he is experiencing problems with. Petitioner testified that he would communicate with the first miller and other coworkers by radio due to the noise level on each floor.

Petitioner testified that Respondent has always required that he use earplugs and he has always used them. Petitioner receives new earplugs each day. HE said Respondent also had earmuff protection he could wear, but it was not required that he wear earmuffs, and after trying the earmuffs and finding he could not get accustomed

to them, he did not use them. The earplugs were described by the Arbitrator for the record. Petitioner said outside of the foam earplugs contoured to the passages in his ears and made them fit snuggly. He said Respondent provided several styles of earplugs, with a new set to be worn each day, and these earplugs were the ones he personally preferred.

Petitioner said that throughout his employment Respondent has required Petitioner and other workers to undergo a mandatory annual hearing tests. These are administered by a company with a trailer set up in the parking lot. He said that company is referred to as HCI. Petitioner testified that at the time of the hearing test, he would complete a questionnaire. He described how the test was administered. Petitioner noted that in the past, he owned an ATV which he would ride occasionally. Also, more than 5 years ago, Petitioner used a shotgun during deer season.

Petitioner testified that he underwent a hearing test with HCI on May 9, 2019, and that following that test Mr. Jeremy Royer, Respondent's safety coordinator, notified him of a shift in his hearing and went over the findings with him. He said that he subsequently retested on May 30, 2019 at the Paris Hospital and then again on June 25, 2019. He said that after the tests were conducted, he would get a copy of the reports contained in Petitioner Exhibit 2.

Petitioner testified that Respondent sent him to Dr. Rachel Raffle, an ENT specialist located in Terre Haute, who he saw on September 19, 2019. He thought Dr. Raffle wanted Petitioner to undergo other tests, including, perhaps, a possible sonogram. Petitioner testified that he spoke to Mr. Royer who advised him that Respondent did not want to go any further with the workup. Petitioner said he never returned to see Dr. Raffle after that. Petitioner testified that Respondent paid for all of his hearing tests and treatment. Petitioner did not seek any further treatment for his hearing. He said Dr. Raffle's billing record which indicated he had paid for the appointment himself was incorrect, Respondent had paid for everything. He said he did not know what Dr. Raffle's findings were, he would just rely on her report.

Petitioner testified that at the time of his May 9, 2019 hearing test, he noticed that he had a hard time hearing in crowds, and had ringing in his ears, especially in his left ear, but no pain and no headaches. Petitioner testified that these issues are still present as of the date of arbitration, and the ringing is now almost constant.

Petitioner identified Petitioner's Exhibit 5 as 3M earplug testing reports he had signed, The lowest decibel rating for the earplugs he used was 16dB on the left and 17dB on the right, with some of the earplugs being 21 dB and 27dB.

On cross examination Petitioner said he is still working as a second miller, is a member of a union, has received wage increases per a collective bargaining agreement, and is earning more as of the date of arbitration than he was earning in May of 2019. He testified that the ear plug ratings noted in Petitioner Exhibit 5 were arrived at by a computer after testing was performed.

Petitioner testified that he receives his primary care at the Paris Hospital by a nurse practitioner, Deborah Griffin. Petitioner saw the nurse practitioner on January 14, 2020 and on May 4, 2021 for an annual exam if that is what her records show. Je could not recall ever talking to her about having a hard time hearing or of

ringing in his ears, and if her records did not reflect those complaints being made he would have no reason to disagree with those records.

MEDICAL/DOCUMENTARY EVIDENCE

Medical records from Health Conservation, Inc. (HCI) note that Petitioner underwent an onsite hearing test at Respondent's location on May 9, 2019. This study was compared to a baseline study conducted on June 24, 1997. The May 9, 2019 study demonstrated a standard threshold shift in the left ear which represented a 10dB or greater shift in hearing using the OSHA/MSHA criteria Subsequently, Petitioner's hearing was retested on May 30, 2019 at an independent clinic. This study was consistent with the initial May 9, 2019 study. Petitioner's audiometric test results for 1,000, 2,000, and 3,000 cycles on that date were 5, 5, and 35 on the left, and 0, 5, and 5 on the right. Doctor of Audiology Lori Aronovici wrote a letter/report to Petitioner on that date advising him that the test results of that date indicated "[n]ormal hearing in the speech frequencies and moderate hearing difficulty in the high frequencies for the left ear; and Normal hearing in the speech frequencies and Normal hearing in the high frequencies for the right ear." (PX 2, p. 13,35,36; PX 4 p.1)

Following these studies, the Respondent and Petitioner completed questionnaires regarding the investigation of the recordable hearing shifts. The Employer and Employee confirmed that Petitioner did not have a history of being exposed to non-occupation noise. Petitioner felt that his hearing shift was a result of spending too much time in the basement of the mill. (PX 2, p. 39-42)

Petitioner was tested twice on May 30, 3019, and his audiometric test results for 1,000, 2,000, and 3,000 cycles on the first test that day were 5, 0, and 30 on the left, and 5, 0, and 30 on the right. The test results for the retest on May 30, 2019 were 0, 5, and 30 on the left, and 0, 0, and 5 on the right. (PX 2 p.13,36,37)

On July 15, 2019, Respondent's Mill Supervisor, Mr. Snider, filled out an Employer Questionnaire for investigation of Recordable Hearing Shifts in regard to Petitioner. That document indicates that Petitioner's noise exposure from October of 1996 to October of 2003, while working as a Platform Laborer, was 95.2 dBA; from October 2003 to October 2006, while working as a Trucker, was 90 dBA; from October 2006 to October 2011, while working as a Sweeper, was 92.3 dBA; and, for the nearly eight years prior to the claimed accident, from October 2011 onward, while working as Second Miller, was 90.9 dBA. That questionnaire also notes that the foam ear plugs used by Petitioner had a noise reduction rating (NRR) of 33, and Petitioner demonstrated proper hearing protection device (HPD) fit. (PX 2 p.39)

On August 14, 2019, Petitioner was seen at Associates in Audiology and a referral was made for a comprehensive audiogram. The comprehensive audiogram was performed on August 9, 2019 at Sound Care Audiology in Terre Haute, Indiana. This audiometric test results for 1,000, 2,000, and 3,000 cycles on that date were 0, 5, and 35 on the left and 5, 5, and 10 on the right. (PX 3 p.1)

Petitioner was seen by Dr. Rachel Raffle on September 18, 2019. Petitioner testified that Dr. Raffle was an ENT specialist. The history in that record states "Mr. Johnson reports sudden decrease in hearing bilaterally. He has had tinnitus 'for a while' that is most noticeable in a quiet environment, worse in the left ear. His place of employment performs annual hearing checks and referred him here due to shift in hearing compared to last year's exam. He works in a mill, an environment with loud noise exposure and regularly uses ear protection. Most of the equipment he frequently works with are on his left side. Denies otalgia, otorrhea, vertigo, or family

history of hearing loss." Dr. Raffle concluded that Petitioner's asymmetric sensorineural hearing loss could be "due to a retrocochlear mass lesion, such as an acoustic neuroma." Dr. Raffle recommended an MRI, and noted if no mass was found on MRI testing, Petitioner likely had an asymmetric noise induced hearing loss. (PX1)

On 9/25/2019, HCI computed a list of OSHA recordable hearing shifts. That document noted that Petitioner's hearing shift was recordable and there was a notation that the shift was work-related. (PX 2, p.24)

HCI's report of October 16, 2019 notes noise exposure at Respondent's plant from 1996 to 2003 was 95 dBA, from 2003 until that date it was 90 to 92 dBA, and that dosimetry testing on August 27, 2019 90 dBA, adjusted for a 12 hour shift. (PX 2 p.33)

On October 16, 2019, audiologist Dr. Teresa Small completed a report regarding Petitioner's hearing shift. In that report, Dr. Small noted that Petitioner's hearing shift was not recordable. Dr. Small noted that Petitioner had a progressive 4K Hz noise notch pattern in his left ear. She also noted that the 8/19/2019 audiological evaluation indicated a sensorineural hearing loss in the left ear. Petitioner's hearing was within normal limits for his right ear. Dr. Small concluded by noting "The change in the left ear is not likely due to the occupation noise exposure. Suspect non-occupational noise exposure as contributor to the changes in the left ear" (PX2, p. 33).

Petitioner's last audiogram took place on June 25, 2020. This study was consistent with the prior three studies and continued to reveal Petitioner's left ear high frequency hearing loss, audiometric test results for 1,000, 2,000, and 3,000 cycles on that date were 5, 5, and 30 on the left and 5, 0, and 20 on the right. Doctor of Audiology Teah Richey wrote a letter/report to Petitioner on that date advising him that the test results of that date indicated "[n]ormal hearing in the speech frequencies and moderate hearing difficulty in the high frequencies for the left ear; and Normal hearing in the speech frequencies and Normal hearing in the high frequencies for the right ear." (PX 4, p.4)

No deposition testimony was introduced into evidence.

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner was a cooperative witness when questioned by both attorneys. His testimony in regard to the hearing protection he wore and the fact that he wore that hearing protection at all times was consistent with all records introduced into evidence. His complaints of difficulty in understanding speech of others is not consistent with the numerous audiometric test results and reports from Doctors of Audiology introduced into evidence, however, as they indicate normal hearing in the right ear, and normal hearing in speech frequencies in the left ear. The Arbitrator finds Petitioner's testimony in regard to the work he performed to be credible and his testimony in regard to his hearing problems to be less credible.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on May 9, 2019, and whether Petitioner's current condition of ill-being, hearing loss and tinnitus, are causally related to the accident of May 9, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

Section 8(e)(16) of the Workers' Compensation Act states:

> For the permanent partial loss of use of a member or sight of an eye, or hearing of an ear, compensation during that proportion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye, or hearing of an ear, which the partial loss of use thereof bears to the total loss of use of such member, or sight of eye, or hearing of an ear
>
> (a) Loss of hearing for compensation purposes shall be confined to the frequencies of 1,000, 2,000 and 3,000 cycles per second. Loss of hearing ability for frequency tones above 3,000 cycles per second are not to be considered as constituting disability for hearing.
>
> (b) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels for the thresholds of hearing for the frequencies of 1,000, 2,000 and 3,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 30 decibels or less in the 3 frequencies, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 85 decibels or more in the 3 frequencies, then the same shall constitute and be total or 100% compensable hearing loss.
>
> (c) In measuring hearing impairment, the lowest measured losses in each of the 3 frequencies shall be added together and divided by 3 to determine the average decibel loss. For every decibel of loss exceeding 30 decibels an allowance of 1.82% shall be made up to the maximum of 100% which is reached at 85 decibels.
>
> (d) If a hearing loss is established to have existed on July 1, 1975 by audiometric testing the employer shall not be liable for the previous loss so established nor shall he be liable for any loss for which compensation has been paid or awarded.
>
> (e) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.
>
> (f) No claim for loss of hearing due to industrial noise shall be brought against an employer or allowed unless the employee has been exposed for a period of time sufficient to cause permanent impairment to noise levels in excess of the following:

Sound Level DBA Slow Response	Hours Per Day
90	8
92	6
95	4
97	3
100	2
102	1-1/2
105	1
110	1/2
115	1/4

When determining the noise exposure, noise reduction provided by hearing protection is to be deducted from the dosimetry levels of sound Petitioner was exposed to while working for Respondent. In the 22 years prior to Petitioner claimed date of accident, Petitioner's noise exposure was:

- 95.2 dBA from October 1996 to October 2003
- 90 dBA from October 2003 to October 2006
- 92.3 dBA from October 2006 to October 2011
- 90.9 dBA from October 2011 to the date of arbitration

Petitioner testified that he was required to wear, and did constantly wear, hearing protection devices, foam ear plugs, ear plugs which had an NRR of 33 and a tested reduction of at least 16 decibels on the left and 17 decibels on the right, and as much as 21 decibels on the left and 27 decibels on the right. (PX 5)

Using the highest known noise exposure, which is also the furthest from the alleged date of accident, 95.2 dBA, and reducing that by the lowest reduction for the hearing protection devices, 16 decibels, the noise Petitioner would have been exposed to would have been 79.2 dBA.

Petitioner's audiologic testing on May 30, 2018 showed an average loss in the 1000, 2000, and 3000 cycles of 11.67 decibels on the left, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on May 30, 2018 showed an average loss in the 1000, 2000, and 3000 cycles of 3.33 decibels on the right, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on May 9, 2019 showed an average loss in the 1000, 2000, and 3000 cycles of 15.00 decibels on the left, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on May 9, 2019 showed an average loss in the 1000, 2000, and 3000 cycles of 3.33 decibels on the right, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on May 30, 2019 showed an average loss in the 1000, 2000, and 3000 cycles of 11.67 decibels on the left, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on May 30, 2019 showed an average loss in the 1000, 2000, and 3000 cycles of 1.67 decibels on the right, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on June 25, 2020 showed an average loss in the 1,000, 2000, and 3,000 cycles of 12.33 decibels on the left, below the 30 decibel average required for a compensable loss of hearing under the Act.

Petitioner's audiologic testing on June 25, 2020 showed an average loss in the 1,000, 2000, and 3,000 cycles of 8.33 decibels on the right, below the 30 decibel average required for a compensable loss of hearing under the Act.

The Arbitrator finds that Petitioner has failed to prove that he suffered an accident on May 9, 2018, which arose out of and in the course of his employment by Respondent. This finding is based upon his not having been exposed to the necessary level of noise as set out by the Act. As previously noted by the Commission in denying accident in John Archer vs. Bridgestone/Firestone, Inc., 2004 IIC 417, "if we were to assume a noise level of 90-94 dBA based upon the February of 1996 reading, Petitioner's admittedly consistent and long-term use of hearing protection rated at 15dBA would have had the effect of lowering his noise exposure to a level below 90 dBA on a daily basis." The same is true in this case as well, after reduction for hearing protection Petitioner did not meet the 90 dBA compensability threshold, he was exposed to less than 80 dBA at all times. See also: Larry Wilkinson vs. Snap-On-Tools, 97 IIC 683; Randy Shuman vs. Lauhoff Grain Company, 11 IWCC 33.

The Arbitrator further finds that Petitioner's current conditions of ill-being, hearing loss and tinnitus, are not causally related to the injury of May 9, 2019.

The finding in regard to tinnitus is based upon a lack of evidence linking said condition to Petitioner's work. Though a complaint of tinnitus was made to Dr. Raffle on September 19, 2019, she did not offer any opinion as to the cause of that condition. Compensation is to be denied in cases such as this when the claimant fails to present a medical opinion to support causation be the tinnitus and the workplace. Ellner vs. Consolidation Coal, 09 IWCC 475; Monti vs. Consolidation Coal, 09 IWCC 1007. In addition, Petitioner never complained of that condition at any time to his primary care provider, Nurse Practitioner Griffin. The Arbitrator in comparing the amount of complaints voiced about this condition as opposed to the dearth of medical evidence supporting those complaints finds that Petitioner's complaints are not credible, and are not supported by the evidence.

The finding in regard to hearing loss is based upon Petitioner's not meeting the statutory loss of an average of 30 decibels in the 1000, 2000, and 3000 cycles upon repeated audiological testing, Dr. Small's October 16, 2019 notation that "the change in the left ear is not likely due to the occupational noise exposure," Dr. Raffle's conclusion that Petitioner's asymmetric sensorineural hearing loss could be "due to a retrocochlear mass lesion, such as an acoustic neuroma," and the lack of expert opinions finding causal connection between workplace noise and hearing loss.

Compensation is therefore denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004682
Case Name	Fabio Anastasini v. Teatro Zinzanni
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0437
Number of Pages of Decision	28
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Martha Niles
Respondent Attorney	Andrew Fernandez

DATE FILED: 9/12/2024

/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

Fabio Anastasini,

Petitioner,

vs. NO: 21 WC 004682

Teatro Zinzanni,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of employer-employee, and penalties/fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

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

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.

September 12, 2024
MP:yl
o 8/29/24
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	21WC004682
Case Name	Fabio Anastasini v. Teatro Zinzanni
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Martha Niles
Respondent Attorney	Andrew Fernandez

DATE FILED: 11/13/2023

/s/ Jeffrey Huebsch, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 7, 2023 5.26%

F. Anastasini v. Teatro ZinZanni, 21 WC 004682

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

FABIO ANASTASINI Case # **21** WC **004682**
Employee/Petitioner
v.
TEATRO ZINZANNI
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 **5/24/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 29, 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 $**128,700.00**; the average weekly wage was $**2,475.00**.

On the date of accident, Petitioner was **22** 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 $**106,215.26** for TTD, $**57,517.61** for TPD, $**107,248.65** for maintenance, and **$5,623.98** for other indemnity benefits paid, for a total credit of $**276,614.41**.

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

ORDER

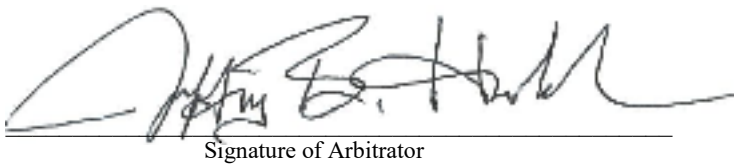
Respondent shall pay reasonable and necessary medical expenses of $760.00, pursuant to the Medical Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner permanent partial disability benefits, commencing May 24, 2023, of $1,147.38/week for the duration of the disability, until Petitioner reaches age 67 or 5 years from the date of the final award, whichever is later, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Petitioner's claim for Penalties and Attorney's Fees is denied.

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

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



Signature of Arbitrator

November 13, 2023

STATEMENT OF FACTS

This is a unique case, involving a workers' compensation claim by a circus performer against a producer entity that ran the show that the performer was a part of. The Parties designated their relationship as Artist/Producer and their agreement said that the Artist was retained to provide services in the Show by Producer as an independent contractor. The agreement also provided that Producer insures Chicago on-the-job claims through "Workers (sic) Compensation Insurance". (PX 1, PX 2).

Petitioner's Testimony

Petitioner, testified that he lives in Englewood Florida and has lived in Florida his entire life. (T.@ 12). He attended school at the Englewood Elementary Public School until the middle of the fourth grade, stopping at approximately nine years old. He stopped attending public school, was due to engaging in acrobatics and circus performing in different cities. (T.@ 13-14). He began training in acrobatics when he was seven years old, and that he was performing professionally by the age of nine. (T.@ 14) Petitioner was homeschooled from the age of nine until 16. (T.@ 15). He further testified that he never finished a high school program and that he stopped his education between the eighth and ninth grades. (T.@ 15-16). Petitioner noted that he had never passed a GED test, but that he attempted to take it on two occasions and failed it both times. (T.@ 16).

Petitioner testified that he had been performing professionally as an acrobat with his brother, Guliano Anastasini. for 12 to 13 years prior to the date of injury. (T.@ 17). Petitioner testified that his act is unique, and that there are only approximately 4 to 5 groups of two people in the world that do the same act he does, or did perform up to the date of injury, including the number of tricks and the speed at which the performance was done. (T.@ 17-18). He stated that it's an approximately seven minute act with multiple somersaults, twists, doubles, etc. (T.@ 18. He also testified that people contacted them to perform in shows, usually circuses or corporate events, theaters, entertainment venues. (T.@ 17).

Petitioner testified that the only type of work he had ever engaged in up until the date of injury was the acrobatic work that he did. (T.@ 19).

With respect to his employment with Redspondent, Teatro ZinZanni, Petitioner testified that he was contacted by Respondent's agent, or show manager, Renee. Duffy. (T.@ 20). He further stated that they were in discussions over approximately three years before any contracts were signed. (T.@ 20).

Petitioner identified PX 1 as the contract that he and his brother signed with Respondent. (T.@ 21). He then identified PX 2 as the Handbook that Respondent provided to them. Per the terms of the contract, the Handbook was attached to and made part of it. (PX 1@ p.5).

Petitioner identified PX 9 as the calendar for scheduled performances for the show which was was prepared by respondent. (T.@ 22). They began performances in Woodinville Seattle in May of 2019, and then moved to Chicago in July. (T.@23-24) The Chicago show was to run to March 2020. (PX 9@ p.1).

Petitioner described his performance as requiring flexibility, quick reactions, physical strength, and eye coordination. Strength in the legs was required due to the heavy impact, as well as upper body strength to prevent injuries. (T.@ 25). He testified that the majority of his time, doing somersaults, twists, etc., occurred while he was airborne, having been kicked up by his brother. (T.@ 26-27). He would land on his brother's feet until he would dismount. (T.@ 27). Petitioner further specified that he would do a dismount, approximately seven times during the act where he would be coming down from 6 to 7 feet in the air, landing on his legs for the dismount. (T.@ 28).

He testified that in addition to doing the acrobatic performance, Respondent had him doing other tasks in support of the circus. (T@ 29). He described that he and his brother did what was called "animation," where they were dressed as waiters, walked around, pretending to wait on tables with props to try to joke and engage and prank with the audience. (T.@ 29). They were also instructed to sing and dance, move props, etc. during the performance. He was taught the singing and dancing by Respondent. (T.@30).

Respondent provided all costumes that were used during the show, including for his acrobatic routine, (T.@ 31), and all props used. (T.@ 30). The only act item not provided by Respondent was a particular bench used by Petitioner's brother, Giuliano Anastasini, for their acrobatic performance. (T.@ 75).

Petitioner testified that Respondent provided housing for him in Seattle and in Chicago. (T.@ 32-33). He further testified that he received one meal per day on show days, also provided by Respondent. (T.@33).

Petitioner testified that for the Anstasini brothers' act to be integrated into the show, there were rehearsals, and that he was paid for those rehearsals. (T.@ 33-34). He also testified that he was paid for the individual shows that he performed in. (T.@ 34).

Petitioner testified that during the term of his contract with Respondent, he did not work for any other employer. (T.@ 34). He was instructed to appear between an 1hour 45 minutes to 2 hours before a show . (T. @ 34). He would participate and pick up rehearsals and performed in shows that were added to the original schedule. (T. @ 35).

Petitioner testified that Respondent set the show schedule, and the stage manager would schedule pick up rehearsals. (T.@ 57). He stated that he and his brother would at times schedule their own rehearsals, but they would were required have to permission from the stage manager to do so. (T.@ 57).

He testified that to the best of his knowledge, all of the costumes and props that were used, including those used for their acrobatic performance, were owned by Respondent. He further testified that the Respondent's business was that of a dinner, and a show, eating dinner for watching the circus show. (T.@ 58).

Petitioner further testified that Respondent would set changes to the schedules or meetings and then he would be required to attend those meetings. (T.@ 58- 59).

Petitioner testified that prior to November 29, 2019, he had no accident or injury to either of his legs and had never had any treatment for either of his legs. (T.@ 36).

Petitioner testified that on November 29, 2019, while performing his routine, "his [referring to his brother] foot slipped." Due to his partner's foot slip, Petitioner landed poorly on his dismount, snapping his left leg. He stated that his felt his left side "give in," and when he tried to stand up, he saw his left leg "bend sideways." He picked up his leg and it was "wobbling like a noodle" from the shin down and he realized it was broken. (T.@ 36-37).

He also testified that his right leg was very sore, but he did not know what had occurred to the right leg. He was in a lot of pain. (T@ 38).

At the time of the incident, no one from respondent helped him, so he crawled on his "butt" to the exit and was crying. His brother ran over to him, picked him up and helped him outside the entrance of the show. A friend of another performer called an ambulance. (T.@ 38-39).

Petitioner testified that he was taken to the emergency room at Northwestern Memorial Hospital on November 29th. He was admitted at that time for surgery, which originally included a closed reduction with sedation. (T.@40; PX 4 (Records of Northwestern Memorial); PX 6, (Records for Center for Comprehensive Orthopedic and Spine Care, hereinafter "Dr. Merk")).

On December 2, 2019, an open reduction with internal fixation on Petitioner's left leg was performed by Dr. Bradley Merk. Following an x-ray to the right leg, Dr. Merk Performed a surgery with internal fixation on the right leg on December 13, 2019. (T.@ 40-41; PX 4).

Due to Covid, Petitioner was provided a home exercise program instead of a formal medical program of therapy. (T.@ 41-42). He testified that he followed that program very clearly. (T.@ 42). He continued treating with Dr. Merk. (PX 6).

In April 2021, Dr. Merk ordered a Functional Capacity Evaluation, which was performed and following that he was released to return to work. (T@ 42-43).

Petitioner testified that following his release by Dr. Merk, he attempted to return to work as an acrobat. (T.@43). He stated that when he would try to do the easiest or basic routine, which includes front somersaults, he would feel a very sharp pain in the back of his knee, more on the left leg than the right, when he tried to tuck his legs in. (T.@ 43).

Petitioner testified that he tried this a few different times, and every time he did, he had the same result, including a thumping pain. (T@43). After a break of several days, he attempted to perform the basic elements again, with increased pain. (T.@44).

Petitioner stated the he has attempted to run or jump rope, and found that he has severe pain when he does. (T.@ 44). He notices that he starts to feel a sharp pain in his shin on the left leg where it had broken. He has stopped attempting acrobatics, or jumping rope. When he tries to run on a hard surface, he haw pain between the knee, the shin, and the ankle, and running on the beach was a little less painful, but still caused pain. He has discontinued any attempt at running. In order to keep in shape, he rides a bike, hoping to rebuild muscles in his leg. (T.@ 45-46). Petitioner noted however, that when he tries to put pressure using his knee, he gets the pain. This is particularly true when he tries to pedal backwards. (T.@ 46). The pain was described as a sharp, stabbing pain primarily behind the left knee, but he does have it on the right as well. (T.@ 47). On a scale of 1 to 10, he categorizes the pain on the right leg as a four, and the pain in the left leg as an 8 to 9 when trying to do activities. (T.@47).

Petitioner testified about having met with a vocational advisor, Joe Belmonte. He stated that Mr. Belmonte advised him his left, leg look crooked and inquired whether it might now be shorter than his right leg. T.@49 Petitioner did agree that no doctor had actually measured his legs. Id.. They discussed his educational level and some other issues. T.@49.

Anastasini testified that subsequent to his doctor's release, he started looking for work. He noted that it was difficult for someone without a high school diploma to find work. (T.@ 50). He stated that he did find a job working in a lawnmower shop, unboxing items and bringing them to the showroom or hanging them on shelves. He was also responsible for keeping the shop clean. He was still employed there on the date of trial. (T.@ 51). When he started working there, he was paid $10.00/hour, working 30-40 hours per week. He stated that in approximately October he was given a pay raise to $11 an hour. That was the rate he was earning as of the date of trial. (T.@ 51-52).

With respect to what he noted in his daily life activities, Petitioner testified that he has difficulty kneeling due to the pain from the rod under his right knee cap and then, when he's kneeling down, he feels it as a sharp pain. (T.@ 52). He also notes that he does not have the strength or flexibility he used to have. Washing dishes by hand hurts because he feels as though his left leg is shorter than his right, putting stress on

his hip and his back, when he stands for longer than 2 to 3 minutes. (T.@ 54). When he tries to squat, he has the same type of issues of pain behind the knees. (T.@ 55).

He further testified that if he is sitting in a car and driving for more than approximately two hours, begins to have pain in his knee and has to stop and extend his legs to relieve the pain. (T.@ 56).

When asked if he ever explored the possibility of removing the rods and pins, he testified that his understanding is that removing the rods and pins would weaken his legs to the point where he could fracture them again. (T.53-54).

On cross examination, Petitioner agreed that it would be typical to get a contract in his line of work, and that the contract would dictate the start and end dates, and that there could be occasional gaps in between contracts. He said that it was very rare that he and his brother experienced gaps. (T.@ 61). He did acknowledge that there was approximately a four day to one week gap between the end of the show in Woodinville and the beginning of the show in Chicago with Respondent. (T@ 62). The Arbitrator notes that this time frame is included in the term of the Contract. PX. 1@ p. 18).

In response to questions about the engagement with Respondent, Petitioner testified that they were told if they were willing to add singing, dancing, and more than just their acrobatic performance, they could contract with Respondent. (T.@ 65).

Respondent inquired if the Petitioner understood that the contract he was signing identified him as an independent contractor and he did indicate that he was aware of that language. (T.@ 68).

In response to questions about his scheduling, Petitioner, testified that Respondent scheduled the rehearsals, specified when and where he would perform and any additional scheduling changes that they made. (T.@ 69). He further stated that they were not allowed to rehearse on their own without Respondent's permission. (T.@ 70).

Petitioner was shown RX 2, a wage record prepared by Respondent. He agreed that it appeared to be accurate as to his pay from Respondent. (T.@ 71). He further agreed that no withholding was taken out, and that his pay was issued via direct deposit. (T.@ 72).

Petitioner testified that the contract was ending in March 2020 and he was in discussions about continuing with the show. (T.@ 73). He also testified that, had he not been injured, he would have continued with the show for an anticipated additional six months. (T.@ 74).

When asked if his condition might have improved since he stopped trying to perform acrobatics, Petitioner said no, it had not. (T.@ 75).

At Respondent's request, Petitioner stood and showed the Arbitrator his legs. (T.@76). At the Arbitrator's instruction, he put his ankle bones together. He was trembling, and stated it was hard for him to try to make his knees touch. (T.@ 77).

The Arbitrator noted that there was a difference in the circumference between Petitioner's calves. The Arbitrator further noted that the left leg had a slight curve to the lateral side of the left leg. The Arbitrator further noted an inversion of the left foot. It was not sitting flat on the ground. (T@. 78-80).

Testimony of Norman Langill

Respondent presented Mr. Norman Langill as its witness. Langill testified that he was the founder and artistic Director of TZZ, LLC, and is now the managing partner. TZZ, LLC owns TZZ Chicago, LLC. Before Covid, he was primarily engaged as the artistic director and in strategic management, but since Covid, he has done everything, including general management, artistic direction, company management, casting, etc. (T.@ 83).

Langill testified that Petitioner had accurately described Respondent's business as a circus cabaret dinner theater. (T.@ 84). He testified that at the time of trial, he had six full-time employees with part-time employees brought on during production, and independent contractors. The performers interact with the audience. Langill stated that the employees tell the performers what to do, who to work with and what to accomplish. The independent contractors are primarily on the artistic side. (T.@ 84-85).

Langill testified that his company hired Petitioner through his former Casting Director, Renee Duff. (T.@ 86). He testified that Respondent had been looking for the type of act performed by Petitioner "tracked

them down," and "made it happen." (T.@ 89). Performers and the band get paid on a per show basis, because the shows are pretty regular. (T.@ 87).

He then identified RX 1 as Respondent's copy of the contract between the Parties "Artist Independent Contractor Agreement". (T.@ 88). Langill said that RX 1 was an accurate and complete copy of the contract with Petitioner, but it is missing the handbook. (T.@ 88-89). The contract was to end in March 2020, but they were discussing extending it. (T.@ 91).

Langill stated that Respondent did not control the act itself. (T.@ 90). Respondent required attendance at rehearsals and did not prohibit acts from practicing. (T.@ 90). Petitioner was paid a lump sum, with no deductions, via diect deposit. (T.@ 91)

Langill agreed that all the props and costumes were provided by Respondent, other than the bench that Guliano Anastasini used. (T.@ 92, 94). Langill stated that he has not been contacted by Petitioner about a return to work for Respondent, but would take him on again if that were possible. (T.@ 96).

On cross examination, Langill testified that page 2 of RX 1 stated that the Artist (identified per the Contract as Petitioner and his brother) were "to provide the Services exclusively to the Producer (identified as Respondent per the Contract) during the contract term. (T.@ 97).

He testified that Petitioner's work during the "animation" was to get the audience involved and excited (T.@ 98-99). and that all props and costumes for this was provided by Respondent. (T.@99-100).

Langill testified that per page 4 of the Contract, prior to their act, as part of the "animation", Petitioner was required to dress and perform as a waiter to get the audience excited and involved. (T.@ 99). He agreed that the contract required that Petitioner attend all company meetings and information centers, as set by the producer, and that they were required to be involved in promotional events. (T.@ 100).

Langill then testified that on page 5 the contract specifies that the artist is bound by the Artist Handbook, established by the producer, which was to be attached and form an integral part of the contract. (T.@ 100-101). The contract on page 6 specified that if any new materials were developed during the run of the show, they would be the property of the Respondent. Also, even after the show contract had expired, Respondent had the

right to retain and use Petitioner's promotional materials, photos files, etc. (T.@102). The contract provided that the Producer would provide all costumes clothing except undergarments (T.@ 105).

Langill then read paragraph 14 on page 10 of the Contract, which states "artist may not terminate this agreement to accept an offer of other employment, without express consent of the producer." (T.@ 105). He testified this clause prohibited Petitioner from leaving the show to take another job. (T.@ 106). He went on to testify about this section is a method of preventing performers from leaving his show for better paying jobs. He specifically testified that only if an agreement was reached prior to a contract, would a performer be allowed to accept any other work outside of Respondent's show. (T.@ 121-123). The purpose of the clause was to prevent a performer from accepting competing offers. (T.@ 121).

Langill also testified that the Contract prohibited any performances for any other production, even on days Respondent had no show scheduled; and that "no exceptions [would be]granted." (T.@108).

Paragraph 14 continued that per the terms of the contract, additional shows could be scheduled other than those on the planned schedule and the artist would be required to make those dates, whether or not he had other plans. (T.@ 108-109).

Langill agreed that PX 2 was the Artist Handbook. (T.@ 110).

In response to various questions regarding the contents of the Handbook, the witness agreed that Petitioner was required to keep his schedule open from 5:30 PM on any show day to add and pick up rehearsals as called by the production manager (T.@ 111); that he attend, mandatory meetings on the first show day of a work week (T.@ 110); to and that the performers were held to certain standards at all times whether or not they were actually performing. (T.@ 112).

Langill testified that Respondent provided Petitioner with housing. (T.@ 111).

Langill testified that the Artist Handbook stated "[i]f a performer is injured in the course of an official TZ performance . . .For performances in Chicago, TZ insures on-the-job claims through Workers Compensation Insurance." (T.@ 113; PX 2 at pg.17).

The witness identified PX 10, as the checks paid to Anna Ellsworth for the housing provided to Petitioner in Woodville. (T.@ 116).

Langill confirmed that other than the bench, Respondent provided all of the costumes and props; dictated when Petitioner would show up for rehearsal; when Petitioner would appear for performances; when Petitioner had to attend pick up shows or pick up rehearsals; that Respondent had the ability to change Petitioner's schedule with or without notice; and that Petitioner worked exclusively for Respondent during the term of the contract. (T.@115-120).

Medical Records

Northwestern Memorial PX 4

The Arbitrator notes that Dr. Merk worked out of and through Northwestern Memorial.

Petitioner was initially seen on the date of accident, November 29, 2019 in the Emergency Department at Northwestern Memorial. (PX 4@ 286). The history was of working as a circus performer, when landing, his left lower leg "cracked." Id. He was initially splinted and referred to Dr. Bradley Merk for additional care. PX 4@ 282).

Various surgeries were performed at Northwestern as contained in PX 4 and more fully described in PX 6, Dr. Merk records.

Center for Comprehensive Orthopedic and Spine ("Merk") Records, PX 6

Petitioner began treating with Dr. Merk on December 2, 2019, when he performed surgery including rod and instrumentation on Petitioner's left leg tibia fracture (Intramedullary Nailing). (PX 4@ 142).

On December 11, 2019, Dr. Merk advised Petitioner that he needed surgery on the right leg, including nailing with instrumentation on the right tibia, due to the stress fracture noted on prior x-rays. (PX 4@ 602). As noted in the Northwestern records above, that surgery took place on December 13, 2019.

Petitioner continued treating with Dr. Merk, attending appointments on various dates for the rest of December and early January 2020. On January 30, 2020, updated x-rays showed healing on the incisions for both legs, stable hardware, but both leg fractures were still visible. (PX 6@ 574).

Following this, Petitioner continued treating with Dr. Merk and, on March 5, 2020, the doctor indicated he could increase his activity but not resume jumping for his performance. (PX 6@ 564).

During Covid, Petitioner attended follow ups via phone, starting on June 29, 2020. On that date, Petitioner requested updated x-rays and wanted to find out about continuing care in Florida. X-rays were to be taken and forwarded to Dr. Merk. (PX 6@554).

A telehealth visit was performed on August 6, 2020. At that time, Petitioner was released for light or modified duty if available, but not to work as a performer. He was not able to jump or flip at that time. (PX 6@529). When he continued with Dr. Merk on January 20, 2021, he was still unable to perform as an acrobat. He was encouraged to work on strengthening and workout without restrictions, but was not able to perform repetitive impact on the left leg. (PX 6@ 512). At the March 30, 2021 appointment, he was advised he could return to all activity, including acrobatics.

On April 5, 2021, Petitioner reported "significant pain" while attempting to perform tuck positions. He cannot perform his work as an acrobat due to the pain, and asked for a follow up with Dr. Merk. (PX 6@ 490). At the following visit, on April 20, 2021, Dr. Merk prescribed a functional capacity evaluation in Florida. (PX 6@ 470-71).

The FCE was performed on May 13, 2021, and is contained in Dr. Merk's records. The FCE demonstrated that Petitioner was able to work in the heavy physical demand category and that he performed with acceptable effort. (PX 6@451). The FCE further noted that there were unmet demands for his work as an acrobat, due to discomfort on full squats and that the work as an acrobat requires repetitive full squatting,

followed by jumping and flipping. The FCE noted that it was unsafe for Petitioner to perform the routine acrobatic tricks in the clinical environment. (PX 6@ 452).

Apex physical therapy, PX 5

The functional capacity evaluation was submitted as a separate exhibit, in addition to being included in Dr. Merk's records.

Deposition testimony

Deposition of Joseph Belmonte, Petitioner's Vocational Rehabilitation Witness; PX 7

The Deposition of Joseph Belmonte, CRC was taken on August 11, 2022.

Mr. Belmonte is a Certified Rehabilitation Counselor. He testified that he's been working in this field since 1978. He was retained by Petitioner's counsel to perform a vocational evaluation on Petitioner. (p 12).

Belmonte described Petitioner's job as an acrobat, identified in the US Department of Labor Dictionary of Occupational Titles and noted that for the DOT, the definition is a very heavy duty work. (p. 19). Belmonte read the description of very heavy duty as exerting force in excess of 100 pounds occasionally, 50 pounds frequently, 20 pounds constantly. He then stated that Petitioner's FCE did not meet that definition. (p. 20).

Belmonte described the Petitioner's physical limitations as difficulty performing a full squat with a limited ability in that area, slow performance of kneeling, tremors on balancing, and. (p. 16). The work performed by Petitioner required repetitive fall, squatting, followed by flipping and jumping. Petitioner had significant complaints and limitations regarding his left leg. (pp. 28-31).

With respect to Petitioner's education, Belmonte noted that between 6th and 8th grades, he was educated in a circus environment with tutors; and that from 9th to 12th grade. it was all self-study until age 17. (p. 21) He did not complete his high school education. He was a 9th generation circus performer. Belmonte was aware that Petitioner failed the GED on initial testing and he had been advised by Petitioners attorney at a later date that he had failed a second attempt at the GED.

A review of Petitioner's prior employment demonstrated it was all circus or entertainment related, including the acrobatics actually performed; working concessions; and doing some general labor around the circus environment, starting at a "very young age" at his father's circus. He also pointed out that Petitioner had no formal training in business management, personnel management, purchasing, recruiting, clerical, accounting, or administrative functions for either circus or theatrical management. He had no skills in any trade area, no automotive skills or mechanical skills, no construction skills, no vocational schooling or military experience. (p. 24).

Belmonte noted that Petitioner's computer skills were limited and that he used a "modified" hunt and peck, and had no experience with Microsoft office software, including XL, Outlook or Apple programs. Petitioner had significant placement deficits. (p. 37).

Per his report of March 2, 2022, Belmonte opined that Petitioner was employable in a broad range of work. He did, however, opine that Petitioner's restrictions were closer to medium duty than to heavy duty. He was able to lift 55 pounds which, technically, placed under heavy duty, but he was well below the very heavy duty requirement of lifting 100 pounds. Belmonte opined that the data from the FCE, was more consistent with a medium duty function from a vocational perspective than a heavy duty function. He pointed out that heavy duty work could include landscaping, material, handling jobs, construction jobs, that are heavy duty, and opined that Petitioner was not capable of working in unskilled, construction labor, unskilled, lifting, labor, or anything in the heavy duty range of that nature.

Petitioner was employable, but he has placement deficits. (pp. 33-37). He needs comprehensive vocational rehabilitation intervention. (p. 41) He has no transferable skills and limited education. (p. 44). He needs training. (p. 57). His current job at the lawnmower store is appropriate. (pp 65-66). He has lost his usual and customary job and occupation. (p. 87).

Deposition of Michael McIntosh, RX 5

Respondent submitted the evidence deposition of Michael McIntosh, the physical therapist who performed Petitioner's Functional Capacity Evaluation in Florida. He is a Physical Therapist/Director, with a MPT degree and certifications in Ergonomics and FCEs. (p. 7)

McIntosh recorded the FCE for Petitioner. Petitioner exhibited consistent performance. He noted that Petitioner had tremors with squats. He was slow and had difficulty kneeling. (p. 24). Petitioner reported discomfort in a full squat. McIntosh compared it to the video that he had seen showing that Petitioner would have to do a full squat and backflip, which Petitioner could have difficulty with. (pp. 24-25). The witness further noted that there were limitations in knee flexion. (p. 25).

Given the clinical setting for the FCE and the nature of team acrobatic performances, an FCE that could accurately posit RTW for Petitioner was not feasible. Many of the limitations were judged "probably." McIntosh said that the FCE does not show that Petitioner was capable of a full duty return to work as an acrobat.

Petitioner was able to 55 pounds. (p. 27). He then speculated on whether Petitioner perform heavy duty work based on the Petitioner statements to him that he did not have to lift over 55 pounds as an acrobat. McIntosh stated that he was hesitant to put anything in the FCE about Petitioner's ability to return to work. (p. 30). When asked specifically if Petitioner could return to full duty work as an acrobat, McIntosh stated it was speculative on his part to answer it, but that he had doubts. (p. 30).

In response to a question related to the level of stress or pressure Petitioner would have to do from going from a squat to a full jump, McIntosh agreed that it would be a great deal of pressure. (p. 33). He again confirmed that he had questions about whether Petitioner would be able to return his work as an acrobat. (p. 34-35). He noted tremors when Petitioner attempted to squat, at 90° of flexion. Those tremors could inhibit his balance, especially standing on his brother's feet. McIntosh further noted that Petitioner had slow movements,

albeit fluid, difficulty moving from a standing to kneeling. (pp. 35-36). Finally, the witness reiterated his testimony that he could not determine if Petitioner was capable of working full duty as an acrobat.(p. 40).

Deposition of Dr. Bradley Merk, RX 6

Respondent submitted the evidence deposition of the treating orthopedic surgeon, Dr. Bradley Merk, taken on March 15, 2023. Dr. Merk is a board certified orthopedic surgeon, with an orthopedic trauma surgery fellowship at Cornell. (p.6). He repairs 200 plus tibias a year. (p. 8).

Dr. Merk testified that he initially treated Petitioner on December 2, 2019. He performed surgery on Petitioner's left tibia on that date. (p. 8). The fracture required stabilization, via screws and an intramedullary nail/rod. (pp. 8-9). Dr. Merk opined that the left leg tibia fracture was causally related to Petitioner's work accident. (p. 11).

Decreased range of motion of the left ankle and knee was appreciated and would be expected, given the nailing procedure. A right chronic tibia stress fracture was noted and a prophylactic surgery was suggested because the fracture could fail without stabilization. A right tibial intramedullary nail procedure was performed on December 13, 2019. (pp. 10-12).

Petitioner underwent appropriate follow up care (albeit complicated by Covid). Petitioner had continued complaints. Dr. Merk stated that on April 20, 2021, the last time that he saw Petitioner, he felt that as there was nothing showing on radiographic studies to account for Petitioner's ongoing pain and difficulties, he recommended an FCE. (p. 23). Petitioner was close to MMI and was told to progress activities as tolerated. (p. 20-21). Removing the nails and screws in the legs would not be recommended, but that an FCE could quantify whatever limitations might be present. (p. 23). The doctor testified that he did not agree that Petitioner's condition would improve after the last time he saw him. (p. 24). Dr. Merk also agreed that during the course of his treatment, Petitioner reported difficulty performing exercises and acrobatics throughout the course of treatment. (p. 27).

Dr. Merk testified on cross examination, that the traumatic event of November 29, 2019 was a possible cause of an acceleration, aggravation or exacerbation of the stress fracture on the right leg. Rex.6@ 27 He further stated that he had no information that Petitioner suffered any kind of injury to his right leg prior to the November 29, 2019 accident. (p. 26-27).

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 his claim O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his 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)

It is noted that accident, notice and causal connection were stipulated to.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP?, THE ARBITRATOR FINDS:

Petitioner was an employee of Respondent on November 29, 2019 and, thus, is entitled to Illinois Workers' Compensation benefits for the accidental injuries which arose out of and in the course of his employment by Respondent that he suffered on that date. Additionally, Respondent's liability to Petitioner for Illinois Workers' Compensation benefits is established by the terms of its contract with Petitioner.

This is a unique case due to the relationship of Artist/Producer between the Parties necessitated by Respondent's business (Dinner/Theater/Circus Entertainment) and Petitioner's role in that business (Part of an Acrobatic Act). While the Parties labeled their agreement "Artist Independent Contractor Agreement" and "Teatro Zinzanni Independent Contractor Performer Agreement" (PX1, RX 1), the label the parties place upon their relationship is a factor of lesser weight in determining whether there is an employee/employer relationship. Ware v. Industrial Comm'n, 318 Ill. App. 3d 1117, 1122 (2000).

The Supreme Court has provided a list of factors to consider in determining whether an employment relationship exists, including whether the employer: 1.) may control the manner in which the person performs the work; 2.) dictate's the person's schedule; 3.) pays the person hourly; 4.) withholds income taxes and social security from the person's compensation; 5.) may discharge the person at will; and 6.) supplies the person with materials and equipment. Roberson v. Industrial Comm'n, 225 Ill. 2d 159, 175 (2007).

The mere fact that PX 1 and RX 1 use the words "independent contractor" is not dispositive of the issue; nor is Petitioner's testimony that he believed he was signing such document as an independent contractor.

Case law establishes that whether the purported employer has a right to control the actions of the purported employee is "[t]he single most important factor." Ware v. Industrial Comm'n, 318 Ill. App. 3d 1117 at 1122 (2000).

In this case, not only does the testimony of both Petitioner and Respondent's witness, Langill, confirm that Respondent controlled all aspects of Petitioner's work for the circus other than the actual acrobatic tricks (artistic work) performed. Respondent provided all "uniforms" by virtue of requiring Petitioner to wear the costumes provided; required him to perform more than the acrobatic tricks, such as interacting with the audience, ("animation"); set his schedule for shows and rehearsals and meetings; dictated where he lived; provided all props with the exception of Guliano's bench; dictated that any new developments to his act were the property of Respondent; and required that he work exclusively for Teatro ZinZanni. This aspect alone,

control of how and when and for whom Petitioner could work as an acrobat is establishes that Petitioner is an employee and not an independent contractor.

Respondent is in the entertainment business and that is what Petitioner's act contributed.

While per the terms of the Contract, either party could exit the agreement, only Respondent retained the right to continue in its customary work. Petitioner was prohibited from accepting employment as an acrobat during the contract period per the terms of the contract.

While Petitioner was paid for certain job tasks on a per event basis (e.g.: per rehearsal and per show, Schedule E of PX 1), not hourly and no taxes or Social Security payments were withheld from Petitioner's earnings, these factors do not convince the Arbitrator that Petitioner was truly an independent contractor, especially in light of the provisions in the Handbook regarding injuries to the artist/performer while engaged in a performance, as occurred in the present case.

Per the terms of the Handbook (PX 2), all artists in the course of an official TZ performance were covered by Illinois Workers' Compensation Insurance while performing in Chicago. The Arbitrator finds that Respondent's Contract provides that pursuant to Illinois law, performers, including Petitioner, are employees for the purpose of Workers' Compensation while working in Chicago, where this accident occurred. The Parties elected to come under the coverage of the Act for performer's injuries and Respondent did so by purchasing workers' compensation insurance (ArbX 1, 820 ILCS 305/2(a).

Thus, Respondent's liability under the Act for Petitioner's work injury has been established.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (G), WHAT WERE PETITIONER'S EARNINGS?, THE ARBITRATOR FINDS:

Petitioner claimed an AWW of $2,475.00. Respondent claims the AWW is $1,260.58. (ArbX 1).

AWW is calculated pursuant to Section 10 of the Act, which states, in relevant part "…if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder . . . shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted." 820 ILCS 305/10.

One of the seminal cases interpreting this language is Sylvester v. Industrial Comm'n, 179 Ill.2d 225 (2001). In that case, the Court held that the unworked days during the pay periods were to be removed from the calculation of AWW.

RX 2 was a wage record documenting Petitioner's earnings, which were confirmed by the Petitioner. PX 9 was a copy of the performance schedule, showing rehearsal and performances dates. Respondent's witness, Lingell, confirmed was a true and accurate copy of the schedule.

As noted above, per the contract, Petitioner was to be paid for each performance and rehearsal. A review of RX 2, demonstrates that there are 16 two week pay periods where Petitioner had actual gross earnings totaling $64,800.00. While there are more checks, some of the dates are the same, representing different types of earnings (e.g.: 7/8-21/19 has 2 different checks; 9/16-30 has 2 different checks). RX 2 also demonstrates that Petitioner was paid for only 1 day in the 4/15/19-4/28/19 pay period. During the pay period of 11/25/2019 to 12/08/19, he was paid for 3 days.

While 16 pay periods appear on the checks, pursuant to *Sylvester*, the Arbitrator finds that he worked at total of 28 and 4/7 weeks. Taking the gross earnings of $64,800.00 and dividing by the weeks or parts thereof, the Arbitrator finds that Petitioner's AWW was at least $2,637.25. As Petitioner alleged an AWW of $2,475.00, he is bound by his stipulation per Walden v. Indus. Comm'n, 345 Ill. App. 3d 1084 (2004).

Therefore, the Arbitrator finds that Petitioner's AWW is $2,475.00.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (J), WHETHER THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER WERE REASONABLE AND NECESSARY, AND WHETHER RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS:

The Arbitrator finds that the Petitioner has proven by the preponderance of the evidence that the medical services provided were reasonable and necessary and causally related. Petitioner submitted one unpaid bill, that from Center for Comprehensive Orthopedic and Spine, in the amount of $760.00. (PX 8). Respondent shall pay same, pursuant to the Medical Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act. The Parties agreed that Respondent is entitled to a credit for all awarded bills that it has paid or satisfied.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (K) WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS:

The Parties do not dispute, accident or causation. As noted about. As such, in light of the Arbitrator's findings regarding the employer employee relationship and Respondent's liability for Illinois Workers' Compensation benefits, Petitioner is entitled to receive temporary total disability benefits ("TTD").

Based on Petitioner's AWW of $2,475.00, he is subject to the maximum TTD rate for his date of injury, $1,529.84 per week.

Petitioner was temporarily and totally disabled from November 30, 2019 until he was released to work on March 30, 2021, a period of 69-3/7 weeks. Based on this, the Arbitrator finds that Temporary Total Disability was due and payable from November 30, 2019 to March 30, 2021, in the amount of $106,215.26.

The Arbitrator notes that Petitioner's unrebutted testimony was that he attempted to engage in acrobatic maneuvers without success and contacted Dr. Merk again in April of 2021. At that time, Dr. Merk ordered an FCE, which demonstrated that Petitioner was unable to engage in his usual and customary occupation. (PX 5; RX 5).

Petitioner underwent a vocational assessment at the request of his counsel and in early August of 2022, obtained employment. Per the August 8, 2022 letter contained in PX 7, Petitioner was employed on or about August 5, 2022. (PX 7).

The Arbitrator notes that the Parties did not specifically include Maintenance as a disputed issue, but finds that Respondent has mis-identified some benefits as TTD that would more correctly be identified and paid as Maintenance and makes this change *sua sponte*.

Based on the foregoing, the Arbitrator finds that Petitioner was due and owed Maintenance from March 31, 2021 until August 4, 2022, a period of 70 1/7 weeks. As Maintenance is paid at the same rate as TTD, this amounts to $107,248.65.

The Arbitrator finds that based on the opinions of the only vocational expert in this matter, Jospeh Belmonte, that the job Petitioner obtained and was still working as of the date of trial, is an appropriate position for him based on his lack of education and transferable skills.

Petitioner's unrebutted testimony was that when he started working in August 2022, he was paid $10.00/hour and worked 40 hours/week. This represents weekly earnings of $400.00 week. He further testified that in October of 2022, his wages were increased to $11.00/hour, a wage of $440.00 per week.

Based on the foregoing, the Arbitrator finds that Petitioner was owed Temporary Partial Disability ("TPD") from August 5, 2022 to the date of trial, May 24, 2023, a period of 41 5/7 weeks. TPD is paid at 2/3 of the difference between his actual earnings and what he would earn in the full performance of his occupation as an acrobat. 820 ILCS 305/8(a). From August 5, 2022 until September 29, 2022 is a period of 7-6/7 weeks. Based on his earnings during that time of $400.00/week v. 2/3 of his normal $2,475.00/week, Petitioner is due and owed $1,383.33/week for a total of $10,868.85 in TPD for this time frame.

From September 30, 2022 to the date of trial on May 24, 2023, Petitioner was paid at $11.00/hour, a weekly wage of $440.00. This represents a time frame of 33-5/7 weeks. The 2/3 difference for this time frame is $1,354.00/week for a total of $46,648.76 in TPD.

The Parties stipulated that Respondent has paid a total of $226,709.15 in indemnity benefits (identified as TTD and which the Arbitrator splits between TTD and Maintenance). The totals owed to Petitioner between these two categories is $213,463.91. Thus, Respondent has a credit of $13,245.24.

The Parties stipulated that Respondent has paid a total of $49,905.26 for TPD. The total amount owed to Petitioner for the TPD period is $57,517.61. Thus, Petitioner is owed $7,612.35 for underpaid TPD. In total, Respondent is allowed a credit of $5,632.89 for overpaid disability indemnity benefits.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY?, THE ARBITRATOR FINDS:

In the absence of an election to pursue a PPD claim under §8(d)2 of the Act, if Petitioner proves that he has suffered an injury which incapacitates him from performing his usual and customary occupation and has

suffered an impairment of earning capacity, the Commission shall award a §8(d)1 wage loss. Gallianetti v. Industrial Comm'n, 315 Ill. App. 3d 721, 728-729 (2000).

Here, Petitioner has proved that he is unable to perform his usual and customary occupation as an acrobat/performer and he has suffered an impairment of earning capacity. His AWW as an acrobat/performer in the full performance of his occupation was $2,475.00/week and he now makes $440.00/week. This is an impairment in earnings of $2,035.00. 66- 2/3 of the impairment in earnings is $1,356.67/week. The statutory maximum rate for wage loss benefits for the accident date is $1,147.38/week.

Accordingly, Respondent shall pay Petitioner permanent partial disability benefits, commencing May 24, 2023, of $1,147.38 per week, for the duration of the disability, until the later of when Petitioner reaches age 67 or 5 years from the date this award becomes final, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (M) SHOULD PENALTIES OR FEES BE IMPOSED UPON THE RESPONDENT?, THE ARBITRATOR FINDS:

This was a complicated case and Respondent did pay Petitioner TTD and medical benefits of a significant amount. Respondent did not act in an unreasonable or vexatious manner and its defenses do not appear to have been in bad faith at the Arbitration level. Accordingly, Petitioner's claims for penalties and attorney's fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009173
Case Name	Darreka Lewis v. Mary Mac, Inc. dba McDonald's,
Consolidated Cases	22WC009178;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0438
Number of Pages of Decision	20
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Carol Cesaretti

DATE FILED: 9/13/2024

/s/Stephen Mathis, 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

Darreka Lewis,

Petitioner,

vs. NO. 22WC 09173

Mary Mac, Inc. d/b/a McDonald's,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, prospective medical care, 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 September 26, 2023, is hereby affirmed and adopted.

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. 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.

September 13, 2024

SJM/sj
o-7/24/2024
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009173
Case Name	Darreka Lewis v. Mary Mac, Inc. d/b/a McDonald's,
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Carol Cesaretti

DATE FILED: 9/26/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Maureen Pulia, 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)

DARREKA LEWIS,
Employee/Petitioner

v.

MARY MAC, INC. dba MCDONALD'S,
Employer/Respondent

Case # **22** WC **9173**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **8/31/23**. 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, **12/20/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**23,140.00**; the average weekly wage was $**445.00**.

On the date of accident, Petitioner was **24** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

The petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 12/20/21. The arbitrator finds the remaining issues in dispute moot.

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.

SEPTEMBER 26, 2023

Signature of Arbitrator

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 24 year old crew person, alleges she sustained accidental injuries to her neck that arose out of and in the course of her employment by respondent on 12/20/21 (22WC9173) and 3/16/22 (22WC9178). Petitioner testified that she started working for respondent somewhere between June and September of 2021. She worked at the Collinsville location.

Petitioner testified that her duties including serving as a cashier, taking orders, stocking, and going into the grill area. Petitioner denied ever injuring her neck prior to 12/20/21. She also denied any treatment for her neck prior to 12/20/21.

Petitioner testified that on 12/20/21 she injured her neck when she tried to lift the tea container off the compartment stand. She testified that the container weighed between 40 and 50 pounds and when she went to lift it, she heard a pop in the left side of her neck. She testified that the symptoms in her arm and hand came after 3/16/22.

Petitioner testified that she reported her injury to her supervisor, Cassandra, on 12/20/21. Petitioner testified that following the injury, no accident report was completed. She stated that it was to be completed when the General Manager came in the store, but was not.

Petitioner first sought treatment for her injury when she presented to the emergency room at St. Elizabeth on 12/27/21. Petitioner complained of left sided neck pain for the past week. She gave a history of lifting heavy boxes. She noted that she did get a new mattress and pillow, but does not think it was contributing to her symptoms. She denied any numbness. An examination revealed a palpable left trapezius muscle spasm. She held her head stiffly with her left shoulder elevated, and was able to rotate her head from left to right, and extend and flex without difficulty. X-rays of the cervical spine revealed a straightened lordosis, with no acute bony abnormality. She was diagnosed with Torticollis, given some prescriptions and referred to her primary care physician.

On 12/29/21 petitioner presented to Nurse Practitioner Kamal Akhtar, at the emergency room at Memorial Hospital Shiloh, for a urinary tract infection. She reported partial vaccination for COVID-19. She had COVID-19 symptoms, and her COVID-19 test was positive. She reported myalgias, and her examination was positive for weakness. Her trachea and phonation were normal. With regards to her cervical back she had full passive range of motion without pain, as well as normal range of motion and supple neck. Akhtar's clinical impression was COVID-19 virus infection.

Petitioner continued working light duty.

Petitioner testified that on 3/16/22 while she was attempting to lift boxes of French Fries weighing 40-50 pounds out of the compartment stand, she again felt pain in the left side of her neck. She also experienced numbness and tingling down her left arm. Petitioner testified that she reported this injury to Casandra after it occurred. No accident report was completed at that time. Again, she had to wait until the General Manager came in to complete the accident report. It is unknown if the General Manager completed an accident report.

Petitioner first sought treatment following this accident on 3/18/22 at the emergency room at Memorial Hospital Shiloh. She complained of neck and upper back pain. She complained of pain that starts at her neck and goes to her upper back for approximately 2 months. She stated that at that time she was treated with muscle relaxants and other over the counter medication with minimal relief. She stated that she was doing well until 3/16/22, when her pain got worse. She denied any injury, loss of sensation, any numbness or tingling, or weakness in her bilateral upper extremity. X-rays of the cervical spine revealed a straightened lordosis, and no acute bony abnormality. An examination revealed diffuse tenderness on palpitation on cervical spine and upper back. She was assessed with a strain of the neck muscle, and thoracic myofascial strain. She was prescribed Tylenol, Flexeril and Toradol. She was told to avoid repetitive turning, twisting, bending over, lifting heavy items. She was instructed to follow up with primary care physician in the next day or two.

On 3/21/22, petitioner presented to her primary care physician, Dr. Kandace Lamonica, with complaints of neck pain and stiffness for 5 days. Petitioner was concerned that "something is broke back there" because she continued to have recurrent episodes of neck tightness. She denied any radiating pain down her arms, as well as any numbness and tingling in her arms and hands. Following an examination, Dr. Lamonica performed 4 trigger point injections into her neck and upper trapezius. She had relief in 10 minutes. She was released on an as needed basis. Dr. Lamonica authorized petitioner off work from 3/18/21-3/21/21 with a full duty release on 3/22/21.

On 3/29/22 petitioner to the emergency room with worsening complaints in her neck and numbness down her left arm. She stated that Dr. Lamonica sent her to the emergency for a possible pinched nerve. Another emergency room note indicated that petitioner reported that her neck pain began on 3/17/22 after she was lifting something heavy at work, and started noticing numbness down her left arm, and weakness. A CT of the cervical spine revealed straightening of the cervical lordosis, and a C4-C5 central disc protrusion with superior migration abutting the ventral spinal cord. An MRI was recommended for further evaluation. Petitioner was assessed with cervical radiculopathy at C5, and was referred back to Dr. Lamonica for an MRI of her cervical spine and possible physical therapy. Petitioner was also given a

neurosurgeon referral. She was released to work on 4/1/22 with restrictions on no pushing/pulling/lifting greater than 10 pounds until see by PCP.

On 3/31/22 petitioner was seen by Dr. Lamonica. Dr. Lamonica noted that petitioner had been dealing with ongoing neck pain since 3/16/22 after lifting boxes at work. She noted that she was treated with NSAIDs, muscle relaxers and trigger point injections with mild relief. She reported that she was not experiencing any radiation. Petitioner reported that she was again lifting boxes on 3/29/22 and noticed a sharp pain down her left arm with numbness of her left hands. Since then, she reported pain with neck movements and continued numbness/weakness. Dr. Lamonica assessed C4-C5 disc protrusion with radiculopathy. She ordered an MRI of the cervical spine and physical therapy. Dr. Lamonica took petitioner off work effective 3/31/22.

On 4/13/22 petitioner presented to Multicare Specialists, P.C. She was seen by Dr. Brooks, D.C., and underwent physical therapy. On her history and physical form petitioner gave a history of working as a crew trainer on 3/16/22, when she felt a sharp pain in the middle of the base of her neck while lifting a heavy box out of the freezer.

On 4/15/22 petitioner underwent an MRI of her cervical spine that revealed a large left paracentral at C3-C4, central at C4-C5, slightly smaller at C5-C6 and C6-C7 central protrusions with annular tears/fissures at the apex of each, cranially extruded disc material and C3-C4 and C4-C5; moderate central canal stenosis at and above C3-C4 and C4-C5, milder central canal stenosis at C5-C6 and C6-C7; and mild foraminal stenoses at C3-C4 and C4-C5 due to foraminal extension of the disc herniation.

On 5/17/22 petitioner presented to Dr. Matthew Gornet. Petitioner's main complaint was neck pain to the base of her neck, bilateral trapezial pain, left greater than right, and pain in her left shoulder and down her left arm to her left hand with numbness and tingling in her fingertips and left scapular pain, and occasional tingling in her right hand. She reported that her current problems began on 3/16/22 when she was lifting two boxes of fries in the walk-in freezer and had sudden pain in her left side of her neck. She reported her treatment to date. She stated that her symptoms were getting worse. Petitioner also gave a history of a previous neck injury at the end of December 2021 or early January 2022 while working for respondent. She reported that she was lifting a heavy metal container of tea at that time and felt pain in her neck. She noted that she was placed on light duty and then returned to full duty work, with continued pain. She denied any prior neck problems. She related her neck problems to both injuries, with the injury on 3/16/22 really creating more problems, and the left arm symptoms. Following an examination, x-rays of the cervical spine, and review of the MRI of the cervical spine performed 4/15/22, Dr. Gornet referred petitioner to Dr. Blake for a single steroid injection at C6-C7. He was of the opinion that if she was not

improved, she would require disc replacements from C3-C7. Dr. Gornet was of the opinion that her current condition of ill-being as it relates to her cervical spine is causally related to her injury on 3/16/22, as well as her injury at the end of December 2021 or early January 2022, given that she also had symptoms following that injury. Dr. Gornet took petitioner off work through 7/21/22.

On 6/20/22 started working at another McDonald's restaurant on Westville Plaza Drive.

On 6/21/22 petitioner underwent a steroid injection at C6-C7 by Dr. Blake. Her post-operative diagnosis was left cervical radiculopathy.

Petitioner continued in physical therapy through 7/14/22. On that date she reported that she was continuing to do better and had not had a setback with her pain. Her assessment was improved mobility and decreased pain. On 7/20/22 petitioner's therapy was stopped at the direction of Dr. Gornet.

On 7/21/22 petitioner followed-up with Dr. Gornet for predominantly trapezial and shoulder pain, left scapular pain, and tingling in her fingertips. Dr. Gornet was of the opinion that her symptoms, at least in their level of severity, relates to a work injury on 3/16/22 at McDonalds. She reported that the injection on 6/21/22 helped her, but she still had some residual symptoms. Dr. Gornet was of the opinion that since her MRI showed large herniations at C3-C4 and C4-C5, and to some extent herniations at C5-C6 and C6-C7, petitioner would need a four level cervical disc replacement. Dr. Gornet was of the opinion that clinically petitioner was improved, but she was not at maximum medical improvement. Dr. Gonet recommended a trial of full duty work at McDonalds.

On 9/19/22 the petitioner underwent a Section 12 examination performed by Dr. Daniel Kitchens, at the request of the respondent. Dr. Kitchens noted that petitioner gave a history of an injury in December of 2022 and 3/17/22. She provided a history of changing out the tea container and felt a pain, like something pulled when she lifted it. She provided a history of her treatment. She also reported that she picked up a case of fries and felt bad pain, and her left hand was tingling and numb. She reported her treatment following that injury. She reported that she was currently off work. She stated that her neck pain began at the end of December, after lifting tea at work. She reported calling off work the next day and going to the hospital. Petitioner testified that after injuring herself lifting a case of fries at work, she sought treatment at the emergency room the next day. She reported that since then the pain in her left arm and hand had worsened. She reported an improvement with the injection. She stated that she works 20-0- hours a week as a manager at a different McDonalds than the one where the injuries occurred.

Following an examination, record review from 12/27/21 through 7/21/22, and review of cervical x-rays performed 5/17/22 and the cervical MRI of 4/15/22, Dr. Kitchens assessed disc herniations at C3-

C4, and C4-C5; disc bulging at C5-C6 and C6-C7; and, congenital canal stenosis. He was of the opinion she had no cervical radiculopathy or myelopathy. Dr. Kitchens was of the opinion that petitioner was a poor historian, and the history she provided him was inconsistent with what she provided Dr. Gornet. Based on a belief that petitioner's injury was on 12/27/21, Dr. Kitchens opined that his diagnoses with respect to petitioner's cervical spine are not causally related to the alleged injury of 12/27/21. He was of the opinion that there is no possible mechanism of injury that could have created the MRI findings noted on 4/15/22. He was further of the opinion that it is impossible that an event on 12/27/21 caused pain 1 week prior to that event. He noted that there was no mention of neck pain or of a work injury on 12/27/21, only a diagnosis of COVID-19. Dr. Kitchens opined that his diagnoses with respect to petitioner's cervical spine are not causally related to the alleged injury of 3/16/22. He was of the opinion that there is no possible mechanism of injury that could have created the MRI findings noted on 3/16/22. He was of the opinion that the emergency room record of 3/18/22 did not provide any evidence of a cervical myelopathy or cervical radiculopathy. He noted that petitioner has congenital canal stenosis that she was born with. Dr. Kitchens was of the opinion that none of petitioner's treatment was related to her alleged injuries. He was further of the opinion that petitioner did not require any additional treatment for her cervical spine. He was of the opinion that she did not have evidence of cervical radiculopathy or cervical myelopathy. He saw no indication for a 4-level cervical disc replacement as recommended by Dr. Gornet. He did not believe petitioner was in need of any work restrictions related to either alleged work injury. He was of the opinion that she was capable of working full duty. He did not believe she had a work injury on 12/27/21 or 3/16/22.

On 10/24/22 petitioner returned to Dr. Gornet with ongoing neck pain going to both traps, shoulders and her left scapula. She stated that she has to work, as it is a financial hardship in order to support her family. Dr. Gornet's opinions remained the same.

On 10/17/22 Dr. Matthew Cole, at Tiune Health Group performed a Utilization Review on the four level disc replacement from C3-C7 recommended by Dr. Gornet, related to the injury petitioner sustained on 3/16/22. Dr. Cole reviewed records from 12/27/21 through 7/21/22. Dr. Cole was of the opinion that the recommended disc replacement was not supported by the ODG guidelines. He noted petitioner's BMI was 43.93 on 3/29/22, and this is a contraindication to the planned procedure, and there is no evidence of a recent decrease in weight that translates to a change in the BMI to less than 40. Additionally, he was of the opinion that the most recent doctor record dated 7/21/22 that noted that the petitioner was doing better from the effect of the epidural steroid injection, and the provider recommended a trial return to full duty work for three months indicated that petitioner's clinical and

functional status was well. Based on his review of the medical records from 12/27/21 through 7/21/22 Dr. Coleman found the medical necessity of four levels of C3-C4, C4-C5, C5-C6, and C6, C7 cervical disc replacement is not established. Dr. Coleman recommended non-certification of the recommended disc replacement surgery.

On 1/26/23 petitioner followed-up with Dr. Gornet for her work injury of 3/16/22. Her main symptoms remained axial neck pain, bilateral trapezius pain, left greater than right into her left shoulder and left arm and hand with numbness and tingling into her fingertips and scapular pain. She noted symptoms on the right, but not as bad. Dr. Gornet reiterated his surgical recommendation.

Dr. Gornet reviewed the Section 12 examination of Dr. Kitchens dated 9/19/22. He did not agree with Dr. Kitchens findings. Dr. Gornet noted that he was of the opinion that the MRI appearance of the disc pathology was acute in nature with fluid within the disc itself consistent with something that is not degenerative. He reiterated that he was of the opinion that petitioner was in need of further treatment consistent with the objective studies. He continued petitioner on full duty work without restrictions.

On 4/24/23 petitioner returned to Dr. Gornet. Petitioner reported that her pain and symptoms continued to progress, and she was miserable. Dr. Gornet told her that if her symptoms continue to progress, he may have to take her off work completely. He noted that he was still waiting for approval of his recommended surgery.

On 5/25/23 the evidence deposition of Dr. Matthew Gornet, an orthopedic surgeon, was taken on behalf of petitioner. His practice is devoted to spinal problems focused predominantly on neck and back pain. Dr. Gornet is also in engaged in research regarding the treatment of spinal injuries and conditions. Dr. Gornet opined that petitioner's symptoms, at least in their level of severity, are related predominantly to the accident on 3/16/22. He further opined that even though she had some pain after the December 2021 accident, that could play a role in her axial neck pain, but her radicular symptoms are all from the accident on 3/16/22. Dr. Gornet opined that petitioner has significant spinal cord compression and if she should fall or something at work or something of that nature, it could produce catastrophic consequences, including paralysis. Dr. Gornet opined that petitioner needs a multilevel cervical disc replacement at C3-C4, C4-C5, C5-C6 and C6-C7.

Dr. Gornet testified that he did not agree with Dr. Kitchens conclusions. He was of the opinion that they were not consistent with any treatment of like or similar symptoms. He opined that petitioner has spinal cord compression with a neurologic compression that has progressed, and by any measure she is a patient that is a candidate for surgery. He opined that the treatment he provided petitioner was

reasonable and necessary to diagnose, cure and relieve the effects of her December 2021 and March 2022 work injuries. He further opined that the disc replacement surgery he recommended is reasonable and necessary to cure and relieve the effects of the two work injuries. He opined that the injuries, caused the disc pathology that requires surgery.

On cross examination, Dr. Gornet testified that petitioner reported no other activities associated with the onset of her work activities, other than the two incidents she reported. Dr. Gornet testified that in his surgery center alone there are multiple surgeons, including him, that perform three and four level cervical disc replacements. He stated that he had been performing cervical disc replacements for 17 years, and it is not new technology.

On 6/7/23 the evidence deposition of Dr. Daniel Kitchens, board certified in neurological surgery, was taken on behalf of the respondent. Dr. Kitchens testified that he treats and performs surgery on the cervical spine. Dr. Kitchens does not perform disc replacements. Dr. Kitchens testified that when he examined petitioner, she complained of neck pain that was a tingling, numbness type discomfort in her neck. Dr. Kitchen testified that petitioner had chiropractic and physical therapy treatment, as well as an injection, that only provided a little improvement. Dr. Kitchen was of the opinion that when he examined petitioner she had no evidence of cervical radiculopathy or cervical myelopathy. Dr. Kitchens was also of the opinion that his review of the cervical MRI showed only disc bulging at C5-C6 and C6-C7, which did not produce central and foraminal stenosis, and therefore, there is no need for surgery at these levels. Dr. Kitchens did not see any evidence of spinal cord edema or evidence of changes within the spinal cord. Dr. Kitchens was of the opinion that petitioner did not have critical spinal cord stenosis or a spinal cord injury. Dr. Kitchens opined that petitioner's diagnoses were not related to, caused by, worsened by, or exacerbated by the work injuries she reported. Dr. Kitchens opined that there is no possible mechanism of injury that could have created the MRI findings on 4/15/22 given that petitioner had no force applied to her head or neck, a trip or a fall, or any abnormal action to her head or neck. He was of the opinion that petitioner's cervical spine condition of congenital stenosis is a condition she was born with, and has been present her entire life. He opined that her treatment to date for her spine is not causally related to the 2 injuries she reported; that she does not require any further treatment for her cervical spine related to the 2 injuries she reported; that petitioner's current condition of ill-being as it relates to her cervical spine is not an aggravation of a degenerative disc disease; that petitioner could return full duty work; and, that petitioner has reached maximum medical improvement.

On cross examination, Dr. Kitchens testified that he examined petitioner at the request of respondent's counsel. Dr. Kitchens opined that petitioner needs no treatment for her herniated discs. Dr.

Kitchens testified that he reviewed no records prior to 12/27/21 that substantiate any complaints petitioner had with respect to her cervical spine. Dr. Kitchens admitted that petitioner was diagnosed with cervical radiculopathy by various healthcare providers. Dr. Kitchens was of the opinion that it is not possible to herniate a cervical disc by lifting heavy objects.

On redirect examination, Dr. Kitchens was of the opinion that cervical radiculopathy can resolve on its own.

On 6/13/23 the deposition of Dr. Matthew Coleman, an orthopedic surgeon, was taken on behalf of the respondent. Dr. Coleman specializes in spine surgery. He is licensed in the State of Illinois. Dr. Coleman had no knowledge as to whether or not Triune Health Group Claims Eval are accredited with the Illinois Department of Insurance. Dr. Coleman was of the opinion that after reviewing petitioner's treatment records he did not certify the 4 level cervical disc replacement being recommended because a 4 level disc arthroplasty is not an FDA approved procedure and would be considered almost criminal by most American spine surgeons; that although petitioner has multilevel degenerative disc disease and only a large acute disc herniation at C3-C4, surgery would only be appropriate at the C3-C4 level; that the other levels only have minor degenerative findings and therefore would not be appropriate for a disc replacement; that petitioner's BMI exceed the indication for a total disc arthroplasty; and, that petitioner was responding to conservative therapy. Dr. Coleman testified that he based his opinion on his own clinical judgment, and clinical experience, training, and those type of things. Dr. Coleman was of the opinion that the ODG state that a total disc arthroplasty can reasonably be used for one or two level contiguous cervical disease between C3-C7. He noted that the ODG does not directly state anything about a four level disc replacement because it is wildly off the map when it comes to indication for a total disc arthroplasty. Dr. Coleman testified that Dr. Gornet never reached out to him to appeal his report.

On cross-examination Dr. Coleman was of the opinion that a herniation at C3-C4 would cause a C4 radiculopathy which typically manifests as shoulder blade pain. He was of the opinion that C4-C5 radiculopathy would manifest as lateral shoulder pain; that C5-C5 radiculopathy would manifest as pain into the anterior biceps, forearm and thumb; and, that C6-C7 radiculopathy would manifest as pain in the triceps, forearm and index and middle finger. Dr. Coleman was of the opinion that petitioner exhibited signs of cervical radiculopathy, but not cervical myelopathy. Dr. Coleman was of the opinion that generally speaking, a lifting mechanism could be sufficient to cause a cervical disc herniation. Dr. Coleman was unaware of what petitioner was lifting or how heavy it was when she was injured. However, he was of the opinion that if petitioner lifted a heavy object there is a relatively strong causal link between the disc herniation and the injury on 3/16/22. Dr. Coleman was of the opinion that if

petitioner had concurrent chiropractic and physical therapy way beyond 18 sessions, that would be considered excessive treatment. He was of the opinion that the standard of care call for up to 18 sessions of physical therapy. Dr. Coleman testified that he does perform disc replacements, with only one or two level disc replacements. Dr. Coleman agreed that his practice of medicine is not dictated by FDA approval or non-approval of particular drugs or devices, and ODG guidelines do not dictate the treatment of his private patients. Dr. Coleman testified that he would operate on obese patients if their radiculopathy was causing weakness, or intractable pain. Dr. Coleman was of the opinion that he would defer to the treating physician to do the calculous, if the petitioner's quality of life, or neurologic dysfunction, or pain levels are so great that they outweigh the risks of the surgery not going well or there being a complication.

On cross examination, Dr. Coleman was of the opinion if that an obese patient comes in with progressive myelopathy, the need for cervical surgery would supersede the obesity contraindication. Dr. Coleman was of the opinion that the medical records he reviewed show the petitioner had no signs of cervical myelopathy.

On 8/24/23 petitioner followed-up with Dr. Gornet. Petitioner's complaints, Dr. Gornet's examination, petitioner's work status, and Dr. Gornet's authorization for surgery remained the same.

Respondent offered into evidence petitioner's time logs. Petitioner did not work on 12/20/21, but did work on 12/18/21, 12/19/21, 12/21/21-12/24/21, and 12/26/21-12/29/21. Petitioner did work on 3/16/22, but not 3/17/22.

Petitioner is currently employed as an RA at a Cedarhurst, an assisting living residence. She passes out medications. She works 26-30 hours a week. Petitioner testified that she started school in 2022. She is enrolled at St. Louis Community College, and is studying nursing. She has completed 8-9 classes already, and is taking her final three this semester. She is set to graduate the beginning of next year.

Petitioner testified that she has a 6 year old son. She testified that she wants to undergo the surgery so she can provide for her son.

Petitioner's current complaints include left hand numbness and tingling, left sided neck pain, and shoulder pain going into her spine that feels like a shock. She reported pain in her neck often. She denied any problems with her right side. She testified that the accident on 3/16/22 made her preexisting symptoms worse.

C. DID AN ACCIDENT OCCUR ON 12/20/21 AND 3/16/22 THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

To obtain compensation under the Act, a claimant must show, by a preponderance of the credible 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 incidental to the employment when it belongs to or is connected with what the employee has to do in order in fulfilling his job duties. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848.

In the case at bar the petitioner is alleging she sustained two accidents. One on 12/20/21, and another on 3/16/22.

First, with respect to the injury on 12/20/21. Petitioner testified at trial that on 12/20/21 she lifted a 40-50 pound container of tea off the compartment stand and heard a pop in the left side of her neck. She testified that she reported the injury to Casandra on 12/20/21, but no incident report was created. She testified that the incident report was to completed when the General Manager came in, but it was not.

Petitioner's first treatment after the alleged injury on 12/20/21 was at the emergency room at St. Elizabeth on 12/27/21. There she complained of left sided neck pain for the past week. She gave a history of lifting heavy boxes, and noted that she did get a new mattress and pillow, but did not think it was contributing to her symptoms. The arbitrator finds it significant that petitioner did not make any mention of the alleged incident on 12/20/21 while lifting a tea container weighing 40-50 pounds, and made no mention that the history of lifting boxes was at work.

Just two days later on 12/29/21, petitioner presented to the emergency room at Memorial Hospital Shiloh, for a urinary tract infection. She also reported COVID-19 symptoms and tested positive for COVID-19. She made no specific complaints with respect to her cervical spine, and on exam she had full passive range of motion without pain, as well as normal range of motion and supple neck. She also

made absolutely no mention of the alleged injury she sustained at work on 12/20/21. Petitioner underwent no further treatment until after the alleged injury on 3/16/22.

The arbitrator finds it significant that the first mention of petitioner lifting a tea container off a compartment stand in late December 2021 or early January 2022, was when she presented to Dr. Gornet on 5/17/22. There is no mention of that accident history in any medical report prior to this date. Additionally, the arbitrator finds it significant that this history to Dr. Gornet does not even include a specific injury date.

When petitioner presented to Dr. Kitchens for an examination in 9/19/22 she also reported that her neck pain began at the end of December 2021 after lifting tea at work. She told Dr. Kitchens that she called off work the next day and went to the hospital. Given that petitioner's first treatment after her alleged injury on 12/20/21 was not until 12/27/21, and based on her history to Dr. Kitchens that she called off work the day after the injury and went to the hospital, the arbitrator finds that this would place her alleged injury on 12/26/21.

In reviewing the filed Applications related to the alleged injury on 12/20/23, the petitioner first filed her claim on 4/7/22 alleging an accident date of 12/27/21. On 7/24/23 she filed two amended applications, one changing the accident date to 12/7/21, and another changing the accident date to 12/20/21. The arbitrator finds these multiple amended applications shows petitioner did not have a specific date of accident, but continually tried to find one that would be supported by the medical evidence.

Lastly, the arbitrator finds it most significant that respondent placed into evidence petitioner's time log's for December 2021 that show that petitioner did not punch in or out on 12/20/21. Petitioner did not rebut this evidence. Therefore, the arbitrator finds the petitioner could not have sustained an injury at work on 12/20/21 since she was not working.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 12/20/21. The arbitrator bases this finding on the fact 1) that petitioner was not at work on 12/20/21; 2) that there is no incident report completed by petitioner, her supervisor, or the General Manager with respect to an injury at work on 12/20/21 that was offered into evidence; 3) that the treatment record of 12/27/21, most contemporaneous to the alleged accident of 12/20/21, does not include a history of petitioner lifting a container of tea at work on 12/20/21; 4) that the only mention of any incident in the 12/27/21 report is a history of petitioner lifting heavy boxes, and her reporting that she

did get a new mattress and pillow; 5) that the history of lifting heavy boxes in the 12/27/21 report makes absolutely no mention of this lifting of heavy boxes occurred at work; and, 6) that her first documented history of injuring her neck at work while lifting a container of tea was not until she presented to Dr. Gornet on 5/17/22, nearly 6 months after the alleged injury, and it only includes a general reference as to when the accident occurred, not a specific date.

Petitioner also testified that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 3/16/22, when she lifted boxes of French Fries weighing 40-50 pounds out of compartment stand. Petitioner testified that she reported the injury to Cassandra, but no incident report was created. She testified that it was to be completed when the General Manager came in. However, petitioner did not know if any incident report was completed when the General Manager came in, and none were offered into evidence.

When petitioner first sought treatment following this alleged injury at the emergency room at Memorial Hospital Shiloh on 3/18/22, she complained of neck and upper back pain for 2 months. She stated that she was doing well until 3/16/22 when her pain got worse. Petitioner specifically denied any injury, any numbness or tingling, or weakness in her bilateral arms. She also made no mention of any injury at work on 3/16/22 while lifting boxes of French Fries.

Her next treatment was with Dr. Lamonica on 3/21/22. She reported complaints of neck pain and stiffness for 5 days. Again, petitioner made no mention of any work injury on 3/16/22 while lifting boxes of French Fries.

About a week later, on 3/29/22 petitioner again presented to the emergency room with worsening complaints in her neck, and numbness down the left arm. On this date, petitioner gave a history of her neck pain beginning on 3/17/22 after lifting something heavy at work, and noticing numbness down her left arm, and weakness.

It was not until petitioner returned to Dr. Lamonica on 3/31/22 that she made ay mention of lifting boxes at work on 3/16/22. By 4/13/22 her alleged accident history became more detailed. She reported to Dr. Brooks that on 3/16/22, she felt a sharp pain in the middle of the base of her neck while lifting a heavy box out of the freezer. On 5/17/22 her accident history was even more detailed. On that date, she told Dr. Gornet that her current problems began on 3/16/22 when she was lifting two boxes of fries in the walk-in freezer and had sudden pain in the left side of her neck. When petitioner presented to Dr. Kitchens on 9/19/22 she reported that it was on 3/17/22 that she lifted up a case of fries at work and felt bad. However, the arbitrator notes that petitioner was not working on 3/17/22.

Again, like with respect to the first alleged injury on 12/20/21, the history most contemporaneous to the alleged injury on 3/16/22, does not reflect an accident history consistent with what petitioner testified to at trial. In fact, the emergency room record of 3/18/22 includes a history that petitioner specifically denied any injury, loss of sensation, numbness or tingling, or weakness in her bilateral upper extremities. The arbitrator also finds it significant that as her symptoms worsen, with each medical visit the history of her alleged injury on 3/16/22 become much more detailed. First, just 2 days after the alleged injury, petitioner denies any injury. Then 5 days after the alleged injury, she also makes no mention of any work injury. Then when her symptoms worsen and she again returns to the emergency room, she relates her symptoms to lifting something heavy at work. Then after the CT of her cervical spine shows some positive findings, her history includes lifting boxes at work. Then after the MRI which showed additional positive findings, her accident history to Dr. Gornet on 5/17/22 details her lifting 2 boxes of French Fries in the walk-in freezer at work and experiencing sudden pain in the left side of her neck.

Based on the above, the arbitrator again finds the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 3/16/22. The arbitrator bases this finding again on the fact 1) that there was no accident report offered into evidence; 2) that petitioner was not sure if the General Manager completed an accident report; 3) that absent an accident report to support her claim, petitioner did not see fit to call Cassandra to testify that she reported the injury to her, given that petitioner claims she reported the injury to her on 3/16/22; 4) that the medical record most contemporaneous to the injury does not include any accident history, but includes a reference to petitioner denying that she sustained any injury, loss of sensation, numbness or tingling, or weakness in her upper extremities; 5) that petitioner did not begin providing a generic accident history until her symptoms worsened on 3/29/22, 6) that petitioners' claims of injuring herself on 3/17/22 while lifting something heavy at work are unsupported by her time logs which show she did not work on 3/17/22; and, 7) that it was not until petitioner saw Dr. Gornet on 5/17/22 had her accident history changed from a denial of injury, to an injury lifting something heavy at work, to lifting boxes at work, and finally to lifting 2 boxes of French Fries in the walk-in freezer.

Given the multitude of inconsistencies in the credible evidence as it relates to alleged histories of accident on both 12/20/21 and 3/16/22, as well as the fact that the petitioner was not even working on 12/20/21, and her failure to provide any accident report or witness to corroborate her testimony, the arbitrator finds the petitioner's testimony not credible.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURIES ON 12/20/21 AND 3/16/22?
J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY FOR THE INJURIES ON 12/20/21 AND 3/16/22? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES FOR THE INJURIES ON 12/20/21 AND 3/16/22?
K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE FOR THE INJURIES ON 12/20/21 AN 3/16/22?
L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE FOR THE INJURY ON 3/16/22?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 12/20/21 or 3/16/22, the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009178
Case Name	Darreka Lewis v. Mary Mac Inc., dba McDonald's,
Consolidated Cases	22WC009173;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0439
Number of Pages of Decision	20
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Carol Cesaretti

DATE FILED: 9/13/2024

/s/Stephen Mathis, 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

Darreka Lewis,

Petitioner,

vs. NO. 22WC 09178

Mary Mac, Inc. d/b/a McDonald's,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, prospective medical care, 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 September 26, 2023, is hereby affirmed and adopted.

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. 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.

September 13, 2024

SJM/sj
o-7/24/2024
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	22WC009178
Case Name	Darreka Lewis v. Mary Mac Inc., d/b/a McDonald's,
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Carol Cesaretti

DATE FILED: 9/26/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Maureen Pulia, 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)

DARREKA LEWIS,
Employee/Petitioner

v.

MARY MAC INC, dba MCDONALD'S,
Employer/Respondent

Case # **22** WC **9178**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **8/31/23**. 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

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

FINDINGS

On the date of accident, **3/16/22**, 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 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 $**23,140.00**; the average weekly wage was $**445.00**.

On the date of accident, Petitioner was **24** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

The petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 3/16/22. The arbitrator finds the remaining issues in dispute moot.

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.

SEPTEMBER 26, 2023

Signature of Arbitrator

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 24 year old crew person, alleges she sustained accidental injuries to her neck that arose out of and in the course of her employment by respondent on 12/20/21 (22WC9173) and 3/16/22 (22WC9178). Petitioner testified that she started working for respondent somewhere between June and September of 2021. She worked at the Collinsville location.

Petitioner testified that her duties including serving as a cashier, taking orders, stocking, and going into the grill area. Petitioner denied ever injuring her neck prior to 12/20/21. She also denied any treatment for her neck prior to 12/20/21.

Petitioner testified that on 12/20/21 she injured her neck when she tried to lift the tea container off the compartment stand. She testified that the container weighed between 40 and 50 pounds and when she went to lift it, she heard a pop in the left side of her neck. She testified that the symptoms in her arm and hand came after 3/16/22.

Petitioner testified that she reported her injury to her supervisor, Cassandra, on 12/20/21. Petitioner testified that following the injury, no accident report was completed. She stated that it was to be completed when the General Manager came in the store, but was not.

Petitioner first sought treatment for her injury when she presented to the emergency room at St. Elizabeth on 12/27/21. Petitioner complained of left sided neck pain for the past week. She gave a history of lifting heavy boxes. She noted that she did get a new mattress and pillow, but does not think it was contributing to her symptoms. She denied any numbness. An examination revealed a palpable left trapezius muscle spasm. She held her head stiffly with her left shoulder elevated, and was able to rotate her head from left to right, and extend and flex without difficulty. X-rays of the cervical spine revealed a straightened lordosis, with no acute bony abnormality. She was diagnosed with Torticollis, given some prescriptions and referred to her primary care physician.

On 12/29/21 petitioner presented to Nurse Practitioner Kamal Akhtar, at the emergency room at Memorial Hospital Shiloh, for a urinary tract infection. She reported partial vaccination for COVID-19. She had COVID-19 symptoms, and her COVID-19 test was positive. She reported myalgias, and her examination was positive for weakness. Her trachea and phonation were normal. With regards to her cervical back she had full passive range of motion without pain, as well as normal range of motion and supple neck. Akhtar's clinical impression was COVID-19 virus infection.

Petitioner continued working light duty.

Petitioner testified that on 3/16/22 while she was attempting to lift boxes of French Fries weighing 40-50 pounds out of the compartment stand, she again felt pain in the left side of her neck. She also experienced numbness and tingling down her left arm. Petitioner testified that she reported this injury to Casandra after it occurred. No accident report was completed at that time. Again, she had to wait until the General Manager came in to complete the accident report. It is unknown if the General Manager completed an accident report.

Petitioner first sought treatment following this accident on 3/18/22 at the emergency room at Memorial Hospital Shiloh. She complained of neck and upper back pain. She complained of pain that starts at her neck and goes to her upper back for approximately 2 months. She stated that at that time she was treated with muscle relaxants and other over the counter medication with minimal relief. She stated that she was doing well until 3/16/22, when her pain got worse. She denied any injury, loss of sensation, any numbness or tingling, or weakness in her bilateral upper extremity. X-rays of the cervical spine revealed a straightened lordosis, and no acute bony abnormality. An examination revealed diffuse tenderness on palpitation on cervical spine and upper back. She was assessed with a strain of the neck muscle, and thoracic myofascial strain. She was prescribed Tylenol, Flexeril and Toradol. She was told to avoid repetitive turning, twisting, bending over, lifting heavy items. She was instructed to follow up with primary care physician in the next day or two.

On 3/21/22, petitioner presented to her primary care physician, Dr. Kandace Lamonica, with complaints of neck pain and stiffness for 5 days. Petitioner was concerned that "something is broke back there" because she continued to have recurrent episodes of neck tightness. She denied any radiating pain down her arms, as well as any numbness and tingling in her arms and hands. Following an examination, Dr. Lamonica performed 4 trigger point injections into her neck and upper trapezius. She had relief in 10 minutes. She was released on an as needed basis. Dr. Lamonica authorized petitioner off work from 3/18/21-3/21/21 with a full duty release on 3/22/21.

On 3/29/22 petitioner to the emergency room with worsening complaints in her neck and numbness down her left arm. She stated that Dr. Lamonica sent her to the emergency for a possible pinched nerve. Another emergency room note indicated that petitioner reported that her neck pain began on 3/17/22 after she was lifting something heavy at work, and started noticing numbness down her left arm, and weakness. A CT of the cervical spine revealed straightening of the cervical lordosis, and a C4-C5 central disc protrusion with superior migration abutting the ventral spinal cord. An MRI was recommended for further evaluation. Petitioner was assessed with cervical radiculopathy at C5, and was referred back to Dr. Lamonica for an MRI of her cervical spine and possible physical therapy. Petitioner was also given a

neurosurgeon referral. She was released to work on 4/1/22 with restrictions on no pushing/pulling/lifting greater than 10 pounds until see by PCP.

On 3/31/22 petitioner was seen by Dr. Lamonica. Dr. Lamonica noted that petitioner had been dealing with ongoing neck pain since 3/16/22 after lifting boxes at work. She noted that she was treated with NSAIDs, muscle relaxers and trigger point injections with mild relief. She reported that she was not experiencing any radiation. Petitioner reported that she was again lifting boxes on 3/29/22 and noticed a sharp pain down her left arm with numbness of her left hands. Since then, she reported pain with neck movements and continued numbness/weakness. Dr. Lamonica assessed C4-C5 disc protrusion with radiculopathy. She ordered an MRI of the cervical spine and physical therapy. Dr. Lamonica took petitioner off work effective 3/31/22.

On 4/13/22 petitioner presented to Multicare Specialists, P.C. She was seen by Dr. Brooks, D.C., and underwent physical therapy. On her history and physical form petitioner gave a history of working as a crew trainer on 3/16/22, when she felt a sharp pain in the middle of the base of her neck while lifting a heavy box out of the freezer.

On 4/15/22 petitioner underwent an MRI of her cervical spine that revealed a large left paracentral at C3-C4, central at C4-C5, slightly smaller at C5-C6 and C6-C7 central protrusions with annular tears/fissures at the apex of each, cranially extruded disc material and C3-C4 and C4-C5; moderate central canal stenosis at and above C3-C4 and C4-C5, milder central canal stenosis at C5-C6 and C6-C7; and mild foraminal stenoses at C3-C4 and C4-C5 due to foraminal extension of the disc herniation.

On 5/17/22 petitioner presented to Dr. Matthew Gornet. Petitioner's main complaint was neck pain to the base of her neck, bilateral trapezial pain, left greater than right, and pain in her left shoulder and down her left arm to her left hand with numbness and tingling in her fingertips and left scapular pain, and occasional tingling in her right hand. She reported that her current problems began on 3/16/22 when she was lifting two boxes of fries in the walk-in freezer and had sudden pain in her left side of her neck. She reported her treatment to date. She stated that her symptoms were getting worse. Petitioner also gave a history of a previous neck injury at the end of December 2021 or early January 2022 while working for respondent. She reported that she was lifting a heavy metal container of tea at that time and felt pain in her neck. She noted that she was placed on light duty and then returned to full duty work, with continued pain. She denied any prior neck problems. She related her neck problems to both injuries, with the injury on 3/16/22 really creating more problems, and the left arm symptoms. Following an examination, x-rays of the cervical spine, and review of the MRI of the cervical spine performed 4/15/22, Dr. Gornet referred petitioner to Dr. Blake for a single steroid injection at C6-C7. He was of the opinion that if she was not

improved, she would require disc replacements from C3-C7. Dr. Gornet was of the opinion that her current condition of ill-being as it relates to her cervical spine is causally related to her injury on 3/16/22, as well as her injury at the end of December 2021 or early January 2022, given that she also had symptoms following that injury. Dr. Gornet took petitioner off work through 7/21/22.

On 6/20/22 started working at another McDonald's restaurant on Westville Plaza Drive.

On 6/21/22 petitioner underwent a steroid injection at C6-C7 by Dr. Blake. Her post-operative diagnosis was left cervical radiculopathy.

Petitioner continued in physical therapy through 7/14/22. On that date she reported that she was continuing to do better and had not had a setback with her pain. Her assessment was improved mobility and decreased pain. On 7/20/22 petitioner's therapy was stopped at the direction of Dr. Gornet.

On 7/21/22 petitioner followed-up with Dr. Gornet for predominantly trapezial and shoulder pain, left scapular pain, and tingling in her fingertips. Dr. Gornet was of the opinion that her symptoms, at least in their level of severity, relates to a work injury on 3/16/22 at McDonalds. She reported that the injection on 6/21/22 helped her, but she still had some residual symptoms. Dr. Gornet was of the opinion that since her MRI showed large herniations at C3-C4 and C4-C5, and to some extent herniations at C5-C6 and C6-C7, petitioner would need a four level cervical disc replacement. Dr. Gornet was of the opinion that clinically petitioner was improved, but she was not at maximum medical improvement. Dr. Gonet recommended a trial of full duty work at McDonalds.

On 9/19/22 the petitioner underwent a Section 12 examination performed by Dr. Daniel Kitchens, at the request of the respondent. Dr. Kitchens noted that petitioner gave a history of an injury in December of 2022 and 3/17/22. She provided a history of changing out the tea container and felt a pain, like something pulled when she lifted it. She provided a history of her treatment. She also reported that she picked up a case of fries and felt bad pain, and her left hand was tingling and numb. She reported her treatment following that injury. She reported that she was currently off work. She stated that her neck pain began at the end of December, after lifting tea at work. She reported calling off work the next day and going to the hospital. Petitioner testified that after injuring herself lifting a case of fries at work, she sought treatment at the emergency room the next day. She reported that since then the pain in her left arm and hand had worsened. She reported an improvement with the injection. She stated that she works 20-0- hours a week as a manager at a different McDonalds than the one where the injuries occurred.

Following an examination, record review from 12/27/21 through 7/21/22, and review of cervical x-rays performed 5/17/22 and the cervical MRI of 4/15/22, Dr. Kitchens assessed disc herniations at C3-

C4, and C4-C5; disc bulging at C5-C6 and C6-C7; and, congenital canal stenosis. He was of the opinion she had no cervical radiculopathy or myelopathy. Dr. Kitchens was of the opinion that petitioner was a poor historian, and the history she provided him was inconsistent with what she provided Dr. Gornet. Based on a belief that petitioner's injury was on 12/27/21, Dr. Kitchens opined that his diagnoses with respect to petitioner's cervical spine are not causally related to the alleged injury of 12/27/21. He was of the opinion that there is no possible mechanism of injury that could have created the MRI findings noted on 4/15/22. He was further of the opinion that it is impossible that an event on 12/27/21 caused pain 1 week prior to that event. He noted that there was no mention of neck pain or of a work injury on 12/27/21, only a diagnosis of COVID-19. Dr. Kitchens opined that his diagnoses with respect to petitioner's cervical spine are not causally related to the alleged injury of 3/16/22. He was of the opinion that there is no possible mechanism of injury that could have created the MRI findings noted on 3/16/22. He was of the opinion that the emergency room record of 3/18/22 did not provide any evidence of a cervical myelopathy or cervical radiculopathy. He noted that petitioner has congenital canal stenosis that she was born with. Dr. Kitchens was of the opinion that none of petitioner's treatment was related to her alleged injuries. He was further of the opinion that petitioner did not require any additional treatment for her cervical spine. He was of the opinion that she did not have evidence of cervical radiculopathy or cervical myelopathy. He saw no indication for a 4-level cervical disc replacement as recommended by Dr. Gornet. He did not believe petitioner was in need of any work restrictions related to either alleged work injury. He was of the opinion that she was capable of working full duty. He did not believe she had a work injury on 12/27/21 or 3/16/22.

On 10/24/22 petitioner returned to Dr. Gornet with ongoing neck pain going to both traps, shoulders and her left scapula. She stated that she has to work, as it is a financial hardship in order to support her family. Dr. Gornet's opinions remained the same.

On 10/17/22 Dr. Matthew Cole, at Tiune Health Group performed a Utilization Review on the four level disc replacement from C3-C7 recommended by Dr. Gornet, related to the injury petitioner sustained on 3/16/22. Dr. Cole reviewed records from 12/27/21 through 7/21/22. Dr. Cole was of the opinion that the recommended disc replacement was not supported by the ODG guidelines. He noted petitioner's BMI was 43.93 on 3/29/22, and this is a contraindication to the planned procedure, and there is no evidence of a recent decrease in weight that translates to a change in the BMI to less than 40. Additionally, he was of the opinion that the most recent doctor record dated 7/21/22 that noted that the petitioner was doing better from the effect of the epidural steroid injection, and the provider recommended a trial return to full duty work for three months indicated that petitioner's clinical and

functional status was well. Based on his review of the medical records from 12/27/21 through 7/21/22 Dr. Coleman found the medical necessity of four levels of C3-C4, C4-C5, C5-C6, and C6, C7 cervical disc replacement is not established. Dr. Coleman recommended non-certification of the recommended disc replacement surgery.

On 1/26/23 petitioner followed-up with Dr. Gornet for her work injury of 3/16/22. Her main symptoms remained axial neck pain, bilateral trapezius pain, left greater than right into her left shoulder and left arm and hand with numbness and tingling into her fingertips and scapular pain. She noted symptoms on the right, but not as bad. Dr. Gornet reiterated his surgical recommendation.

Dr. Gornet reviewed the Section 12 examination of Dr. Kitchens dated 9/19/22. He did not agree with Dr. Kitchens findings. Dr. Gornet noted that he was of the opinion that the MRI appearance of the disc pathology was acute in nature with fluid within the disc itself consistent with something that is not degenerative. He reiterated that he was of the opinion that petitioner was in need of further treatment consistent with the objective studies. He continued petitioner on full duty work without restrictions.

On 4/24/23 petitioner returned to Dr. Gornet. Petitioner reported that her pain and symptoms continued to progress, and she was miserable. Dr. Gornet told her that if her symptoms continue to progress, he may have to take her off work completely. He noted that he was still waiting for approval of his recommended surgery.

On 5/25/23 the evidence deposition of Dr. Matthew Gornet, an orthopedic surgeon, was taken on behalf of petitioner. His practice is devoted to spinal problems focused predominantly on neck and back pain. Dr. Gornet is also in engaged in research regarding the treatment of spinal injuries and conditions. Dr. Gornet opined that petitioner's symptoms, at least in their level of severity, are related predominantly to the accident on 3/16/22. He further opined that even though she had some pain after the December 2021 accident, that could play a role in her axial neck pain, but her radicular symptoms are all from the accident on 3/16/22. Dr. Gornet opined that petitioner has significant spinal cord compression and if she should fall or something at work or something of that nature, it could produce catastrophic consequences, including paralysis. Dr. Gornet opined that petitioner needs a multilevel cervical disc replacement at C3-C4, C4-C5, C5-C6 and C6-C7.

Dr. Gornet testified that he did not agree with Dr. Kitchens conclusions. He was of the opinion that they were not consistent with any treatment of like or similar symptoms. He opined that petitioner has spinal cord compression with a neurologic compression that has progressed, and by any measure she is a patient that is a candidate for surgery. He opined that the treatment he provided petitioner was

reasonable and necessary to diagnose, cure and relieve the effects of her December 2021 and March 2022 work injuries. He further opined that the disc replacement surgery he recommended is reasonable and necessary to cure and relieve the effects of the two work injuries. He opined that the injuries, caused the disc pathology that requires surgery.

On cross examination, Dr. Gornet testified that petitioner reported no other activities associated with the onset of her work activities, other than the two incidents she reported. Dr. Gornet testified that in his surgery center alone there are multiple surgeons, including him, that perform three and four level cervical disc replacements. He stated that he had been performing cervical disc replacements for 17 years, and it is not new technology.

On 6/7/23 the evidence deposition of Dr. Daniel Kitchens, board certified in neurological surgery, was taken on behalf of the respondent. Dr. Kitchens testified that he treats and performs surgery on the cervical spine. Dr. Kitchens does not perform disc replacements. Dr. Kitchens testified that when he examined petitioner, she complained of neck pain that was a tingling, numbness type discomfort in her neck. Dr. Kitchen testified that petitioner had chiropractic and physical therapy treatment, as well as an injection, that only provided a little improvement. Dr. Kitchen was of the opinion that when he examined petitioner she had no evidence of cervical radiculopathy or cervical myelopathy. Dr. Kitchens was also of the opinion that his review of the cervical MRI showed only disc bulging at C5-C6 and C6-C7, which did not produce central and foraminal stenosis, and therefore, there is no need for surgery at these levels. Dr. Kitchens did not see any evidence of spinal cord edema or evidence of changes within the spinal cord. Dr. Kitchens was of the opinion that petitioner did not have critical spinal cord stenosis or a spinal cord injury. Dr. Kitchens opined that petitioner's diagnoses were not related to, caused by, worsened by, or exacerbated by the work injuries she reported. Dr. Kitchens opined that there is no possible mechanism of injury that could have created the MRI findings on 4/15/22 given that petitioner had no force applied to her head or neck, a trip or a fall, or any abnormal action to her head or neck. He was of the opinion that petitioner's cervical spine condition of congenital stenosis is a condition she was born with, and has been present her entire life. He opined that her treatment to date for her spine is not causally related to the 2 injuries she reported; that she does not require any further treatment for her cervical spine related to the 2 injuries she reported; that petitioner's current condition of ill-being as it relates to her cervical spine is not an aggravation of a degenerative disc disease; that petitioner could return full duty work; and, that petitioner has reached maximum medical improvement.

On cross examination, Dr. Kitchens testified that he examined petitioner at the request of respondent's counsel. Dr. Kitchens opined that petitioner needs no treatment for her herniated discs. Dr.

Kitchens testified that he reviewed no records prior to 12/27/21 that substantiate any complaints petitioner had with respect to her cervical spine. Dr. Kitchens admitted that petitioner was diagnosed with cervical radiculopathy by various healthcare providers. Dr. Kitchens was of the opinion that it is not possible to herniate a cervical disc by lifting heavy objects.

On redirect examination, Dr. Kitchens was of the opinion that cervical radiculopathy can resolve on its own.

On 6/13/23 the deposition of Dr. Matthew Coleman, an orthopedic surgeon, was taken on behalf of the respondent. Dr. Coleman specializes in spine surgery. He is licensed in the State of Illinois. Dr. Coleman had no knowledge as to whether or not Triune Health Group Claims Eval are accredited with the Illinois Department of Insurance. Dr. Coleman was of the opinion that after reviewing petitioner's treatment records he did not certify the 4 level cervical disc replacement being recommended because a 4 level disc arthroplasty is not an FDA approved procedure and would be considered almost criminal by most American spine surgeons; that although petitioner has multilevel degenerative disc disease and only a large acute disc herniation at C3-C4, surgery would only be appropriate at the C3-C4 level; that the other levels only have minor degenerative findings and therefore would not be appropriate for a disc replacement; that petitioner's BMI exceed the indication for a total disc arthroplasty; and, that petitioner was responding to conservative therapy. Dr. Coleman testified that he based his opinion on his own clinical judgment, and clinical experience, training, and those type of things. Dr. Coleman was of the opinion that the ODG state that a total disc arthroplasty can reasonably be used for one or two level contiguous cervical disease between C3-C7. He noted that the ODG does not directly state anything about a four level disc replacement because it is wildly off the map when it comes to indication for a total disc arthroplasty. Dr. Coleman testified that Dr. Gornet never reached out to him to appeal his report.

On cross-examination Dr. Coleman was of the opinion that a herniation at C3-C4 would cause a C4 radiculopathy which typically manifests as shoulder blade pain. He was of the opinion that C4-C5 radiculopathy would manifest as lateral shoulder pain; that C5-C5 radiculopathy would manifest as pain into the anterior biceps, forearm and thumb; and, that C6-C7 radiculopathy would manifest as pain in the triceps, forearm and index and middle finger. Dr. Coleman was of the opinion that petitioner exhibited signs of cervical radiculopathy, but not cervical myelopathy. Dr. Coleman was of the opinion that generally speaking, a lifting mechanism could be sufficient to cause a cervical disc herniation. Dr. Coleman was unaware of what petitioner was lifting or how heavy it was when she was injured. However, he was of the opinion that if petitioner lifted a heavy object there is a relatively strong causal link between the disc herniation and the injury on 3/16/22. Dr. Coleman was of the opinion that if

petitioner had concurrent chiropractic and physical therapy way beyond 18 sessions, that would be considered excessive treatment. He was of the opinion that the standard of care call for up to 18 sessions of physical therapy. Dr. Coleman testified that he does perform disc replacements, with only one or two level disc replacements. Dr. Coleman agreed that his practice of medicine is not dictated by FDA approval or non-approval of particular drugs or devices, and ODG guidelines do not dictate the treatment of his private patients. Dr. Coleman testified that he would operate on obese patients if their radiculopathy was causing weakness, or intractable pain. Dr. Coleman was of the opinion that he would defer to the treating physician to do the calculous, if the petitioner's quality of life, or neurologic dysfunction, or pain levels are so great that they outweigh the risks of the surgery not going well or there being a complication.

On cross examination, Dr. Coleman was of the opinion if that an obese patient comes in with progressive myelopathy, the need for cervical surgery would supersede the obesity contraindication. Dr. Coleman was of the opinion that the medical records he reviewed show the petitioner had no signs of cervical myelopathy.

On 8/24/23 petitioner followed-up with Dr. Gornet. Petitioner's complaints, Dr. Gornet's examination, petitioner's work status, and Dr. Gornet's authorization for surgery remained the same.

Respondent offered into evidence petitioner's time logs. Petitioner did not work on 12/20/21, but did work on 12/18/21, 12/19/21, 12/21/21-12/24/21, and 12/26/21-12/29/21. Petitioner did work on 3/16/22, but not 3/17/22.

Petitioner is currently employed as an RA at a Cedarhurst, an assisting living residence. She passes out medications. She works 26-30 hours a week. Petitioner testified that she started school in 2022. She is enrolled at St. Louis Community College, and is studying nursing. She has completed 8-9 classes already, and is taking her final three this semester. She is set to graduate the beginning of next year.

Petitioner testified that she has a 6 year old son. She testified that she wants to undergo the surgery so she can provide for her son.

Petitioner's current complaints include left hand numbness and tingling, left sided neck pain, and shoulder pain going into her spine that feels like a shock. She reported pain in her neck often. She denied any problems with her right side. She testified that the accident on 3/16/22 made her preexisting symptoms worse.

C. DID AN ACCIDENT OCCUR ON 12/20/21 AND 3/16/22 THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

To obtain compensation under the Act, a claimant must show, by a preponderance of the credible 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 incidental to the employment when it belongs to or is connected with what the employee has to do in order in fulfilling his job duties. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848.

In the case at bar the petitioner is alleging she sustained two accidents. One on 12/20/21, and another on 3/16/22.

First, with respect to the injury on 12/20/21. Petitioner testified at trial that on 12/20/21 she lifted a 40-50 pound container of tea off the compartment stand and heard a pop in the left side of her neck. She testified that she reported the injury to Casandra on 12/20/21, but no incident report was created. She testified that the incident report was to completed when the General Manager came in, but it was not.

Petitioner's first treatment after the alleged injury on 12/20/21 was at the emergency room at St. Elizabeth on 12/27/21. There she complained of left sided neck pain for the past week. She gave a history of lifting heavy boxes, and noted that she did get a new mattress and pillow, but did not think it was contributing to her symptoms. The arbitrator finds it significant that petitioner did not make any mention of the alleged incident on 12/20/21 while lifting a tea container weighing 40-50 pounds, and made no mention that the history of lifting boxes was at work.

Just two days later on 12/29/21, petitioner presented to the emergency room at Memorial Hospital Shiloh, for a urinary tract infection. She also reported COVID-19 symptoms and tested positive for COVID-19. She made no specific complaints with respect to her cervical spine, and on exam she had full passive range of motion without pain, as well as normal range of motion and supple neck. She also

made absolutely no mention of the alleged injury she sustained at work on 12/20/21. Petitioner underwent no further treatment until after the alleged injury on 3/16/22.

The arbitrator finds it significant that the first mention of petitioner lifting a tea container off a compartment stand in late December 2021 or early January 2022, was when she presented to Dr. Gornet on 5/17/22. There is no mention of that accident history in any medical report prior to this date. Additionally, the arbitrator finds it significant that this history to Dr. Gornet does not even include a specific injury date.

When petitioner presented to Dr. Kitchens for an examination in 9/19/22 she also reported that her neck pain began at the end of December 2021 after lifting tea at work. She told Dr. Kitchens that she called off work the next day and went to the hospital. Given that petitioner's first treatment after her alleged injury on 12/20/21 was not until 12/27/21, and based on her history to Dr. Kitchens that she called off work the day after the injury and went to the hospital, the arbitrator finds that this would place her alleged injury on 12/26/21.

In reviewing the filed Applications related to the alleged injury on 12/20/23, the petitioner first filed her claim on 4/7/22 alleging an accident date of 12/27/21. On 7/24/23 she filed two amended applications, one changing the accident date to 12/7/21, and another changing the accident date to 12/20/21. The arbitrator finds these multiple amended applications shows petitioner did not have a specific date of accident, but continually tried to find one that would be supported by the medical evidence.

Lastly, the arbitrator finds it most significant that respondent placed into evidence petitioner's time log's for December 2021 that show that petitioner did not punch in or out on 12/20/21. Petitioner did not rebut this evidence. Therefore, the arbitrator finds the petitioner could not have sustained an injury at work on 12/20/21 since she was not working.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 12/20/21. The arbitrator bases this finding on the fact 1) that petitioner was not at work on 12/20/21; 2) that there is no incident report completed by petitioner, her supervisor, or the General Manager with respect to an injury at work on 12/20/21 that was offered into evidence; 3) that the treatment record of 12/27/21, most contemporaneous to the alleged accident of 12/20/21, does not include a history of petitioner lifting a container of tea at work on 12/20/21; 4) that the only mention of any incident in the 12/27/21 report is a history of petitioner lifting heavy boxes, and her reporting that she

did get a new mattress and pillow; 5) that the history of lifting heavy boxes in the 12/27/21 report makes absolutely no mention of this lifting of heavy boxes occurred at work; and, 6) that her first documented history of injuring her neck at work while lifting a container of tea was not until she presented to Dr. Gornet on 5/17/22, nearly 6 months after the alleged injury, and it only includes a general reference as to when the accident occurred, not a specific date.

Petitioner also testified that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 3/16/22, when she lifted boxes of French Fries weighing 40-50 pounds out of compartment stand. Petitioner testified that she reported the injury to Cassandra, but no incident report was created. She testified that it was to be completed when the General Manager came in. However, petitioner did not know if any incident report was completed when the General Manager came in, and none were offered into evidence.

When petitioner first sought treatment following this alleged injury at the emergency room at Memorial Hospital Shiloh on 3/18/22, she complained of neck and upper back pain for 2 months. She stated that she was doing well until 3/16/22 when her pain got worse. Petitioner specifically denied any injury, any numbness or tingling, or weakness in her bilateral arms. She also made no mention of any injury at work on 3/16/22 while lifting boxes of French Fries.

Her next treatment was with Dr. Lamonica on 3/21/22. She reported complaints of neck pain and stiffness for 5 days. Again, petitioner made no mention of any work injury on 3/16/22 while lifting boxes of French Fries.

About a week later, on 3/29/22 petitioner again presented to the emergency room with worsening complaints in her neck, and numbness down the left arm. On this date, petitioner gave a history of her neck pain beginning on 3/17/22 after lifting something heavy at work, and noticing numbness down her left arm, and weakness.

It was not until petitioner returned to Dr. Lamonica on 3/31/22 that she made ay mention of lifting boxes at work on 3/16/22. By 4/13/22 her alleged accident history became more detailed. She reported to Dr. Brooks that on 3/16/22, she felt a sharp pain in the middle of the base of her neck while lifting a heavy box out of the freezer. On 5/17/22 her accident history was even more detailed. On that date, she told Dr. Gornet that her current problems began on 3/16/22 when she was lifting two boxes of fries in the walk-in freezer and had sudden pain in the left side of her neck. When petitioner presented to Dr. Kitchens on 9/19/22 she reported that it was on 3/17/22 that she lifted up a case of fries at work and felt bad. However, the arbitrator notes that petitioner was not working on 3/17/22.

Again, like with respect to the first alleged injury on 12/20/21, the history most contemporaneous to the alleged injury on 3/16/22, does not reflect an accident history consistent with what petitioner testified to at trial. In fact, the emergency room record of 3/18/22 includes a history that petitioner specifically denied any injury, loss of sensation, numbness or tingling, or weakness in her bilateral upper extremities. The arbitrator also finds it significant that as her symptoms worsen, with each medical visit the history of her alleged injury on 3/16/22 become much more detailed. First, just 2 days after the alleged injury, petitioner denies any injury. Then 5 days after the alleged injury, she also makes no mention of any work injury. Then when her symptoms worsen and she again returns to the emergency room, she relates her symptoms to lifting something heavy at work. Then after the CT of her cervical spine shows some positive findings, her history includes lifting boxes at work. Then after the MRI which showed additional positive findings, her accident history to Dr. Gornet on 5/17/22 details her lifting 2 boxes of French Fries in the walk-in freezer at work and experiencing sudden pain in the left side of her neck.

Based on the above, the arbitrator again finds the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 3/16/22. The arbitrator bases this finding again on the fact 1) that there was no accident report offered into evidence; 2) that petitioner was not sure if the General Manager completed an accident report; 3) that absent an accident report to support her claim, petitioner did not see fit to call Cassandra to testify that she reported the injury to her, given that petitioner claims she reported the injury to her on 3/16/22; 4) that the medical record most contemporaneous to the injury does not include any accident history, but includes a reference to petitioner denying that she sustained any injury, loss of sensation, numbness or tingling, or weakness in her upper extremities; 5) that petitioner did not begin providing a generic accident history until her symptoms worsened on 3/29/22, 6) that petitioners' claims of injuring herself on 3/17/22 while lifting something heavy at work are unsupported by her time logs which show she did not work on 3/17/22; and, 7) that it was not until petitioner saw Dr. Gornet on 5/17/22 had her accident history changed from a denial of injury, to an injury lifting something heavy at work, to lifting boxes at work, and finally to lifting 2 boxes of French Fries in the walk-in freezer.

Given the multitude of inconsistencies in the credible evidence as it relates to alleged histories of accident on both 12/20/21 and 3/16/22, as well as the fact that the petitioner was not even working on 12/20/21, and her failure to provide any accident report or witness to corroborate her testimony, the arbitrator finds the petitioner's testimony not credible.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURIES ON 12/20/21 AND 3/16/22?
J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY FOR THE INJURIES ON 12/20/21 AND 3/16/22? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES FOR THE INJURIES ON 12/20/21 AND 3/16/22?
K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE FOR THE INJURIES ON 12/20/21 AN 3/16/22?
L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE FOR THE INJURY ON 3/16/22?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her cervical spine that arose out of and in the course of her employment by respondent on 12/20/21 or 3/16/22, the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000516
Case Name	Jason Fedro v. Petroleum Service Group LLC
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	24IWCC0440
Number of Pages of Decision	5
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Paris
Respondent Attorney	Kenneth Smith

DATE FILED: 9/13/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0440

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASON FEDRO,

Petitioner,

vs. NO: 20WC000516

PETROLEUM SERVICE GROUP, LLC,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Will County. In its Decision, filed January 8, 2024, the Court found "that Fedro suffered an accident that arose out of and in the course of the petitioner's employment, and that timely notice was given to the respondent. The IWCC shall consider and rule on the remaining issues which were found to be moot." *Cir.Ct.Dec. at 4 (unnumbered)*.

We initially note that it is unclear whether the Court was reviewing the original Arbitrator's Decision as opposed to the Commission's Decision on Review. Significantly, the Court's Decision does not mention that the Commission modified the Arbitrator's Decision. Instead, on several occasions, the Court made references to the "arbitration decision" and that the "arbitrator ruled" but did not mention the Commission's Decision and our findings. Notably, the Court based its finding, that the Decision was against the manifest weight of the evidence, on portions of the Arbitration Decision which the Commission had stricken. We clarify that the Commission made its decision to deny Petitioner's claim solely due to his failure to prove accident and did not base its decision on a failure to provide proper notice. The Court also wrote, "**Undisputed facts** of the claim show that the injury happened October 23, 2019, during Fedro's 6 p.m. to 6 a.m. shift." *Cir.Ct.Dec. at 1* (*fourth paragraph, emphasis added*). However, we respectfully point out that accident was a disputed issue, and the fundamental question is whether Petitioner actually sustained an injury at work on that day as he claims. Based on our review of the evidence, we found that he did not sustain any injury at work on that day.

The above omissions of the Commission Decision notwithstanding, the Court found that Petitioner proved accident and notice and instructed, "IWCC shall consider and rule on the remaining issues which were found to be moot." *Cir.Ct.Dec. at 4.* Based on a review of the

proceedings and the Arbitrator's decision, those remaining issues are causation, average weekly wage (AWW), temporary total disability (TTD) and medical expenses.

Causation is only an issue as it relates to accident. Since the Court found accident, the Commission finds causation based on the opinion of Respondent's §12 physician, Dr. Cary Templin (*Px6, T.283*) and Respondent's attorney's agreement at the hearing as follows:

ARBITRATOR: I would also add in pretrial discussions, the Respondent has indicated that the dispute with regard to causation is mainly related to accident and, therefore, if accident is shown sufficiently for the arbitrator, causation would also be shown, is that accurate?
MR. SMITH: Yes, Judge.

Therefore, since the Circuit Court found accident, causation naturally follows.

Regarding Petitioner's average weekly wage (AWW), Petitioner claimed, on the Request for Hearing form (*ArbX1*), that his AWW was $871.20 while Respondent claimed it was $788.01. Neither party introduced payroll records or wage statements into evidence and neither party explained their method of calculating AWW nor how they arrived at their respective figures. Petitioner testified:

Q. How long are the shifts that you work?
A. 12 hours.
Q. And what 12-hour period do you work?
A. Two weeks days, then two weeks nights and it's rotating nonstop.
Q. And how many days per week do you work?
A. One week would be three days, the second week would be four days.
Q. And on a three-day week, that would be 36 hours then, is that correct?
A. That's correct.
Q. And on a four-day week that would be 48 hours, correct?
A. That's correct.
Q. And just so we can get the record, how much were you paid on an hourly basis?
A. $19.80.
Q. And at some point during the ten months that you were there, did you make a lessor amount than $19.80?
A. I started at $19.20.
Q. Do you remember when you got that $0.60 raise?
A. I believe it was June or July. It was a cost of living raise. *T.17-18.*

Again, Respondent did not submit any wage statements or payroll records, which it would have had in its control, to dispute Petitioner's testimony regarding his wage rate and number of hours worked. Nevertheless, we find that, although Petitioner testified that he received a raise to $19.80 per hour in "June or July." (*T.18*) it would be speculative to base an AWW on an unknown date when Petitioner allegedly received a raise. Therefore, the Commission finds that Petitioner's AWW should be calculated as follows:

$19.20 per hour
x 42 (average number of hours worked per week)

$806.40 AWW

The Commission awards temporary total disability (TTD) benefits for 66-5/7 weeks from October 26, 2019 through the date of his surgery on February 3, 2021. We note that the last medical records in evidence are from Petitioner's hospital stay when his L4-S1 fusion was performed on that date, almost six months prior to the hearing. *Px7*. No off-work or work-restriction notes are in evidence after his surgery. Due to Petitioner's failure to prove, we find it would be speculative to award TTD benefits beyond this date. Based on an AWW of $806.40, Petitioner's TTD rate is $537.60 per week.

On the Request for Hearing form, Petitioner stipulated that Respondent had paid $26,354.00 in TTD benefits. *ArbX1*. We, therefore, find that Respondent is entitled to this credit.

Based on the Court's findings regarding accident and notice, we find Petitioner is entitled to the medical expenses related to his lumbar spine. However, we note that parties seem to have reserved this issue for a later date once the issues of accident and notice were decided. The Request for Hearing form indicates that Petitioner's attorney wrote, "List to come (all medical incurred) to be determined," which Respondent disputed and claimed, "no accident." For §8(j) credit for medical bills, Respondent's attorney wrote, "to be determined." *ArbX1*.

Although some medical bills were included in Petitioner's exhibits, not all of the dates of service have corresponding medical bills. Therefore, there are many bills that may have been incurred but are not in evidence. Similarly, Petitioner did not submit any medical records after those from Silver Cross Hospital on February 6, 2021, where he underwent L4-S1 fusion surgery. *Px7*. Petitioner testified that, in the months since his surgery, he has been through physical therapy and also sees Dr. Milhotra once a month for pain management. *T.82-83*.

Regarding Respondent's §8(j) credit, the following discussion took place at the hearing:

ARBITRATOR:	We did discuss, I believe, the issue with 8(j) correct or was that not an issue in this case?
MR. SMITH:	We didn't know the amount.
MR. PARIS:	We don't know the amount, but it has been paid by group.
ARBITRATOR:	So if I award those medical expenses, what I would put into my decision is something to the affect of X bills are awarded pursuant to Section 8(a) and Section 8.2 which is the fee schedule, and the Respondent would be entitled to credit for anything paid pursuant to 8(j) that was paid prior to hearing so long as they hold Petitioner harmless with regard to same. Is that sufficient?
MR. PARIS:	That's sufficient.
ARBITRATOR:	Ken?
MR. SMITH:	Yes, that's fine. *T.12-13*.

Due to the lack of supporting documentation, but in consideration of what appears to be the parties' agreement that medical expenses and §8(j) credit were "to be determined," we find it impossible to award a specific dollar amount of medical bills. Instead, we simply find that Petitioner is entitled to the medical expenses related to the services contained in Petitioner's exhibits. Respondent is entitled to §8(j) credit for all amounts paid by its group insurance carrier prior to the hearing provided that it holds Petitioner harmless with regard to same.

Regarding prospective medical, we find Petitioner is entitled to reasonable and necessary post-surgical follow up care as prescribed by Dr. Sampat and Dr. Milhotra.

All else is affirmed and adopted.

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 Respondent pay to Petitioner the sum of $537.60 per week for a period of 66-5/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical bills contained in Petitioner's exhibits 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 is entitled to a credit under §8(j) of the Act for payments made by its group 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 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 $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.

September 13, 2024 /s/ *Maria E. Portela*

SE/ /s/ *Amylee H. Simonovich*
O: 7/30/24
49 /s/*Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022351
Case Name	Maurice Dean v. Elite Labor Staffing Services Ltd
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0441
Number of Pages of Decision	21
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Scott Goldstein
Respondent Attorney	Peter Stavropoulos

DATE FILED: 9/16/2024

/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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MAURICE DEAN,

Petitioner,

vs. NO: 20WC022351

ELITE LABOR STAFFING SERVICES, LTD,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's finding that Petitioner failed to prove causal connection between Petitioner's current conditions of ill-being related to his shoulder and neck. However, we modify the maximum medical improvement (MMI) date to February 2, 2021, instead of November 28, 2020.

Regarding the cervical condition, we agree that the opinion of Respondent's §12 physician, Dr. Kern Singh, is persuasive and that Petitioner's cervical condition had resolved within four weeks after the accident and that Petitioner could return to full duty without restrictions. Similarly, we find the opinion of Respondent's §12 physician, Dr. Brian Forsythe, persuasive that Petitioner only sustained a right shoulder strain that resolved by November 28, 2020.

We note that temporary total disability (TTD) was not an issue at the hearing because the Request for Hearing form (ArbX1) reflects the parties' stipulation that Petitioner was temporarily totally disabled for 22 weeks from "9/2/20 -2/2/21." February 2, 2021 is the date of Petitioner's work conditioning "Functional Status Report / Discharge Summary," referred to by the Arbitrator and in some medical records as an "FCE". *Px2*. Despite that stipulation, the Arbitrator found that Petitioner was only entitled to medical expenses through November 28, 2020.

This leads to the illogical conclusion that, although the parties stipulated that he was temporarily totally disabled through February 2, 2021, Petitioner was only entitled to medical treatment through November 28, 2020. Based on Respondent's stipulation, we find that it stipulated that Petitioner had not reached MMI until February 2, 2021. We point out that the Functional Status Report / Discharge Summary (*Px2*) reflects Petitioner met 100% of his required job demands and that this was one of the factors on which Dr. Forsythe based his opinion that Petitioner was at MMI and did not need right shoulder surgery. *Rx1, T.541 at #6*. We find that Petitioner is, therefore, entitled to all medical expenses, including physical therapy and work conditioning, through that date.

Next, although Petitioner did not have a history of "head trauma, headache, dizziness, or other symptoms of brain injury," the emergency room physician, Dr. Christopher Berg, wrote on September 2, 2020, "Pt has had right neck pain, right sided headache, also right arm and lower leg tingling, paresthesias, for this reason, CT head and cervical spine CT were ordered." *Px3, T.356*. Therefore, the Commission finds that this CT scan was a reasonable and necessary diagnostic tool after Petitioner's undisputed work accident, and we modify the Decision to award this bill.

We specifically affirm the Arbitrator's denial of prospective medical treatment.

Finally, we make two clerical corrections to the Decision. First, the Arbitrator wrote, "Petitioner was not consistently compliant with his course of therapy, attending 24 sessions but missing 17." *Dec. 14.* The treating and billing records actually reflect that Petitioner attended 30 sessions of physical therapy (PT) and canceled 17, as indicated on the December 28, 2020 discharge report. *Px2, T.125*. Therefore, we correct this finding on page 14.

Second, the Arbitrator wrote, "Dr. Patel did not place restrictions on Petitioner's work activities as of the last encounter." *Dec. 14*. We strike that sentence as it is inaccurate. At Petitioner's last "encounter," which was the telemedicine visit on December 27, 2021, Dr. Patel wrote, "This is a work related injury. … Given this, work [accommodations] should be made during the treatment period. … My recommendation is as such: continue current restrictions, surgery." *Px4, T.501-502*. The previous restrictions, on September 27, 2021, were no lifting greater than 30 pounds and sedentary work only. *T.499.*

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses through February 2, 2021, as contained in Petitioner's exhibits, under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $15,000.00. 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.

September 16, 2024

SE/
O: 7/30/24
49

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022351
Case Name	Maurice Dean v. Elite Labor Staffing Services LTD
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Scott Goldstein
Respondent Attorney	Peter Stavropoulos

DATE FILED: 4/26/2023

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

/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)

Maurice Dean
Employee/Petitioner

v.

Eltie Labor Staffing Services, Ltd.
Employer/Respondent

Case # **20 WC 22351**

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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **November 29, 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 **8/28/2020**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**18,772.00**; the average weekly wage was $**361.00**.

On the date of accident, Petitioner was **22** 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 $**7,351.81** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,351.81**.

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

ORDER

Respondent shall pay all reasonable, necessary and related medical services up through and including November 28, 2020, as provided in §8(a) and to be adjusted in accord with the medical fee schedule. All other claims for medical bills and charges are denied.

Petitioner’s claim for prospective medical care 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.

Signature of Arbitrator

APRIL 26, 2023

Maurice Dean v. Elite Labor Services, Ltd.
20 WC 22351

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***F:*** Is Petitioner's current condition of ill-being causally related to 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 prospective medical care?

It is stipulated that Petitioner was entitled to TTD benefits from September 2, 2020 through February 2, 2021, which Respondent paid and is dur a credit.

STATEMENT OF FACTS

On August 28, 2020 Petitioner Maurice Dean was working for Respondent Elite Labor Staffing. Petitioner testified that he injured his neck and right shoulder when he was lifting, "a shrink roll," a large roll of plastic shrink wrap. Petitioner testified that he was able to work for a couple of days after the accident and reported the injury to his employer.

On September 1, 2020, Petitioner presented to the Diagnostic and Rehabillative Center of Morris (IL) Hospital, complaining of neck and shoulder pain radiating to his right leg (PX #7). He reported that on August 28, 2020 he was lifting a shrink roll and now he had burning in his right neck and shoulder down to his right arm and right leg. He denied weakness, numbness, or tingling to his right arm, hand, or other extremities. Petitioner reported similar complaints from a motor vehicle accident in 2018, when he had an outpatient procedure but is unsure of the procedure.

On examination Petitioner noted as not in distress. Findings on physical examination were within normal limits. The assessment was strain of muscle and tendon of back wall of thorax, right, dorsal, lateral, posterior, and proximal. Petitioner was discharged with work restrictions of no overhead work, or reaching, or lifting, pushing, or pulling, and no driving at work. Petitioner was advised to follow up with his "neck surgeon."

Petitioner presented to the Emergency Department of Adventist Hinsdale Hospital at about 9:30 pm on September 2, 2020 (PX #3). Petitioner complained of right neck and right arm pain and tingling. He also complained of right lower leg and foot pain and tingling after lifting something heavy at work 3 days prior. He complained of pain-related arm weakness. He reported that he had followed up with an MD without imaging, but who had released him to full duty work. Petitioner stated he would benefit from a few more days of rest for his arm. He gave a history of similar symptoms after an MVA in 2017, at which time he had a "burning" procedure.

On examination Petitioner was neurologically intact with no abnormalities or deficits. Range of motion and muscle strength were normal. There was tenderness noted over the right arm and right shoulder, as well as the right foot. X-rays of the right shoulder and CTs of the cervical spine and head were unremarkable. Petitioner was discharged with diagnoses of cervical radiculopathy, paresthesia of right arm and leg, and right arm strain. Petitioner was given light duty restrictions and a follow-up referral.

On September 9, 2020 Petitioner sought treatment at Hinsdale Orthopaedics, where he was seen by Dr. Ronak Patel (PX #4). Petitioner reported that on August 28 he was lifting a 60-pound roll of paper and as he was walking the roll began to fall. He reached for it and felt a pull in his right arm and immediate pain in his neck and right shoulder. He reported he had seen a "work" doctor who returned him to work. When his pain increased he went to Hinsdale Hospital emergency room. He also reported neck and back injuries from an MVA in November 2018 and had a nerve burning procedure. He had no issues until the August 28, 2020 injury.

Petitioner complained of 8/10 pain in the right neck. The clinical examination was essentially normal, but for tenderness and slightly restricted cervical range of motion due to pain. Range of motion in both shoulders was within normal limits with no tenderness. Shoulder muscle strength was normal. Various testing of the rotator cuff and labrum of the right shoulder were all negative. Speed's test for the biceps was negative. Cross body adduction, for the acromioclavicular (AC) joint, was also negative

Dr. Patel diagnosed cervical sprain and muscular paraspinal strain, referred Petitioner to physical therapy, and took him off work. The doctor noted the injuries were work-related.

On September 11, 2020 Petitioner began physical therapy at Athletico for a strain of the neck and weakness of the right upper extremity (PX #2). He was wearing a right arm sling. The therapist noted tightness in the right side of the neck but maintained right shoulder range of motion. Petitioner exhibited pain with repetitive upper extremity use. The therapist recommended therapy 3 times per week for 4-6 weeks.

Petitioner returned to Dr. Patel September 23, 2020. Petitioner's history & complaints were as before. He reported therapy helped his right shoulder pain better than his neck. Findings on exam were unchanged from before. Dr. Patel assessed cervical strain and paraspinal muscle spasms, referred Petitioner for a cervical MRI, continued physical therapy, and continued Petitioner off work.

On September 30, 2020 Petitioner underwent a cervical spine MRI (PX #4). The radiologist noted disc space narrowing from C2 to T1. There was disc desiccation at C2-3, C3-4, C4-5, and C5-6. There were central disc protrusions at C3-4, C4-5, and C5-6. There was also mild/moderate neuralforaminal narrowing at C3-4 and C5-6.

On October 5, 2020 Dr. Patel reviewed the MRI findings, noting the radiologist's interpretation. Petitioner complained his neck pain was causing headaches but reported his right shoulder pain was decreasing. Dr. Patel's impression was strain of the fascia and tendon of the cervical level with mild herniation of discs without stating which discs. Dr. Patel noted Petitioner was improving appropriately and that therapy was helping. Clinical exam findings were unchanged. Dr. Patel related Petitioner's problems to his cervical spine. Petitioner was referred for pain management consultation, ordered to continue in therapy, and still taken off work.

On October 12, 2020 Petitioner presented to Dr. Neil Malhotra of Expert Pain Physicians on referral from Dr. Patel, complaining of right sided neck pain (PX #5). Petitioner reported the pain radiated from his neck to shoulder. He reported the pain was associated with headaches and numbness/tingling in the shoulder. Dr. Malhotra noted the cervical MRI demonstrated disc space narrowing and disc desiccation at C2-3, C3-4, and C4-5. There was also disc protrusions at C3-4, C4-5, and C5-6. The doctor noted reduced cervical range of motion and tenderness to palpation over the cervical spine. Strength and sensation to light touch were normal.

Dr. Malhotra diagnosed cervicalgia, cervical radiculopathy, and spondylosis without radiculopathy. Petitioner was scheduled for a right C5-6 ESI (epidural steroid injection) and was to continue in physical therapy.

Petitioner returned to Hinsdale Orthopaedics October 28, 2020, when he was seen by NP Rebecca Comas (PX #4). He reported dull, sharp, and stabbing pain. He rated his pain at 10/10 and reported he was still taking Tylenol with codeine for pain. Examination of the right shoulder was positive for tenderness in the greater tuberosity and bicipital groove. Other exam findings on the right shoulder and biceps was negative as before. Cervical range of motion was restricted and painful. NP Comas' impression was cervical strain and "some" mild herniated discs. Petitioner was ordered to continue physical therapy, start Celebrex, and remain off work.

Petitioner consulted chiropractor Dr. Justin Boyce on November 6, 2010 (PX #6). Petitioner presented with neck and right shoulder pain from an injury on August 28, 2020. Petitioner reported he had lifted a roll of shrink wrap, but it slipped, and he tried to catch it. He felt a pull in his back. He complained of 6/10 pain but also that the injury affected his sense of smell and taste. Petitioner reported that he was treated in the ER and that he had seen an orthopedist.

Dr. Boyce noted decreased range of cervical motion and muscle tension in the suboccipitals, "trapz" (trapezius), rhomboids, pectoralis, and anterior scalenes. Dr. Boyce diagnosed brachial plexus disorders, pain in right shoulder, and other muscle spasm.

Petitioner returned to Dr. Boyce on November 9, 2020. The findings on examination were as before. Dr. Boyce noted the same diagnoses but added segmental and somatic dysfunction of both the cervical and thoracic regions. He noted that treatment went well without documenting what the treatment was.

Petitioner underwent a §12 IME of his cervical spine by Dr. Kern Singh of Midwest Orthopedics at RUSH on November 19, 2020 (RX #6). In addition to a clinical examination Dr. Singh reviewed Petitioner's medical records from Drs. Bialas and Patel. Petitioner presented with complaints of 9/10 neck pain. He reported he was lifting a 60-pound roll at work when he developed neck pain. Petitioner he had good days and bad days. He reported increased pain with standing and sitting but could walk and stand up to 30 minutes. Physical therapy, heat and cold compressions, and deep tissue massages gave moderate relief. Pain disrupted his sleep.

On exam Petitioner had 40° of lumbar flexion but otherwise normal range of motion, as well as normal muscle strength. Dr. Singh noted 5 negative Waddell

signs. Dr. Singh diagnosed a cervical muscular strain. He recommended work restrictions. He requested the MRI imaging to render additional opinions.

On November 20, 2020 the therapist at Athletico noted Petitioner was able to lift and carry 25 pounds without pain. He was able to lift 25 pounds overhead, waist to shoulder, floor to waist and 20 pounds with two hands without pain. The therapist noted Petitioner could require work conditioning for frequent heavy lifting (PX #2).

On November 23, 2020 Petitioner returned to Hinsdale Orthopaedics, when he was seen by PA-C Donald Kuik (PX #4). Petitioner reported the pain in the right shoulder had decreased, 7/10. It was noted he was compliant with activity restrictions and that therapy was helping with his symptoms. He requested more Tylenol #3 for pain. The examination revealed tenderness in the AC joint and bicipital groove of the right shoulder. The left AC joint was also tender. All other testing of the shoulder was negative. Examination of cervical spine motion was painful in the midline and paraspinals. A corticosteroid injection was administered to Petitioner's right shoulder, but it was not noted who performed the procedure.

Petitioner was diagnosed with cervical strain, mild disc herniation without specifying which disc, and AC joint arthritis. Petitioner was released to sedentary work. He was also referred back to the pain specialist for a cervical corticosteroid injection and to continue in therapy.

On December 11, 2020, Petitioner reported to the therapist at Athletico that he continued to have pain in the neck and anterior shoulder. The therapist noted Petitioner was able to lift 35 pounds at all levels. The therapist also noted Petitioner had poor attendance at therapy, attending 24 sessions and cancelling 17. The objective examination showed cervical and right shoulder active range of motion was normal. There was no pain with shoulder active range of motion. The therapist noted Petitioner could benefit from work conditioning (PX #2).

Petitioner returned to Dr. Patel on December 23, 2020. Petitioner complained of dull, persistent shoulder pain, 5/10, over the superior aspect. Petitioner reported improvement in his neck and right shoulder pain. Examination findings were unchanged and unremarkable except for a positive cross body adduction sign for the right shoulder. Dr. Patel diagnosed cervical strain and AC joint arthritis. Petitioner was referred to work conditioning for 4 weeks. He was released to work with 30-pound lifting restrictions.

Petitioner was discontinued with physical therapy on December 28, 2020 and began work conditioning. On January 20, 2021 the therapist at Athletico noted Petitioner met 55.56% of his job demands. Petitioner was able to occasionally carry and lift 50 pounds to waist, 40 pounds to shoulder and 30 pounds overhead (PX #2).

Petitioner saw PA-C Lauren Rooney at Hinsdale Orthopaedics January 27, 2021. He reported decreased shoulder pain, 3/10. Cervical range of motion was limited by pain. There was right shoulder tenderness at the AC joint tenderness, greater tuberosity, and bicipital groove. Right shoulder Speed's, belly press, and lift off test were positive, although the remainder of right shoulder testing was negative. The diagnoses remained the same. An FCE was considered. Petitioner was ordered to continue with conservative management and was continued with 30-pound lifting restrictions.

On February 2, 2021, Athletico discharged Petitioner from work conditioning, having met all the requirements for a forklift driver (PX #2 & RX #8). Petitioner was capable of performing work in the heavy physical demand level. Petitioner able to lift 60 pounds from floor to waist, 40 pounds from waist to shoulder and 30 pounds overhead.

Petitioner saw Dr. Patel again on February 11, 2021. He reported 40% relief from the injection but only for 2.5 weeks. Petitioner reported he continued to take anti-inflammatories for pain, 4 Aleve twice a day. He reported his neck pain had improved but his shoulder pain persisted, 5/10. He had completed work conditioning but had not returned to work. He still had AC joint tenderness. Speed's, belly press, and lift off were still positive. O'Brien's and Mayo Shear were now positive also. Dr. Patel assessed Petitioner with resolved cervical radiculopathy and continued AC joint pain. Petitioner was released to return to work with 30-pound lifting restrictions and referred for an FCE. Surgical intervention was considered.

Dr. Singh authored an Addendum IME report on February 24, 2021 (RX #7). After review of the September 30, 2020 cervical spine MRI, he diagnosed cervical muscular strain and mild diffuse cervical spondylosis without stenosis, which had resolved. He noted that the MRI demonstrated pre-existing mild degenerative changes in the cervical spine. The doctor opined that these conditions were causally related to the August 28, 2020 work accident.

However, Dr. Singh went on to opine that Petitioner's treatment had been excessive and prolonged in nature. He believed that 4 weeks of conservative

treatment was reasonable and necessary in addressing a soft-tissue muscular strain of the cervical spine with a normal neurological examination and minimal radiographic findings. He further opined that Petitioner could return to work full duty without restrictions.

Petitioner returned to Dr. Patel August 17, 2021 (PX #4). Petitioner denied any change and reported burning pain in the superior aspect of his shoulder. He reported 6/10 pain. He reported that he had had 60% relief from the injection for 1.5 month. It was noted he was working light duty 1.5 month. When asked why he did not return to work sooner, Petitioner responded that the physical therapist told him getting back to 100% would take time. The FCE results were discussed, which noted Petitioner met 100% of forklift driver job duties. Petitioner reported he had considerable pain while performing the exam and working light duty. On exam Speed's, belly press, lift off, O'Brien's, and Mayo Shear were all positive.

Dr. Patel recommended an MRA of the shoulder and continued work restrictions. Dr. Patel also noted surgery could be an option.

On August 31, 2021 Petitioner underwent an MR arthrogram of the right shoulder (PX #4). The radiologist noted focal detachment of the superior aspect of the posterior labrum but with no full thickness rotator cuff tears or a tear of the anteroinferior labrum. The biceps tendon was unremarkable. The acromium had a Type II curve.

Petitioner had a telemedicine consultation with Dr. Patel on September 27, 2021. He reported 8/10 right shoulder pain. Dr. Patel reviewed the August 31, 2021 MRI films. His impressions were focal detachment of the superior aspect of the posterior labrum with no full thickness rotator cuff tears identified, the same as the radiologist. Dr. Patel also noted he reviewed the FCE. The doctor noted that Petitioner met 100% of his reported job demand and was able to function as a warehouse/forklift worker and tolerate heavy physical demand level with no limiting factors from his injury.

Dr. Patel diagnosed an AC joint sprain and a SLAP tear. He recommended Petitioner continue working with his 30-pound lifting restrictions. Dr. Patel recommended a right shoulder arthroscopic labral debridement, biceps tenodesis, and distal clavicle excision.

Petitioner underwent a §12 IME of his right shoulder by Dr. Brian Forsythe of Midwest Orthopedics at RUSH on October 19, 2021 (RX #1). In addition to a clinical examination, Dr. Forsythe reviewed Petitioner's medical records, including

the September 30, 2020 cervical spine MRI and the August 31, 2021 MR arthrogram of the right shoulder. Petitioner gave a history of injuring his right shoulder at work on August 28, 2020 when he was lifting 60 pounds of shrink wrap. He reported that he had had physical therapy, work hardening, and an injection in the shoulder. Petitioner presented with 5/10 pain but had up to 8-9/10 pain with activity. It was noted that Dr. Patel was recommending shoulder surgery.

On the physical exam Dr. Forsythe noted Petitioner's complaints of diffuse non-localizing and non-physiologic tenderness to palpation. Petitioner complained that his shoulder goes numb with light palpation of the supraspinatus and infraspinatus fossa. The doctor noted Petitioner demonstrated moderate symptom magnification. Petitioner had essentially normal range of motion and normal strength. Neer's, Hawkins, Speed's, O'Brien's, valgus shear, Yergason's, and crossover adduction were all negative. Dr. Forsythe noted the special testing was grossly normal.

Dr. Forsythe diagnosed a right shoulder strain that had resolved. He found there was no aggravation of a pre-existing condition in the shoulder. He noted that this condition was causally related to the work injury. Dr. Forsythe opined that the treatment of the right shoulder was excessive and recommended no further treatment. Petitioner was at MMI on or around November 28, 2020 and was able to return to work full duty without restrictions as it related to his right shoulder. Dr. Forsythe found an AMA impairment rating of 0%.

On December 27, 2021 Petitioner had another telemedicine consultation with Dr. Patel. The doctor had reviewed the IME report. Petitioner reported he was still working "sedentary" duty and not lifting more than 30 pounds. Dr. Patel noted Petitioner failed conservative treatment. He recommended surgery and continued work restrictions. Petitioner was returned to work with no lifting more than 30 pounds.

Dr. Brian Forsythe evidence deposition, November 17, 2022 (RX #2)

On November 17, 2022 Dr. Forsythe testified by evidence deposition (RX #2). He is a board-certified orthopedic surgeon. He refreshed his memory from his October 19, 2021 report. Dr. Forsythe opined that Petitioner suffered a right shoulder strain in the August 28, 2020 incident, which had resolved. He testified that Petitioner likely reached MMI by November 28, 2020, although strains of this nature usually resolve in 4 – 6 weeks.

Dr. Forsythe further testified that Petitioner received excessive medical treatment. He found Petitioner's complaints were inconsistent with his

presentation and noted that Petitioner was ultimately was found to be capable of 100% of his job duties. He testified further that he reviewed the actual MR imaging as well as the radiologist's report from the MR arthrogram in August 2021. He found the MR arthrogram was normal, with no acute findings, and did not show a labral tear. The doctor noted that all the special testing performed during the physical exam was negative for labral tears, SLAP tears, or rotator cuff tears.

Furthermore, Dr. Forsythe testified that Dr. Patel's examination within 10 days of the original incident disclosed 5/5 upper extremity strength bilaterally, 170° of forward elevation, and 60° of external rotation with internal rotation to T6. He stated that Petitioner's examination disclosed non-physiological complaints in the right shoulder, which called into question the Petitioner's credibility (Petitioner's counsel's objection regarding the doctor's opinion of Petitioner's credibility was sustained and the opinion was disregarded). Dr. Forsythe testified that surgery was contraindicated, noting that his examination findings were identical to those in Dr. Patel's initial examination.

Dr. Forsythe also testified that he performed an impairment rating in accord with AMA Guides to Evaluation of Permanent Impairment, 6th Edition. He found Petitioner had 0% impairment.

At trial, Petitioner testified that his pain level was at a 6, but sometimes goes up to 7. He testified that he takes ibuprofen for pain. After returning to work for Respondent for a period of time, Petitioner moved to Sedalia, Missouri and has obtained alternate employment working with disabled people. His job duties include taking residents out to smoke and making sure they are "still breathing." The current job does not require physical exertion. Petitioner testified that he has worked several different jobs in and around Sedalia, including McDonalds, Walmart, and Tyson Chicken, where he drove a forklift. He testified that he could lift up to 35 pounds as part of job duties.

Petitioner testified that he wants the shoulder surgery Dr. Patel has recommended for relief of his pain.

CONCLUSIONS OF LAW

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator finds that the evidence showed that Petitioner sustained sprain/strain injuries to his neck and right shoulder that were causally related to his work accident on August 28, 2020. However, the evidence also showed that

Petitioner's injuries had resolved long before the trial of this matter. Therefore, the Arbitrator finds that Petitioner failed to prove that his claimed current condition of ill-being in his right shoulder is causally related to his work accident.

It was undisputed that Petitioner was injured on August 28, 2020 in an accident that arose out of and in the course of his employment. He did not seek immediate medical care. There was no evidence he took off any days of scheduled work before seeking care at Morris (IL) Hospital on September 1, 2020. Petitioner received chiropractic care and physical therapy over the following months. Clinical notes from Hinsdale Orthopaedics indicate Petitioner's neck problem had resolved by February 11, 2021, confirmed in an addendum note on February 24, 2021 by Dr. Singh, Respondent's IME examiner.

Petitioner's initial medical care was focused on his neck complaints. During the course of care for his neck Petitioner also complained of right shoulder pain.

The Arbitrator finds the opinions of Dr. Forsythe persuasive and adopts the same. Dr. Forsythe opined that Petitioner reached MMI by November 28, 2020. He based his opinions on a thorough clinical exam as well as a review of Petitioner's medical records that Petitioner's treating physicians did not review. The objective finding from Dr. Forsythe's physical examination were essentially normal. The doctor noted symptom magnification and diagnostic studies that revealed no pathology. Dr. Forsythe persuasively explained that while the radiologist found there to be a focal detachment on the MRI, that is not the same as a tear. Dr. Forsythe personally reviewed the MRI imaging and found a normal labrum that was not detached or torn.

The Arbitrator particularly notes that the treating doctor, Dr. Patel, has not performed a physical exam since August 17, 2021, with the two visits following the August 31, 2021 MRI being telemedicine visits. Dr. Forsythe's scope of knowledge of Petitioner's condition is greater than Dr. Patel's.

Also, Petitioner's FCE noted he was able to perform the requirements of his job as a forklift driver/warehouseman. This was confirmed by Petitioner's discharge from work conditioning. Dr. Patel did not place restrictions on Petitioner's work activities as of the last encounter. Petitioner has held a variety of jobs since relocating to Missouri, none of which had heavy labor requirements. In fact, he worked as a forklift driver for Tyson in Missouri. The Arbitrator also noted that Petitioner was not consistently compliant with his course of therapy, attending 24 sessions but missing 17.

As stated above, the Arbitrator adopts the opinion of Dr. Forsythe that Petitioner only sustained a shoulder strain, which had resolved no later than November 28, 2020. Therefore, Petitioner's failed to prove causal connection to his claimed current condition of ill-being.

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

The Arbitrator finds that the evidence supports finding only that certain of the medical care provided to Petitioner was reasonable and necessary. The Arbitrator bases this finding on the persuasive opinions of Drs. Singh and Forsythe.

Dr. Singh conducted a §12 IME of Petitioner's cervical spine on November 19, 2020. After reviewing records and conducting a clinical exam Dr. Singh diagnosed a cervical strain. Dr. Singh confirmed his diagnosis in an addendum opinion February 24, 2021. Dr. Singh further opined that Petitioner's medical care for his neck complaints had been excessive. He believed 4 weeks of conservative care was reasonable and, further, he believed Petitioner's cervical strain had resolved.

The Arbitrator finds Dr. Singh's opinions persuasive and well supported by the evidence. Accordingly, the Arbitrator finds that Petitioner failed to prove that medical care or therapy for his claimed neck injury beyond 4 weeks after the August 28, 2020 work accident was reasonable or necessary.

As noted above, the Arbitrator finds that the evidence showed that Petitioner reached MMI for the right shoulder November 28, 2020, and that Petitioner failed to prove that any medical treatment as a result of the work injury following that date was reasonable or necessary.

Work conditioning at Athletico was provided after Petitioner had achieved MMI in November 2020 according to Dr. Forsythe's opinion. As noted above, the Arbitrator found Dr. Forsythe's opinions persuasive. The charges for work conditioning are denied.

The Arbitrator noted that Petitioner presented to Hinsdale Hospital emergency department September 2, 2020 with complaints of neck and shoulder pain. Among the examinations and procedures performed was a CT of the head.

The Arbitrator found no evidence supporting this procedure. Petitioner presented with no history of head trauma, headache, dizziness, or other symptoms of brain injury. The charges for the head CT scan are denied.

K: *Is Petitioner entitled to prospective medical care?*

The Arbitrator finds that Petitioner failed to prove that he is entitled to prospective medical care.

As noted above, the Arbitrator found the opinions of Drs. Singh and Forsythe reasonable and persuasive. They had each found Petitioner at MMI and in no further need of medical intervention for Petitioner's claimed injuries. Dr. Forsythe convincingly testified, "it makes no sense to operate on him because he has full range of motion, full strength, and negative provocative findings, and meets 100 percent of his work demands." Even Dr. Patel, during the telemedicine visit on September 27, 2021, recognized that the FCE demonstrated Petitioner met 100% of his reported job demands and was able to function as a warehouse/forklift worker and could tolerate heavy physical demand with no limiting factors from his injury.

Steven J. Fruth, Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009635
Case Name	Michael Goodman v. State of Illinois - Vienna Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0442
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Kenton Owens

DATE FILED: 9/17/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Goodman,

Petitioner,

vs. NO: 22 WC 009635

State of Illinois - Vienna Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 30, 2023 is hereby affirmed and adopted.

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

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

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

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.

September 17, 2024

o091024
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	22WC009635
Case Name	Michael Goodman v. State of Illinois - Vienna Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Kenton Owens

DATE FILED: 10/30/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 24, 2023 5.32%

/s/ Maureen Pulia, Arbitrator

Signature

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

October 30, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MICHAEL GOODMAN,
Employee/Petitioner

v.

STATE OF ILLINOIS-VIENNA CORRECTIONAL CENTER,
Employer/Respondent

Case # **22** WC **9635**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Herrin**, on **10/3/23**. 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, **2/7/22**, 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 $**68,695.00**; the average weekly wage was $**1,321.06**.

On the date of accident, Petitioner was **48** 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 $**51,962.42** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**51,962.42**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $880.71/week for 84-1/7 weeks, commencing 2/8/22 through 10/3/23, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $51,962.42 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services for treatment to petitioner's left shoulder, cervical spine and right shoulder from 2/7/22 through 10/3/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall also reimburse petitioner for out of pocket expenses outlined in PX12 in the amount of $836.77.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay reasonable and necessary medical services for 1) an arthroscopic surgery to clean out petitioner's left shoulder and try to restore motion, should Dr. Davis still think it is a viable option; 2) ongoing physical therapy and follow-up appointments with Dr. Davis for petitioner's right shoulder; and, 3) a referral to Dr. Rutz for evaluation of petitioner's cervical spine, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

OCTOBER 30, 2023

Signature of Arbitrator

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 48 year old Corrections Officer, sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/7/22 when he was working in the capacity of Laundry Manager that day. The issues in dispute are causal connection, medical expenses, temporary total disability from 6/1/22 through 10/3/23, and prospective medical. Petitioner denied any left shoulder or cervical spine problems prior to 2/7/22.

On 2/7/22 petitioner was required to fill in as the Laundry Manager. On that day, petitioner pulled the van onto the patio. After he dumped a 55 gallon drum filled with mopheads into the van, and was pulling the barrel back with his right arm, a big chunk of ice hit him on the top of his head, and he fell backwards. As he fell backwards, he reached out with his left hand and hit the ground. Petitioner testified that he was knocked out. The next thing he remembered was waking up on the patio after the inmates pulled him there. Petitioner testified that the ice fell from two stories up and he thought he got hit with a bubble television. Petitioner testified that he injured his head, neck and left shoulder. Petitioner testified that when he came to, he was dizzy, had a severe headache, and pain in the front part of his left shoulder. Petitioner was first seen in the respondent's healthcare facility.

A Report of Injury was completed by Elizabeth Villasenor, First Notice Associate for respondent, on 2/7/22. It included a history of "EE was TA'ing as laundry manager, he was going to unit 5 to pick up mop heads, he dumped the barrel into the van, put the barrel back in its place when a chunk of ice fell off the top of housing unit 5 and struck EE on the head and he fell." The injury or illness included a bump on his head, as well as pain in his neck and left shoulder. Headaches were also noted.

On 2/8/22 petitioner presented to Dr. Vargo, his primary care physician. Petitioner provided a consistent history of the accident and subsequent complaints. Petitioner reported that he was right hand dominant and sustained an injury to his right shoulder 20+ years ago that required surgery to his shoulder and biceps. Petitioner complained of numbness in his left fingertips, and pain in his neck. Following an examination, Dr. Vargas was of the opinion that petitioner had a torn rotator cuff on the left, and potential cervical radiculopathy. He performed an injection into the left shoulder, and prescribed a muscle relaxer and NSAIDs. Petitioner was taken off work.

On 2/14/22 petitioner returned to Dr. Vargo. He reported that he got no relief from the injection. Dr. Vargo examined petitioner and assessed internal derangement of the left shoulder. Dr. Vargo recommended an MRI of the left shoulder. Petitioner was continued off work.

On 3/18/22 petitioner underwent an MRI of the left shoulder. The impression was 1.6 cm full-thickness of the anterior supraspinatus tendon with 1.6 cm of retraction with moderate underlying tendinosis of the intact rotator cuff; full thickness tear/disruption of the long head of the biceps tendon; and, moderate osteophytic changes of the acromioclavicular joint.

On 5/12/22 petitioner underwent a left shoulder arthroscopic massive rotator cuff repair with 50%, or 30 minutes extra time, spent secondary to the complexity of the tear; left shoulder arthroscopic subacromial decompression; and, left shoulder arthroscopic extensive debridement of rotator interval; and, extensive debridement of the intraarticular, subacromial, and subdeltoid adhesions, and labrum. This procedure was performed by Dr. Davis. Petitioner followed-up post-operatively with Dr. Davis. This treatment included physical therapy.

Petitioner testified that following his surgery he was doing well in physical therapy. But his order for additional physical therapy a was denied by respondent. It was then restarted by respondent, only to be stopped again. Petitioner then got a shot in his shoulder, but the pain in his left shoulder only got worse over time.

On 6/30/22 petitioner followed-up with Dr. Vargo. Petitioner complained of left-sided, midline neck pain related to the injury on 2/7/22. Dr. Vargo noted that when petitioner presented on 2/8/22 he had neck complaints that were superseded by his left shoulder pain. Dr. Vargo examined petitioner and ordered x-rays of the cervical spine. On 7/1/22, after reviewing the results of the cervical spine x-rays, Dr. Vargo recommended an MRI of the cervical spine and a referral for cervical radiculopathy.

On 7/14/22 petitioner returned to Dr. Vargo for his left shoulder pain and neck pain. His examination of the neck remained unchanged. Petitioner reported that he was in therapy for his left shoulder. He reported a “catch in his neck”, numbness in his left thumb and index finger, and constant “tingle.” Dr. Vargo assessed cervical radiculopathy, crushing injury of the neck, and tear of the left supraspinatus tendon. Dr. Vargo also prescribed therapy for the cervical spine.

On 8/2/22 petitioner followed up with Dr. Vargo. He reported that he had started physical therapy that day. Petitioner noted that he was out of the arm sling for the last week as it was hurting his neck. Petitioner reported that the therapy made his neck worse. Dr. Vargo was of the opinion that if this was the case, then he would stop physical therapy and work to get the MRI approved. Following an examination, Dr. Vargo’s assessment remained the same. On 8/8/22 petitioner called Dr. Vargo and reported that physical therapy did not seem to be helping his neck. Dr. Vargo put therapy on hold.

On 8/16/22 petitioner returned to Dr. Vargo for follow-up of his neck. Following an examination and assessment that remained unchanged, Dr. Vargo recommended petitioner refrain from additional therapy until the MRI of his cervical spine was completed. By 8/30/22 petitioner's MRI of the cervical spine had not yet been approved. Dr. Vargo told petitioner to return as needed for the neck, pending the MRI of the cervical spine.

On 9/1/22 petitioner underwent an MRI of the cervical spine. The impression was degenerative changes resulting in C5-C6 and C6-C7 moderate spinal canal stenosis and multilevel mild-moderate neural foraminal stenosis.

On 9/2/22 Dr. Vargo reviewed the MRI of the cervical spine and was of the opinion that petitioner had bulging discs at C5-C6 and C6-C7 with stenosis where the nerves came out. He saw no obvious pinched nerve, but could be with the stenosis. He was of the opinion that petitioner's crush injury exacerbated or created the disc bulge. He recommended a referral to pain management for epidural injection discussion, or a referral to a neurosurgeon.

On 9/13/22 petitioner returned to Dr. Vargo. He reported that his cervical spine condition was unchanged. Following an examination, his assessment remained unchanged. Dr. Vargo recommended a referral to neurosurgery in Carbondale. He continued petitioner off work.

On 10/21/22 petitioner followed-up with Dr. Vargo. Petitioner reported more numbness in his fingers since his last visit. He reported that since the injury it was mainly his thumb, but was now his thumb, index and middle finger. Following an examination, Dr. Vargo's assessment remained the same. He noted that petitioner's neck condition was worsening with neuropathy progressing to more fingers. Dr. Vargo continued petitioner off work, given that he still had not seen the neurosurgeon.

On 12/9/22 petitioner returned to Dr. Vargo. Petitioner reported that he was still in so much pain from his left shoulder surgery, that he was to undergo a repeat MRI of the left shoulder. He also reported that Workers' Comp had terminated his therapy for his left shoulder, and he still had not gotten authorization to see a neurosurgeon. He complained that he was in excruciating pain and Norco was not helping. He reported chronic neck and left shoulder pain, as well as pain and numbness/tingling to the left arm and hand hourly. Following an examination, Dr. Vargo's assessment remained unchanged. Dr. Vargo again referred petitioner to a neurosurgeon. Petitioner was continued off work.

On 12/13/22 petitioner underwent a repeat MRI of the left shoulder. The impression was infrasubstance signal and bursal surface fraying of the supraspinatus and infraspinatus tendons that were intact, and suggested a combination of tendinosis and postsurgical changes; interarticular long heads

biceps tendon that was not identified and needed to be correlated for tenodesis; subacromial/subdeltoid bursitis with synovitis; degeneration and possible degenerative tear of the posterior glenoid labrum; and, acromioclavicular joint arthropathy.

On 1/13/23 petitioner returned to Dr. Vargo. He continued to complain of pain in his neck and left shoulder. He noted that Dr. Davis had recommended a repeat surgery for his left shoulder. He also noted that he had a neurosurgery appointment scheduled with Dr. Chu on 2/3/23 for his neck pain, but requested to see Dr. Rutz for his neck pain. Dr. Vargo made that request, but told petitioner to keep appointment with Dr. Chu, until they get authorization for appointment with Dr. Rutz. Petitioner never saw Dr. Chu.

On 1/16/23 petitioner underwent a Section 12 examination performed by Dr. Michael Nogalski, at the request of the respondent. Petitioner reported that a piece of ice fell off of a 2 story building and landed on his left head and shoulder. He provided a consistent history of his treatment to date. Petitioner complained of pain in his left shoulder at rest; difficulty lifting anything up and away from his body, and overhead; difficulty rolling over or sleeping on his left shoulder; weakness; tightness and swelling in his left shoulder; and, some tingling and burning in his arm. Following an examination, x-rays of the left shoulder taken that day, review of the medical records, and review of a TriStar Notification of Injury, Dr. Nogalski's assessment was status post repair of chronic rotator cuff tear with significant limited range of motion and pain.

Dr. Nogalski was of the opinion that petitioner had a preexisting chronic rotator cuff and biceps tendon tear in his left shoulder prior to 2/7/22; that petitioner's passive range of motion of his left shoulder was not conclusive for loss of motion due to capsular tightness; that petitioner had some form of capsulitis or pain limiting his motion; that petitioner was focused upon what appears to be a chronic pre-existing condition that is related to his injury on 2/7/22, that is not consistent with the mechanism of injury or the operative findings; that petitioner's objective findings are not causally related to the injury on 2/7/22; that a block of ice falling on petitioner would not cause a rotator cuff tear; that petitioner did not specifically state that he fell on his left shoulder, and that was inconsistent with the contemporaneous information regarding the fall; that petitioner's current left shoulder condition is related to a post-operative adhesive capsulitis, that is not related to the injury on 2/7/22; that petitioner's massive rotator cuff tear is not related to the mechanism of injury on 2/7/22, but rather to his chronic rotator cuff tear; that his treatment to date was reasonable and necessary; that a manipulation under anesthesia, or possible arthroscopic debridement would be reasonable; and, that physical therapy would also be reasonable.

Dr. Nagolski was of the opinion that petitioner should be restricted from inmate contact, and use of the left arm over shoulder level. Dr. Nogalski was of the opinion that petitioner had reached maximum medical improvement because he found no causal connection between petitioner's current condition of ill-being and his left shoulder. He was of the opinion that petitioner sustained a strain for which physical therapy was needed, and he would have reached maximum medical improvement with 4-6 weeks after 2/7/22.

On 2/14/23 petitioner followed-up with Dr. Vargo. Petitioner reported that his left shoulder and neck were unchanged. Dr. Vargo examined petitioner and his assessments remained unchanged. However, he also noted that petitioner had tenderness and decreased range of motion in the right shoulder. He ordered x-rays of the right shoulder and continued petitioner off work.

On 2/23/23 petitioner returned to Dr. Vargo. He reported that he felt his right shoulder complaints were due to overuse, and he "really injured it when reaching for a pillow as left shoulder is still out of commission from the work comp injury." Dr. Vargo was of the opinion that petitioner's right shoulder condition was indirectly related to the left shoulder injury due to him having to use it more. Following an examination, Dr. Vargo assessed tendinosis of the right shoulder, and acute pain of the right shoulder. Dr. Vargo performed a right shoulder injection.

On 3/15/23 petitioner followed-up with Dr. Vargo for his left and right shoulder, as well as his cervical spine. Following an examination, Dr. Vargo assessed cervical radiculopathy, traumatic complete tear of the left rotator cuff, tear of the left supraspinatus tendon, and internal derangement of the right shoulder. He again placed a referral to Dr. Rutz, and ordered an MRI of the right shoulder.

On 4/10/23 petitioner presented to Dr. Davis with persistent complaints of right shoulder pain, worse with activity and better with rest since March of 2023 when he was reaching back to pull a pillow up behind his neck and felt pain. Given his complaints, and following an examination, Dr. Davis assessed pain in the right shoulder and a traumatic complete tear of the right rotator cuff. Dr. Davis prescribed a course of physical therapy.

On 4/17/23 petitioner returned to Dr. Vargo. He noted that the referral to Dr. Rutz had been denied. Dr. Vargo noted that petitioner has been authorized off work since 2/7/22. Petitioner continued with complaints related to his neck with constant numbness in his left three digits, as well as pain in his left shoulder. He also still had decreased range of motion in his neck to the left, with pain. Following an examination Dr. Vargo's assessment now included a rupture of the left biceps tendon. Petitioner was continued off work.

On 5/17/23 petitioner followed-up with Dr. Vargo. He complained of ongoing pain in his neck, left shoulder, and numbness in his left 3 digits. He reported decreased range of motion of the neck to the left pain. He also reported worsening pain and decreased range of motion in his right shoulder, and tingling in the 3rd and 4th right fingers. Dr. Vargo assessed cervical radiculopathy, traumatic complete tear of the left rotator cuff, and internal derangement of right shoulder. Petitioner was continued off work.

On 6/5/23 petitioner returned to Dr. Davis. He gave a history of an injury on 2/7/22 that subsequently led to a left shoulder rotator cuff repair, that had progressed slowly and developed into a frozen shoulder. He stated that as a result petitioner has had to use his right arm for essentially all daily activities, and has had some increase in pain to the point where it is affecting his sleep and any ability to use it away from the plane of his body. Following an examination, Dr. Davis assessed postoperative adhesive capsulitis on the left shoulder following a rotator cuff repair dating back to a work injury on 2/7/22, and a right shoulder traumatic rotator cuff tearing, tendinosis and biceps tendinopathy as a result of over compensation from his left shoulder surgery, and subsequent frozen shoulder from a work injury. Dr. Davis was of the opinion that as a result of petitioner's left shoulder surgery and subsequent development of a frozen shoulder after his surgery that his right shoulder was now painful and needed further evaluation due to his recovery from his work injury on his left shoulder. He ordered an MRI of the right shoulder.

On 6/9/23 petitioner underwent an MRI of the right shoulder. The impression was large near complete full thickness tear of the supraspinatus; at least moderate grade partial thickness articular sided tear of the infraspinatus; near complete tear of the subscapularis with MRI comma sign, with some of the inferior fiber possibly intact; likely torn biceps tendon; and, superior labral tear and probable degeneration of the posterior labrum.

On 6/13/23 petitioner returned to Dr. Davis following his MRI of the right shoulder. Dr. Davis was of the opinion that the MRI showed a re-tear of the rotator cuff repair done by Dr. Brown about 20 years ago. Petitioner's examination was unchanged. Dr. Davis offered a right shoulder revision arthroscopic rotator cuff repair of a traumatic tear of the right shoulder, with possible SAD, and labral debridement. Petitioner wants this surgery.

On 7/10/23 the evidence deposition of Dr. Michael Nogalski, an orthopedic surgeon, was taken on behalf of respondent. On cross examination Dr. Nogalski was of the opinion that petitioner had a chronic left rotator cuff tear at least 6 months prior to 2/7/22. Dr. Nogalski testified that he did not review the MRI films of the left shoulder, and did not need to in formulating his opinions because he looked at the intraoperative reports. Dr. Nogalski was of the opinion that the "traumatic tear" referenced in the

operative report means somewhere there may have been a trauma, but does not describe or opine the chronicity or time frame of that tear. Dr. Nogalski was of the opinion that he saw no medical records regarding petitioner's left shoulder prior to the injury on 2/7/22, and knew of no trouble petitioner was having performing his job duties prior to 2/7/22. Dr. Noglaski admitted that the day after the injury petitioner had left shoulder complaints, and positive testing that was representative of rotator cuff issues. Dr. Nogalski was of the opinion that if someone gets hurt and it is under review by two opposing sides to resolve the issue, it is "under high scrutiny." Dr. Noglaski then testified that he did not know that respondent had accepted petitioner's first surgery to his left shoulder and paid petitioner his TTD.

On recross examination Dr. Nogalski testified that the history of the chunk of ice falling on his head and left shoulder, is a different history than the ice falling on his head and him falling to the ground on his left shoulder. Dr. Nogalski was of the opinion that "there is no clear documentation of an injury to the left shoulder other than speculation", because in his prior sentence he found no stress or strain to the left shoulder.

On 7/19/23 petitioner underwent a right shoulder arthroscopic massive rotator cuff repair with extensive time spent due to complexity of the tear; right shoulder arthroscopic extensive debridement of the intraarticular, subacromial, subdeltoid and subcoracoid adhesions; extensive debridement of type 2 SLAP tear; and, extensive debridement of rotator interval and residual biceps tendon stump. This procedure was performed by Dr. Davis. Petitioner's post-operative diagnosis was right shoulder massive rotator cuff tear of the supraspinatus, left supraspinatus, and left subscapularis tendon, as well as a Type 2 SLAP tear.

Petitioner followed-up post-operatively with Dr. Davis on 8/2/23 and 8/28/23. On 8/28/23 petitioner reported a rash from doxycycline, and increased pain after some aggressive therapy. Dr. Davis examined petitioner and assessed status post right shoulder arthroscopic massive rotator cuff repair done on 7/19/23, with some likely cellulitis.

On 8/7/23 the evidence deposition of Dr. Davis, an orthopedic surgeon, was taken on behalf of petitioner. Dr. Davis testified that petitioner was seen by PA Palmer in his office on 3/20/22. He noted that petitioner reported left shoulder pain after an injury at work on 2/7/22 that caused him to fall on his left shoulder. Dr. Davis testified that surgery was recommended at that time, after review of the MRI that showed a full rotator cuff tear. He further testified that on 5/12/22 he performed surgery on petitioner to repair the massive rotator cuff tear involving the supraspinatus, and part of the subscapularis. He was of the opinion that there was nothing he saw in surgery that would indicate this tear was longstanding.

Dr. Davis was of the opinion that with repairs of massive rotator cuff tears there is less predictable healing complications that include stiffness, and need for revision surgery if it fails to heal. Dr. Davis was of the opinion that post-operatively petitioner developed a stiff shoulder. Dr. Davis opined that the work injury caused or exacerbated petitioner's pain and led to the treatment he rendered. Following some issues in therapy and an injection that did not provide lasting relief, Dr. Davis assessed petitioner with adhesive capsulitis and offered him an arthroscopic surgery to clean out the shoulder and try to restore motion. Dr. Davis was of the opinion that the petitioner's adhesive capsulitis was related to the prior surgery, which was the result of the injury on 2/7/22. Dr. Davis was of the opinion since petitioner had still not yet had the recommended surgery, the odds of him "thawing out" completely were not great. He was of the opinion that petitioner could possibly gain some function, improvement, and slight pain improvement if left alone, but the longer you wait without surgery, the less good the long term outcome is because the adhesions become thicker and less willing to give in terms of manipulation and the ability to break them up.

Dr. Davis was of the opinion that on 6/5/23 petitioner was unable to work as a result of his left shoulder functional limitation. With respect to the right arm, Dr. Davis was of the opinion that whenever you have a "slow to recover surgery" the opposite side has to do more work, and fatigability and structural damage with overuse can occur. He noted that petitioner had an incident in March of 2023 where he reached back to pull a pillow up behind his neck and that is when his right shoulder pain took off. Dr. Davis was of the opinion that this event was not directly related to petitioner's work injury of 2/7/22. He did not believe that there was a direct correlation between petitioner's right shoulder and the work injury on 2/7/22. However, he was of the opinion that there could be a contributing component that petitioner's right shoulder was not in great shape from being overworked and could not handle the basic maneuver of reaching behind his head to pull the pillow. Dr. Davis opined that petitioner's right shoulder being required to carry the load, or do more work, might or could have led to his right shoulder condition becoming weakened in terms of the rotator cuff. Dr. Davis testified that he had no information that petitioner had problems with his right shoulder until he complained about if after the left shoulder was injured, other than his surgery to the right shoulder 20 years ago.

On cross examination, Dr. Davis was of the opinion that if a rotator cuff was repaired 20 years ago, with successful healing, he would hope that it was still good, but it would depend on what happened in the interval.

On redirect Dr. Davis was of the opinion that with a normal, functioning, intact rotator cuff, reaching for a pillow in theory should not cause it to tear. Dr. Davis was of the opinion that if an inch of ice fell from the roof of a two story building it could cause a rotator cuff tear.

On 8/25/23 petitioner followed up for pain, redness, swelling, and hot to the touch in his right shoulder following surgery on 7/19/23. He presented to Dr. Vargo because his surgeon was out of town. Following an examination, Dr. Vargo assessed cellulitis of the right shoulder.

Petitioner testified that he has a follow-up appointment with Dr. Davis scheduled in October of 2023 for his right shoulder. He testified that he is still in physical therapy for his right shoulder.

Petitioner was authorized off work by Dr. Davis from 2/8/22 through 6/29/22. From 6/30/22 through 8/9/22 he was restricted to right upper extremity work only, with no driving. From 8/10/22 through 10/17/22 petitioner was restricted right upper extremity work only. On 10/18/22 petitioner was restricted to a 1-2 pound lift; waist level work only; and no repetitive lifting, pulling or pushing. From 11/21/22 through pending surgery, petitioner was restricted from inmate contact and any use of the left upper extremity. On 7/10/23 and 8/2/23 petitioner was authorized off work by Dr. Davis until reevaluated. Petitioner was not reevaluated by Dr. Davis before the hearing on 10/2/23. Petitioner testified that he is not allowed to return to work for respondent in a light duty capacity. He testified that he would have to return in his full capacity as a Corrections Officer.

Petitioner testified that currently he cannot raise his left arm above shoulder level to the side or in front of him. He also testified and demonstrated that he cannot reach his left arm behind his back. He stated that the pain is primarily in the front of his left shoulder. He reported that he has no strength in his left arm, and that it hurt to make a fist. He stated that when he flexes his biceps his muscle is deformed due to a knot on the outside of his biceps that has been there since about 2 months following his surgery when physical therapy was denied by respondent.

Petitioner reported that since the date of injury and the surgery to his left shoulder, he has had problems with his right shoulder because he was overcompensating with his right arm due to his limitations with his left arm. Petitioner testified that since overcompensating with his right arm he cannot mow his yard, and just sits in his recliner with a pillow behind his neck and his left shoulder.

Petitioner testified that currently his right shoulder is great. He denied any problems with his right shoulder prior to 2/7/22.

With respect to his neck and head pain following the injury on 2/7/22, petitioner testified that he gets headaches a couple times a day. He stated that when he tries to drive he cannot turn his head to the

left. He stated that he cannot sleep, and his neck hurts constantly. He also testified that he cannot turn to the right and look down. He noted that certain movements of his neck cause tingling to his thumb, index finger, and middle finger. He stated that this happens when his pillow is not in the right place when he is sleeping. Petitioner also stated that since the injury on 2/7/22 if he leans his head back he has shooting pain and tingling into his left arm.

Petitioner testified that Dr. Vargo has done x-rays and an MRI of his neck, and has referred him to Dr. Rutz. Petitioner wants to see Dr. Rutz for his neck.

Petitioner offered into evidence physical therapy records from Southern Illinois Healthcare for the period 6/3/22 through 5/10/23. Petitioner testified that the therapy for his neck did not help, and even made his neck worse.

Petitioner offered into evidence $836.77 in out of pocket expenses.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner is alleging that his current condition of ill-being as it relates to his cervical spine, left shoulder and right shoulder are causally related to the injury on 2/7/22. Respondent disputes.

Petitioner provided a consistent history that a big chunk of ice fell off the building and hit him on top of his head and he fell backwards onto his left hand. The respondent's accident report completed on 2/7/22 also states that after petitioner was struck on the head by the chunk of ice he fell to the ground. Petitioner testified that the impact of the chunk of ice on his head knocked him out. Petitioner had immediate complaints of neck and left shoulder pain. From the date of accident forward, petitioner has continued with complaints regarding his neck and left shoulder. It was not until 2/14/23 that the records contain any reference to right shoulder complaints. Petitioner alleges that the right shoulder complaints are related to the overuse of his right arm, as well as a pop he felt in his right shoulder after reaching behind him to lift the pillow behind his neck and left shoulder.

Although petitioner may have had preexisting degenerative changes in his left shoulder prior to 2/7/22, there is no evidence that petitioner had any treatment for, or issues with, his left shoulder prior to 2/7/22. Petitioner was working his full duty job as a Corrections Officer with respondent without issue prior to 2/7/22. Casual connection opinions were offered by Dr. Davis and Dr. Nogalski as they relate to petitioner's left shoulder.

Following the injury on 2/7/22 petitioner underwent an injection to his left shoulder that did not provide any relief. Thereafter, petitioner underwent surgery to his left shoulder to repair a massive rotator cuff tear, subacromial decompression, extensive debridement of the rotator interval, interarticular,

subacromial, and subdeltoid adhesions, and debridement of the labrum. This was performed by Dr. Davis.

Dr. Davis ordered physical therapy post-operatively, which petitioner began and was doing well. Then, before he could finish the physical therapy, respondent stopped paying. The respondent might then authorize additional physical therapy, only for it to be stopped again. As a result, petitioner's left shoulder got worse over time, and eventually he underwent a repeat MRI of the left shoulder, and Dr. Davis recommended a repeat surgery for his left frozen shoulder. Dr. Davis was of the opinion that post surgery, petitioner's left shoulder had progressed slowly and developed into a frozen shoulder. He assessed postoperative left shoulder adhesive capsulitis following a rotator cuff repair dating back to the work injury on 2/7/22.

Dr. Davis was of the opinion that there was nothing he saw when performing surgery on petitioner's left arm on 5/12/22 that would indicate that petitioner's massive rotator cuff tear was longstanding. Dr. Davis opined that petitioner's adhesive capsulitis is related to the prior surgery, which was the result of the injury on 2/7/22.

Dr. Nogalski was of the opinion that petitioner had a preexisting chronic rotator cuff and biceps tendon tear in his left shoulder prior to 2/7/22. However, he also admitted that he saw no records to support a finding that petitioner had any problems with, or treatment for, his left shoulder prior to 2/7/22. Dr. Nogalski was also of the opinion that petitioner's left shoulder injury was not consistent with the mechanism of injury because he did not believe that a block of ice falling on petitioner's head would cause a rotator cuff tear. However, the arbitrator finds it significant that Dr. Nogalski completely ignores the fact that petitioner fell backwards to the ground. He simply states that petitioner did not specifically state that he fell on his left shoulder. The arbitrator also finds it significant that Dr. Nogalski chose to not address the impact on the shoulder when someone falls backwards to the ground, possibly on his left hand. The arbitrator finds Dr. Nogalski's implication that petitioner was less than truthful when talking about the mechanism of injury unsupported by the credible evidence and petitioner's testimony. The arbitrator finds such claims by Dr. Noglaski to be unfounded, and if anyone's opinions are less than persuasive in this case, it would be Dr. Nogalski's, given that his opinions are not based on the credible evidence, but rather facts not in evidence.

Based on the above, as well as the credible evidence, the arbitrator finds the opinions of Dr. Davis more persuasive that those of Dr. Nogalski given that they are consistent with the credible evidence. As a result, the arbitrator adopts the opinions of Dr. Davis and finds the petitioner's current condition of ill-being as it relates to his left shoulder is casually related to the injury he sustained on 2/7/22. The

arbitrator finds it significant that petitioner had no left shoulder problems prior to 2/7/22, and has had immediate left shoulder pain after the injury on 2/7/22 that has not abated.

With respect to petitioner's cervical spine, petitioner had immediate complaints of neck pain from the date of injury on 2/7/22, when the chunk of ice landed on his head. Petitioner testified that it felt like a bubble television fell on him. Petitioner also reported numbness in his left fingertips that Dr. Vargo assessed as cervical radiculopathy. When petitioner presented to Dr. Vargo after his left shoulder surgery on 6/30/22 with ongoing neck complaints, Dr. Vargo was of the opinion that when petitioner first presented on 2/8/22 he had neck complaints that were superseded by his left shoulder pain. On 6/30/22 Dr. Vargo began requesting from respondent a referral to a neurosurgeon for petitioner's cervical radiculopathy. Dr. Vargo also placed petitioner in physical therapy for his neck, but petitioner stated that it made it worse. An MRI of the cervical spine was performed and petitioner continued to follow-up with Dr. Vargo. Dr. Vargo continued requesting a referral to a neurosurgeon, but respondent offered no appointment. Petitioner requested that he be referred to Dr. Rutz, but respondent denied that request. Petitioner continues with neck pain and more numbness in his fingers on his left hand.

The only casual connection opinion offered with respect to petitioner's cervical spine was that of Dr. Vargo. Dr. Vargo opined that petitioner's crush injury to his head exacerbated or created the disc bulges at C5-C6 and C6-C7. The arbitrator finds it significant that petitioner had no neck complaints prior to 2/7/22; that immediately after 2/7/22 he reported complaints of neck pain and cervical radiculopathy; and, despite multiple requests to respondent for a referral to a neurosurgeon, respondent has refused to approve petitioner's request to be seen by Dr. Rutz.

Based on the above, as well as the credible record that shows petitioner had immediate neck pain and cervical radiculopathy complaints from the time of the injury that have not abated, the arbitrator adopts the opinion of Dr. Vargo and finds petitioner's current condition of ill-being as it relates to his cervical spine causally related to the injury he sustained on 2/7/22. Respondent offered no causal connection opinion as it relates to petitioner's cervical spine.

Lastly, with respect to petitioner's right shoulder. It is unrebutted that petitioner had surgery to his right rotator cuff over 20 years ago, and petitioner had no recent treatment to, or complaints regarding his right shoulder prior to the injury on 2/7/22. Following the injury on 2/7/22, petitioner ultimately underwent surgery to his left shoulder. Following a difficult post-operative period where respondent kept stopping and starting petitioner's physical therapy, petitioner started experiencing right shoulder complaints due to overuse of his right arm, given his inability to use his left arm. On 2/14/23 Dr. Vargo first noticed that petitioner had tenderness and decreased range of motion in his right shoulder. When

petitioner presented to Dr. Vargo on 2/23/23 he noted that petitioner's right shoulder symptoms really increased after he was sitting in a recliner and reached behind his back with his right arm to pull up his pillow and place it behind his neck and left shoulder, and felt a pop in his right shoulder. Petitioner reported to Dr. Davis that as a result of his injury and slow post operative recovery, he has had to use his right arm for essentially all daily activities. As a result, his pain has increased to the point where it affects his sleep and any ability to use it away from the plane of body. Petitioner eventually underwent an MRI of his right shoulder followed by a massive rotator cuff repair; extensive debridement of the intraarticular, subacromial, subdeltoid and subcoracoid adhesions; extensive debridement of a Type 2 SLAP tear; and, extensive debridement of the rotator interval and residual biceps tendon stump. Petitioner did well post-operatively.

Causal connection opinions as it relates to the right shoulder were only offered by Dr. Davis. Dr. Davis was of the opinion that whenever you have a slow recovery from surgery in one arm, the opposite arm has to do more work, and as a result fatigability and structural damage with overuse can occur. Dr. Davis was of the opinion that petitioner's simple act of lifting and reaching behind his back to lift the pillow up by his neck and left shoulder was not an event directly related to the petitioner's work injury of 2/7/22, but could be a contributing component since petitioner's right shoulder was not in great shape from being overworked and it could not handle the basic maneuver of reaching behind his head to pull the pillow up. Dr. Davis opined that petitioner's right shoulder being required to carry the load, or do more work, might or could have led to his right shoulder condition becoming weakened in terms of the rotator cuff.

Based on the above, as well as the credible evidence, the arbitrator adopts the causal connection opinions of Dr. Davis, as they relate to petitioner's right shoulder, and finds them consistent with the credible evidence, and persuasive. Therefore, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that his current condition of ill-being as it relates to his right shoulder is causally related to the injury he sustained on 2/7/22, due to overuse. Respondent offered no causal connection opinion as it relates to petitioner's right shoulder.

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?

Having found petitioner's current condition of ill-being as it relates to his left shoulder, cervical spine and right shoulder causally related to the injury on 2/7/22, the arbitrator finds all treatment for petitioner's left shoulder, cervical spine and right shoulder from 2/7/22 through 10/3/23, was reasonable and necessary to cure or relieve petitioner from the effects of that injury.

Respondent shall pay reasonable and necessary medical services for treatment to petitioner's left shoulder, cervical spine and right shoulder from 2/7/22 through 10/3/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall also reimburse petitioner for out of pocket expenses outlined in PX12 in the amount of $836.77.

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.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Having found the petitioner's current condition of ill-being as it relates to his left shoulder, cervical spine and right shoulder causally related to the injury on 2/7/22, the arbitrator finds the petitioner is entitled to the following prospective medical care:

1. An arthroscopic surgery to clean out the left shoulder and try to restore motion, should Dr. Davis still think it is a viable option;
2. Ongoing physical therapy and follow-up appointments with Dr. Davis for his right shoulder; and,
3. A referral to Dr. Rutz for evaluation of petitioner's cervical spine.

Respondent shall pay reasonable and necessary medical services for 1) an arthroscopic surgery to clean out petitioner's left shoulder and try to restore motion, should Dr. Davis still think it is a viable option; 2) ongoing physical therapy and follow-up appointments with Dr. Davis for petitioner's right shoulder; and, 3) a referral to Dr. Rutz for evaluation of petitioner's cervical spine, as provided in Sections 8(a) and 8.2 of the Act.

The arbitrator finds it significant that Dr. Nogalski agreed with the recommended surgery to petitioner's left shoulder, even though he did not believe it was causally related to the injury petitioner sustained on 2/7/22.

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner is alleging that he is entitled to temporary total disability benefits from 2/8/22 through 10/3/23, a period of 84-1/7 weeks. Respondent claims it has paid temporary total disability benefits from 2/8/22 through 5/31/23, in the amount of $51,962.42.

Having found that the petitioner's current condition of ill-being as it relates to his left shoulder, cervical spine and right shoulder causally related to the injury on 2/7/22; that Dr. Davis and/or Dr. Vargo

have authorized petitioner off work or on light duty through 10/3/23; and, that petitioner is unable to return to work for respondent in any capacity other than a full return work capacity, the arbitrator finds the petitioner is entitled to temporary total disability benefits from 2/8/22 through 10/3/23.

Respondent shall pay Petitioner temporary total disability benefits of $880.71/week for 84-1/7 weeks, commencing 2/8/22 through 10/3/23, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $51,962.42 for temporary total disability benefits that have been paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015988
Case Name	Rachel Rogers v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0443
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Mary Massa, Nathan Becker
Respondent Attorney	Scott Lucas

DATE FILED: 9/18/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0443

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RACHEL ROGERS,

Petitioner,

vs. NO: 22 WC 015988

ILLINOIS STATE POLICE, STATE OF ILLINOIS,

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 average weekly wage and nature and extent of disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that the Arbitrator correctly excluded overtime hours for determining average weekly wage. The Commission views the evidence differently, however, regarding Respondent's payment of hazard pay and finds the hazard pay should be included.

The seminal case addressing the exclusion of bonus pay under Section 10 of the Act is *Arcelor Mittal Steel vs. Ill. Workers' Comp. Comm'n*., 2011 IL App (1st) 102180WC. In that case, the Appellate Court noted that "bonus" is commonly defined as "something in addition to what is expected or strictly due." *Arcelor Mittal Steel,* 2011 IL App (1st) 102180WC P40 (citing Webster's Third New International Dictionary 167 (1981).) The Court then drew a distinction between "incentive-based pay, which an employee receives in consideration for specific work performed as a matter of contractual right, and a bonus, which an employee receives for no consideration or in consideration of overall performance at the sole discretion of the employer." *Id.* The Court went on to hold that the claimant had received production bonuses in consideration for work performed, "*and not as an extra benefit provided by employer gratuitously*." *Arcelor Mittal Steel*, 2011 IL App (1st) 102180WC P41. (Emphasis added) The Court's decision thus articulated the legal

standard for determining whether an extra wage payment is to be classified as a bonus within the meaning of Section 10, requiring us to determine whether the additional wages were paid either without consideration or in consideration for overall performance at the employer's sole discretion. If so, then the extra wages shall be considered a bonus and excluded when computing average weekly wage. Conversely, we must include extra wages when the evidence shows the employee was entitled to the extra payments in consideration for specific work performed. Applying this standard in *Contreras vs. City of Chicago Heights*, 2013 Ill. Wrk. Comp. LEXIS 432, 13 IWCC 347, the Commission ruled that "longevity pay" was not a bonus because the longevity payments were "based purely on how many years Petitioner worked for Respondent" and were non-discretionary as provided for in the union collective bargaining agreement.

In the case at bar, Petitioner testified she received hazard pay for working as a trooper on the interstate. When asked what was required to receive hazard pay, Petitioner testified that, "[t]o earn the hazard pay, I'm a trooper on the interstate. I handle multiple crashes, different incidents. It's just incorporated for the hazard of the job." (T. 18) She further testified that, as far as she knew, the hazard pay was non-discretionary. Respondent's witness, Phillip Schumer, on the other hand, agreed that some troopers received hazard pay but he was unable to say whether the hazard pay was discretionary or required.

Hazard pay is commonly defined as "extra money that someone is paid for doing work that is dangerous." (Merriam-Webster Dictionary, online dictionary) Hazard pay is also defined as "A payment made beyond basic wages for dangerous work." (Oxford English Dictionary, online dictionary) This form of compensation paid in consideration for dangerous work is distinguishable from bonus pay which as the Court noted is "something in addition to what is expected or strictly due." *Arcelor Mittal Steel, supra* P40. Based on the consistency of the $143.50 payments reflected on Petitioner's "regular" paystubs for every pay period and Petitioner's unrebutted testimony, the Commission finds that the hazard pay was paid in consideration for the specific work Petitioner performed as a patrol trooper on the interstate and was not a gratuitous bonus paid at Respondent's discretion. Accordingly, Petitioner satisfied the legal test articulated in *Arcelor Mittal Steel* requiring the inclusion of her hazard pay for determining average weekly wage.

The Commission re-calculates Petitioner's average weekly wage using her regular wages of $65,609.50 and hazard pay of $3,444.00, and finds Petitioner's gross combined earnings equaled $69,053.50, yielding an average weekly wage of $1,327.95 during the applicable 52-week period preceding the accident. This translates into a corresponding TTD rate of $885.20 and PPD rate of $796.77.

The Commission also views the evidence differently on the issue of nature and extent of disability. As it pertains to PPD benefits, the Arbitrator's Section 8.1b(b) analysis gave proper weight to the enumerated factors; however, the Commission views the level of disability differently than the Arbitrator. The Commission modifies the Arbitrator's Decision to increase Petitioner's PPD award from 15% to 25% loss of use of the right leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $885.20 per week for a period of 22 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall be entitled to a credit for paid

extended benefits in the amount of $27,577.90.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $796.77 per week for a period of 53.75 weeks, as provided in §8(e)(12) of the Act, for the reason that the injuries sustained caused 25% loss of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $4,398.00 for medical expenses as provided under §8(a) and §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided under Section 8(j) 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.

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

September 18, 2024

KAD/swj
O 7/30/24
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015988
Case Name	Rachel Rogers v. Illinois State Police
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Nathan Becker
Respondent Attorney	Alyssa Silvestri

DATE FILED: 12/14/2023

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 12, 2023 5.19%

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

December 14, 2023

/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

Rachel Rogers
Employee/Petitioner
v.
Illinois State Police
Employer/Respondent

Case # **22** WC **015988**

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

DISPUTED ISSUES

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

FINDINGS

On **September 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 $**65,609.50**; the average weekly wage was $**1,261.72**.

On the date of accident, Petitioner was **27** 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 $**27,577.90** for other benefits (Extended Benefits), for a total credit of $**27,577.90**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $841.15 per week for 22 weeks, commencing September 28, 2021, through February 28, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $4,398.00, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $757.03 per week for 32.25 weeks, because the injuries sustained caused the 15% loss of the right leg, as provided in Section 8(e)(12) of the Act.

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

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

Signature of Arbitrator

December 14, 2023

FINDINGS OF FACT

This matter proceeded to hearing on May 25, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were causation, average weekly wage, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 1 (AX1).

Petitioner is currently employed as a crime scene investigator for Respondent. The job of a crime scene investigator requires her to respond to and process crime scenes. On September 28, 2021, Petitioner was working as a patrol trooper. Petitioner's job as a patrol trooper consisted of enforcing the law and the Illinois Vehicle Code and respond to incidents.

On September 28, 2021, Petitioner responded to a crash that had been relocated from 55 southbound to Harlem Avenue, just off the highway ramp. The crash involved a semi-truck and a passenger vehicle. Petitioner had been inside the semi-truck gathering paperwork. As she was stepping down from the semi-truck with paperwork in her hand and her cover on, the cover started to blow off. Petitioner reached to catch the cover when she lost her balance. Petitioner fell on the right side of her body.

Petitioner sought treatment at MacNeal Hospital. (PX1) The history taken from Petitioner indicated that Petitioner fell on her side after a misstep and suffered right hand and knee pain. Medical personnel cleaned and bandaged her right ring and pinky fingers and referred Petitioner to Dr. John Miller, whom she ultimately saw on October 1, 2021. (PX2) Dr. Miller ordered an MRI of the right knee, which Petitioner underwent on October 12, 2021. The MRI revealed small focal impaction of the posterior medial tibial plateau, full thickness ACL tear, and probable tear at the meniscocapsular junction of the posterior horn and body of the medial meniscus.

Dr. Miller reviewed the MRI and ordered physical therapy which Petitioner underwent at Athletico, and surgery for the right knee. (PX2 & PX3) On November 23, 2021, Dr. Miller performed a right knee arthroscopic ACL reconstruction using quadriceps autograft. (PX2)

Petitioner testified that Petitioner's Exhibit 5 was an accurate reflection of the regular pay she received between September 30, 2020, and September 15, 2021. Petitioner further testified that Petitioner's Exhibit 6 was an accurate reflection of the overtime pay she received between September 30, 2020, and August 31, 2021, and the overtime hours she worked during that period. Petitioner testified that Petitioner's Exhibit 5 also showed the additional $143.50 she received every pay period for hazard pay she was entitled to for being a trooper who worked on the interstate. The hazard pay was a flat, preset amount. According to Petitioner, hazard pay was not discretionary, so Respondent could not refuse to pay her hazard pay. Petitioner explained that she retrieved Petitioner's Exhibits 5 and 6 from the E-PASS system, which Respondent provides to its employees so that they can access their pay information. Petitioner testified that she receives one check that reflects her regular pay and another check that reflects her overtime pay.

Regarding overtime work, Petitioner testified that overtime was mandatory for the most part when she worked as a trooper. Petitioner acknowledged that sometimes overtime was voluntary. Petitioner explained that overtime was mandatory when she was in a middle of an incident; she could not leave until she was finished. Another time overtime is mandatory is when a computer message goes out to all troopers indicating that that they are held over for work until further notice. Petitioner testified that about 95% of the overtime listed in the overtime pay stubs was mandatory.

Respondent called Philip Schumer (Schumer), Respondent's human resources/benefits manager, to testify regarding Petitioner's wages. He testified that the bureau chief told him that overtime was not mandatory. Schumer had no knowledge as to whether troopers are mandated to stay until the job is done.

Schumer reviewed Petitioner's Exhibit 6 and Respondent's Exhibit 3 (Respondent's Wage Statement Sheet) and noted that overtime pay was listed differently on the sheets and could not explain why. Schumer did not have first had knowledge of the numbers put into Respondent's Exhibit 3. Schumer also had no knowledge as to whether hazard pay was discretionary or a flat rate, but he did know that troopers are paid hazard pay. Schumer did not know if Respondent's Exhibit 3, which was completed by someone else, includes hazard pay.

Regarding her current complaints, Petitioner testified that she still has issues with her right knee while running or walking long distances. Petitioner explained that she was required by Respondent to take a yearly physical fitness inventory test (PFIT) and it must be completed during a certain time frame. Petitioner testified that prior to the work accident, she could complete the exam easily, but now she can barely run 5 to 8 minutes without struggling. Petitioner testified her right knee does not prevent her from running short distances. Petitioner acknowledged that she passed both PFITs and that she scored higher on the September 20, 2022, PFIT.

Regarding her current job as a crime scene investigator, Petitioner testified she must kneel a lot while photographing crime scenes. She has to use a cushioned pad if she is required to kneel for long periods of time. If she does not use the pad, she will get a sharp pain in her right knee. Petitioner acknowledged that her right knee does not prevent her from her normal activities of work. Petitioner makes $15,000.00 more annually as a crime scene investigator.

Petitioner testified that in the morning her right knee is sore, and she must stretch it. At the end of the day, her right knee sometimes feels swollen and has to be iced. Petitioner will take Advil for her right knee issues. Petitioner testified she did not have right knee issues while running, bending or walking prior to her work injury.

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

The Arbitrator notes that there is no dispute that Petitioner sustained a right knee injury while working on September 28, 2021. There is no indication that Petitioner had right knee problems prior to the work accident. Petitioner sought immediate care following the work accident and was diagnosed with an ACL tear.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being regarding her right knee is causally related to the September 28, 2021, work accident.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that a claimant in a workers' compensation proceeding has the burden of establishing her average weekly wage. *Edward Don Co. v. Industrial Comm'n, 344 Ill. App. 3d 643, 655 (2003)*. Further, for the inclusion of overtime as part of claimant's average weekly wage, the claimant must establish that (1) she was required to work overtime as a condition of her employment, (2) she consistently worked a set number of hours of overtime each week, or (3) the overtime hours she worked were part of her regular hours of employment. *Freesen, Inc. v. Industrial Comm'n, 348 Ill. App. 3d 1035, 1042 (2004)*.

In the case at bar, Petitioner testified that about 95% of the overtime listed in the pay stubs was mandatory. The Arbitrator notes that Schumer testified to someone telling him that there was no mandatory overtime for troopers and that he had no knowledge at to whether troopers were required to stay at incidents

until complete. The Arbitrator finds that Schumer has no real first-hand knowledge of what the required work hours are for a trooper and gives his testimony very little weight.

The Arbitrator finds Petitioner's testimony credible and persuasive. However, the problem is that Petitioner is unable to distinguish which hours of overtime were mandatory and which were not. As stated above, it is Petitioner's burden to establish her average weekly wage. As such, it is Petitioner's burden to establish which overtime hours were mandatory so that they can be added as part of her average weekly wage. Petitioner did not do this.

Next, a review of the pay stubs and wage sheets shows that Petitioner did not consistently work a set number of hours of overtime each week. In fact, she did not work overtime every week. The overtime Petitioner worked in the year preceding the work accident ranged from 0.5 to 19.5 hours per pay period. Therefore, Petitioner failed to establish that she worked a set of overtime hours consistently each week.

Lastly, there is nothing in the record to indicate that the overtime hours Petitioner worked were part of her regular hours of employment. Some of her overtime was voluntary, most was mandatory and varied throughout. They did not fall within her regular hours of employment.

Regarding the inclusion of hazard pay within Petitioner's average weekly wage, the Arbitrator notes that Petitioner testified that the amount was not discretionary, but acknowledged that it was pay given to trooper who worked on the interstate, which Petitioner did in the year preceding the work accident. The Arbitrator notes that Section 10 of the Act states that bonuses are not to be included in an average weekly wage calculation. Based on Petitioner's testimony, the hazard pay in this case is a bonus for her trooper assignment, i.e., working on the interstate. Therefore, the hazard pay bonus cannot be included in Petitioner's average weekly wage.

Based on the above, the Arbitrator finds that Petitioner made $65,609.50 in the year preceding the work accident on September 28, 2021. Therefore, Petitioner's average weekly wage was $1,261.72.

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 finding above that Petitioner's current condition of ill-being is causally related to the September 28, 2021, work accident, the Arbitrator finds Petitioner's treatment reasonable and necessary.

The Arbitrator notes that Respondent submitted a pay ledger showing all the medical bills it has paid. (RX11) Per the pay ledger, the only outstanding amount is for services provided by Athletico for $4,398.00. Therefore, Respondent shall pay the outstanding amount of $4,398.00 to Athletico pursuant to Sections 8(a) and 8.2 of the Act.

The parties have stipulated that Respondent is entitled to a credit under Section 8(j) of the Act for amounts paid.

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:

Petitioner was off work from September 29, 2021, through February 28, 2022. Therefore, Petitioner is entitled to temporary total disability benefits from September 29, 2021, through February 28, 2021.

Respondent paid extended benefits in the amount of $27,577.90, during Petitioner's temporary total disability period, for which Respondent shall receive a credit.

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

Pursuant to Section 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.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives this factor no weight.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a patrol trooper at the time of the accident. Petitioner returned to work following the work accident as a crime scene investigator. The Arbitrator gives this factor moderate weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 27 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner returned to work as a crime scene investigator following the work accident. As a crime scene investigator, Petitioner makes $15,000.00 more than she made as a patrol trooper. The Arbitrator gives this factor considerable weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner underwent a right knee anterior cruciate ligament reconstruction

using quadriceps autograft. Petitioner was released to full duty work on July 6, 2022, and has not sought any treatment since. Petitioner continues to have difficulty running, walking long distances, standing, and kneeling on the right knee. The Arbitrator gives this factor substantial weight.

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 the right leg pursuant to Section 8(e)(12) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC003377
Case Name	Scott Prince v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0444
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/18/2024

/s/Carolyn Doherty, 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

Scott Prince,
Petitioner,

vs. NO: 22 WC 3377

State of Illinois – Graham Correctional Center,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions 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, 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 March 6, 2024 is hereby affirmed and adopted.

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

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

Pursuant to §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.

September 18, 2024

O: 09/12/24
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	22WC003377
Case Name	Scott Prince v. State of Illinois/Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 3/6/2024

/s/ Adam Hinrichs, Arbitrator
Signature

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

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

March 6, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Scott Prince
Employee/Petitioner

v.

State of IL / Graham Correctional Center
Employer/Respondent

Case # **22** WC **003377**

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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield, Illinois**, on **January 19, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **01/13/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**69,236.44**; the average weekly wage was $**1,331.47**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $887.65/week for 5 3/7 weeks, commencing 05/18/2022 through 06/06/2022 and from 06/22/2022 through 07/11/2022, as provided in Section 8(b) of the Act.

Respondent shall pay all medical charges for Petitioner's reasonable, necessary and related medical treatment, as outlined in Petitioner's Exhibit 1. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

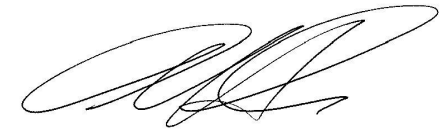
Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $798.88/week for 66.45 weeks, because the injuries sustained caused a 7.5% loss to Petitioner's right hand, a 7.5% loss to Petitioner's left hand, a 7.5% loss to Petitioner's right arm, and a 7.5% loss to Petitioner's left arm, as provided in Sections 8(e)9 and 8(e)10 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 07/11/2022 through 01/19/2024, 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.



March 6, 2024

Signature of Arbitrator

FINDINGS OF FACT

This matter was heard pursuant to Petitioner's request for hearing. The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits and the nature and extent of Petitioner's injuries. (T. 4)

Petitioner testified that he has been employed as a correctional officer with the Illinois Department of Corrections for 23 years. (T. 12) Petitioner began his career with the Department of Corrections at a maximum-security facility, the Joliet Correctional Center, where approximately 90% of his time was spent on a gallery or wing in the housing units. (T. 12, 13) There, he performed opening and closing doors, cuffing and uncuffing and opening chuckholes. (T. 13) He stated that the chuckholes had to be opened with Folger Adams keys which are approximately five to six inches long. (T. 13, 14) He testified that the facility is old and the locks and chuckholes do not work easily. (T. 14) He also used his arms to search the property boxes of inmates in custody. (T. 14, 15) He performed cell shakedowns, which involved checking everything in a cell from the sink to under beds and in boxes. (T. 15) At Joliet, he performed bar rapping, which involves rattling the bars of each cell door back and forth to check for loose or cracked bars. (T. 16) He performed bar rapping on most days, which made his hands and arms tired and sore. (T. 16)

After spending 10 years at Joliet, he transferred to Graham Correctional Center where he continued to serve as a Correctional Officer. (T. 16, 17) Petitioner testified that prior to COVID, his assignments included working as a housing unit officer, a writ officer, working in the healthcare unit, receiving unit and towers. (T. 35)

He testified that while at Graham, he worked in the segregation unit for two-and-a-half years, which involved opening chuckholes to give inmates everything that they needed, cuffing them, opening doors, taking them to the shower, yard and to healthcare. (T. 18) During COVID, he spent approximately 50 percent of his time as a housing unit officer and approximately 30-40 percent as a writ officer. (T. 35-37, 52) Petitioner testified that in April or May of 2020, he went on "one or two writs" but that this was not a daily assignment. (T. 54) Prior to April/May 2020, he worked as a writ officer only when he was told to go on the road. (T. 54-55) He testified that his writ officer assignment began right around the time he had his surgery. (T. 53) He spent five percent of his time working in the healthcare unit, five percent working in receiving and one percent was spent working in the towers. (T. 35-37) He spent approximately 80 to 90 percent of his overall time at Graham Correctional Center in the gallery or as a housing officer. (T. 17, 49, 52)

Petitioner testified that he reviewed Respondent's job postings exhibit and was asked what they meant, and he replied, "Nothing, because you can be changed – your assignment can change no matter what. Your Shift Commander when you go into roll call he can tell you to go one place but then switch you out and go to another." (T. 17-18, 52)

As a writ officer, he had to restrain inmates, shake them down, take them out, place them in a vehicle, drive them to where they are going and then do it all in reverse. (T. 40) He stated he performed anywhere from one to four transports per day. (T. 41) In healthcare, he had to feed prisoners, take them out for showers and escort them to the other side of the healthcare unit, gym or library. (T. 41, 42) He testified that there is not much keying or cuffing in the tower assignment. (T. 43-44) He testified that in the receiving unit, "you have to open and close doors all the time," that the doors are metal and are three or four inches thick, that they do not open like normal doors and you "have to jerk and pull sometimes to open them." (T. 44) He testified that there is some bar rapping that takes place at Graham. (T. 17) When working as a housing officer, he performed extensive opening doors and keying activities. (T. 17, 38-39, 62)

He testified that prior to COVID, he still performed cuffing "all day" but after COVID, his cuffing activities increased in the morning and at the end of his shift. (T. 38, 39) He testified that there are usually 50 doors in a housing unit and he had to open all the doors in his housing unit in the morning and lock them again at the end of his shift. (T. 38-39) He testified that when feeding inmates in housing, he would open each door, hand the inmates the tray and retrieve the tray. (T. 62-63) When showering inmates, taking them to healthcare or passing medications, he had to open and lock doors. (T. 62-63)

Petitioner testified that Graham has been short-staffed for the past four or five years and that during the pandemic, the housing units went into lockdown, which doubled his job duties. (T. 18-19) He testified that while in lockdown, the housing officers had to do "pretty much everything" for the inmates, including feeding, getting them out for showers, "always" opening and closing doors, cuffing them and taking them places and wearing PPE. (T. 18-19)

Petitioner testified that lockdown began in April or May of 2020. (T. 32) He stated that "it never really stopped" but "just lessened." (T. 32-33) He stated the facility would come off lockdown then go back on in certain houses. (T. 32-33) When asked when lockdowns were no longer a concern, he stated that "they are really never not a concern" and that they "still go on lockdowns due to shortage of staff." (T. 33) He was asked when the last time the facility was on lockdown, and he replied that the facility was locked down "yesterday" due to staff shortages. (T. 53)

Petitioner testified that the length of time it took to unlock each door depended on the lock. (T. 39) He stated that with some doors, he could "jiggle it" and get it right open, but some doors took 30 seconds or a minute to open. (T. 39) He stated that on a good day, 100 minutes could be spent unlocking and locking doors. (T. 39) He testified that pre-COVID, he had to cuff one or two or 40 or 50 people depending on where you were, and that usually once per week he had to cuff and uncuff 40 or 50 people. (T. 40)

Petitioner testified that the keys used for cuffing consisted of several different kinds of keys but were mostly a normal "police officer set of cuff keys." (T. 42) At Joliet Correctional Center, the cell door keys were five to six inches long and the keys at Graham are two to three inches long. (T. 42-43) He was asked how much force it takes to turn a key and replied that "it depends on if the lock is bad or the key is bad you can sit there and jiggle it and jiggle it, move it up and down, back and forth or it could just pop right open. (T. 43) He performs keying with both hands, as he switches to keying with his left hand when his right hand gets tired. (T. 46)

When asked what specific duties caused his injuries, he stated, "I am not a doctor, but I know that I have used my hands every single day turning keys, cuffing people, doing all the duties as assigned." (T. 37) He testified that he used his hands and arms all the time and felt that his activities of opening and closing all the doors in housing units, turning doorknobs and frequently putting on and taking off restraints had "something to do" with his injuries. (T. 37-38)

Petitioner initially managed his symptoms by shaking his fingers out and utilizing Tylenol or ibuprofen; however, his symptoms worsened. (T. 20, 31) He utilized braces around 2013 or 2015 when he initially noticed symptoms; however, the braces did not resolve his symptoms and he "just got used to the symptoms." (T. 30-31) He testified that prior to his surgeries, he was "miserable," and he would wake in the middle of the night with numbness, tingling and pain in his hands. (T. 22-23)

On January 13, 2022, Petitioner presented to the office of Dr. Matthew Bradley with right worse than left elbow, hand and wrist pain, tingling and numbness. (PX3) He reported that his symptoms began eight years prior. *Id.* Prior to the COVID lockdown, his symptoms were bearable and he was able to shake out his hands for relief of symptoms; however, his symptoms had gone from intermittent to almost constant and chronic. *Id.* His symptoms were worse in his third and fourth digits, and while sleeping or driving, they were worse in his fifth digit. *Id.* His pain and weakness had recently worsened and he had begun to drop things and awaken at night due to his symptoms. *Id.* He had tried a home exercise program, bracing and anti-inflammatory medications with no improvement. *Id.*

Dr. Bradley noted that Petitioner had been a correctional officer for 21 years. *Id.* He denied outside hobbies with repetitive motion and did not have a history of diabetes, thyroid disease or obesity. *Id.*

Physical examination of Petitioner's wrists and hands showed bilateral mild atrophy over the thenar eminence, numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, markedly positive Phalen's and positive Tinel's. *Id.* Exam of Petitioner's elbows showed tingling along the ulnar nerve distribution bilaterally and positive Tinel's at the right elbow. *Id.* X-rays of the bilateral hands and wrists showed no acute fractures, dislocation or significant degenerative changes. *Id.*

Dr. Bradley's assessment was bilateral carpal and cubital tunnel syndrome, with the carpal tunnel symptoms being slightly worse than the cubital tunnel symptoms. *Id.* He ordered an EMG and nerve conduction study to further

evaluate Petitioner's carpal and cubital tunnel syndromes and recommended that he continue to utilize his braces and ibuprofen and to continue his home exercise program. *Id.*

Dr. Bradley stated that the repetitive microtrauma Petitioner experienced while working as a correctional officer over the past 21 years and particularly the last the past year-and-a-half during the pandemic lockdown was contributory to the development of his bilateral carpal and cubital tunnel syndromes. *Id.*

On January 20, 2022, Petitioner underwent an EMG and nerve conduction study with Dr. Ravi Yadava, which confirmed the presence of moderate bilateral carpal tunnel syndrome, mild bilateral cubital tunnel syndrome, as well as moderate bilateral Guyon's canal syndrome. (PX4)

Petitioner returned to Dr. Bradley on January 24, 2022, and the results of his EMG and nerve conduction testing were reviewed. (PX3) He reported no improvement in his symptoms. *Id.* Dr. Bradley again noted that Petitioner had been utilizing anti-inflammatories, a home exercise program and night bracing without significant changes in his symptoms. *Id.* He indicated that Petitioner's symptoms were fairly chronic and waking him numerous times at night. *Id.* Further treatment, including surgical intervention, was discussed and carpal and cubital tunnel decompression on the right was scheduled. *Id.*

On May 18, 2022, Petitioner underwent a right carpal tunnel decompression and right ulnar nerve neurolysis at the elbow with Dr. Bradley at the St. Louis Spine and Orthopedic Surgery Center. (PX5) Intraoperatively, Dr. Bradley noted at the ulnar nerve, there were significant adhesions and inflammatory tissue just posterior to the medial epicondyle. *Id.* As the nerve entered distally into the fascia, there was stricturing and compression, and the fascia was released approximately 1 centimeter. *Id.* At the carpal tunnel, the transverse carpal ligament was very thickened and opened approximately 1 centimeter upon release. *Id.* The median nerve was compressed with a flattening deformity. *Id.*

At Petitioner's June 6, 2022 postoperative appointment, he reported that his right upper extremity symptoms had significantly improved. (PX3) He indicated his wishes to undergo surgery on his left upper extremity due to the success with the right side. *Id.* Dr. Bradley noted that Petitioner had tried and failed nonoperative treatment and left carpal and cubital tunnel surgeries were planned. *Id.* With respect to his right upper extremity, Petitioner was instructed to continue a daily home exercise program and to utilize Tylenol and ibuprofen. *Id.* Dr. Bradley indicated that Petitioner could return to work full duty up until the time of his left upper extremity surgery. *Id.*

On June 22, 2022, Petitioner underwent a left open carpal tunnel release and left cubital tunnel decompression with Dr. Bradley. (PX5) Intraoperatively, Dr. Bradley indicated that the ulnar nerve within the cubital tunnel was severely adhered to some chronic inflammatory tissue posterior to the medial epicondyle, and there was tightness as entered the fascia distally. *Id.* The fascia was released approximately 1 centimeter. *Id.* The carpal tunnel showed flattening of the median nerve. *Id.*

At Petitioner's July 11, 2022 postoperative appointment with Dr. Bradley, he reported that he was doing exceptionally well. (PX3) He indicated that he had a few instances of numbness and tingling in the fourth and fifth digits in the morning but that same had resolved quickly with motion and utilization of his left upper extremity. *Id.* Dr. Bradley recommended use of ibuprofen or Tylenol as needed, continuation of Petitioner's home exercise program and massage of his scar tissue over his palms. *Id.* He indicated that Petitioner could return to work full duty without restrictions and placed him at maximum medical improvement. *Id.*

Dr. Patrick Stewart, Respondent's Section 12 Examiner: Report and Testimony

On July 1, 2022, Petitioner submitted to a Section 12 examination at Respondent's request with Dr. Patrick Stewart, who authored a report dated July 8, 2022. (RX5) Petitioner testified that Dr. Stewart performed some of his examination and another person performed testing on his fingers. (T. 25) Dr. Stewart indicated that Petitioner was a correctional officer and had been so since 2001. (RX 5) He indicated that Petitioner worked in three different positions, namely, as a housing officer for three months, a writ officer for three months and a day room officer for three months. *Id.* Dr. Stewart indicated that a housing officer was assigned a wing and that they were the primary source for evaluating the prisoners and keeping a logbook. *Id.* He indicated that a dayroom officer "would take each

wing of a given house to the day room and monitor them, and then take them back to their cells, and this was for a two-hour shift." He stated the officers also accompanied prisoners to their meals. *Id.* He indicated the writ officer accompanied prisoners on medical and legal appointments. *Id.* He stated "there is essentially one of these trips that occurs per day for a writ officer." *Id.*

Dr. Stewart reviewed Dr. Bradley's records and stated that Petitioner's symptoms had been present for approximately eight years and that they were initially mild; however, had subsequently worsened during the COVID pandemic. *Id.* Dr. Stewart noted that Petitioner provided him a similar history and that his symptoms had been present for eight to 10 years and had worsened over the past two years.

Dr. Stewart indicated that Petitioner reported no hobbies that required repetitive motion and his hobbies essentially included spending time with his children and coaching his son's baseball team. *Id.* He stated that Petitioner did not utilize braces, anti-inflammatories or a home exercise program, but that he had one physical therapy appointment. *Id.*

At the time of Dr. Stewart's examination, Petitioner had already undergone his surgeries and was still in postoperative dressing and splint after his left upper extremity surgery. *Id.* Dr. Stewart's assessment was status post bilateral carpal tunnel and cubital tunnel releases. *Id.* He indicated that Petitioner was direct, appropriate and cooperative during his interview and examination. *Id.*

He opined that there was not a causal relationship between Petitioner's compression neuropathies and his work activities. *Id.* He stated that Petitioner rotated through three different positions, and that "none of these positions have the requisite amount of force for the activities that are completed." *Id.* He believed that there was a greater recovery time throughout the day where Petitioner was not exposed to repetition and stated that compression neuropathies have a 50% rate of idiopathic etiology. *Id.*

Dr. Stewart's report included a question that asked if Petitioner's medical treatment had been reasonable and necessary. *Id.* Dr. Stewart did not indicate whether surgery was necessary, but rather, he stated that Petitioner was not treated conservatively prior to surgery. *Id.* He did not see an indication for the x-rays that were completed on Petitioner. *Id.* He felt Petitioner's prognosis was excellent; however, indicated that he that since he was only eight days postop, he was not at maximum medical improvement. *Id.* He expected that Petitioner could return to regular activities with no restrictions within two to three weeks. *Id.*

Dr. Stewart's report contained his perception of multiple assignments for Correctional Officers at Graham Correctional Center. *Id.* He opined that the assignments he discussed did not pose a risk factor for the development of compression neuropathies, nor did he feel that there was significant alteration in the activities of officers due to the COVID pandemic. *Id.*

Dr. Stewart testified consistent with his report on August 1, 2023, via evidence deposition. (RX6) He testified that on clinical examination, Petitioner had bilateral carpal tunnel and right cubital tunnel. *Id.* at 41. Dr. Stewart agreed that Petitioner had no comorbidities such as obesity, hypothyroidism, female sex, rheumatoid arthritis or hypertension. *Id.* at 32. He testified that repetitive trauma is cumulative and develops over a period of time; however, on the issue of causation, he only looks at what an injured person was doing at the time their symptoms began and at the most, going back one year into their work history. *Id.* at 33.

Dr. Stewart was asked if the COVID lockdown had increased the workload on Correctional Officers with regard to the use of their upper extremities, and he replied that some prisoners had to be handcuffed and shackled; however, this was not occurring because the prisoners were not being moved. *Id.* at 42. However, he admitted, "There would be additional times that [officers] would be either opening the cell door or opening the chuck door to feed prisoners that otherwise would have gone to the dining room for their meal. So, there would be additional keying that would occur." *Id.* at 42.

Dr. Matthew Bradley Testimony

Dr. Bradley testified via deposition on June 7, 2023. (PX6) Dr. Bradley is a board-certified orthopedic surgeon who treats patients with compression neuropathies on an almost daily basis. *Id.* at 4-7. Regarding physical examination

testing, Dr. Bradley testified that there is both a subjective and an objective component to the testing, and that the test is only positive if a patient's reported symptoms are in the area that the nerve would be expected to have symptoms. *Id.* at 39-40. He testified that the tests are designed and there are ways of making sure that a patient is being honest with their answers. *Id.* at 40.

He testified that Petitioner's EMG correlated with his clinical examination, as the findings on EMG were more severe in the wrists and milder in the cubital tunnel. *Id.* at 11, 12. Dr. Bradley testified that anti-inflammatory medications, a home exercise program and bracing were utilized to treat Petitioner non-operatively; however, these did not change his symptoms. *Id.* at 14.

Dr. Bradley testified that compression neuropathies occur with occupational activities such as utilization of vibratory tools, as well as in patients that have repetitive fine motor skills or repetitive action that leads to microtrauma or hitting in the wrist area. *Id.* at 8. He testified it occurs in the elbow with people that perform pushing and pulling with a bent elbow or pulling and pushing against it. *Id.* He indicated that with correctional officers, it includes activities such as repetitive use of keys and opening and closing heavy doors. *Id.* at 8.

Dr. Bradley was asked if there was a certain number of keys that had to be turned for the activities to be a causative factor, and he replied that he uses the whole picture of what someone has done, how long they have done it, and what their responsibilities were. *Id.* at 34-35.

Dr. Bradley testified that Petitioner completed a form wherein he indicated that his job duties included opening and closing, driving, walking, bending, climbing, driving, reaching, repetitive hand use, pushing and pulling. *Id.* at 24. He reviewed a work history timeline and job description from Petitioner and spoke with Petitioner regarding his job duties. *Id.* at 13, 26-27. He testified that Petitioner indicated to him that at the max security facility, everything was locked and unlocked and that during COVID when the inmates were unable to participate as much, there was a lot more locking and unlocking activities. *Id.* at 26-27. He testified that Petitioner and other Graham Correctional Center patients informed him that the locks were not routine door locks similar to a house or car and that there were times the locks got stuck and were jammed by the inmates with various things, including feces, and officers use both hands to open them. *Id.* at 27, 28. He stated that handcuffs can be difficult to use when an individual is resisting or under the influence of drugs. *Id.* at 27-28.

Dr. Bradley testified that maintaining security of the institution involves many things, including opening and closing cell doors, putting on and removing restraints, training with weapons, guns and mace and moving inmates throughout the institution. *Id.* at 36-37.

Dr. Bradley testified that Petitioner did not have non-occupational risk factors for the development of compression neuropathy, nor any hobbies that involved the repetitive or forceful use of his hands and arms. *Id.* at 9-10. When asked about the cause of Petitioner's carpal and cubital tunnel syndrome, Dr. Bradley testified that compression neuropathies are multifactorial and that the multiple activities Petitioner performed over 20 years as a correctional officer cumulatively led to or contributed to the development of same. *Id.* at 13-14. He stated that Petitioner did not have any other significant factors that contributed to his condition. *Id.*

> Further, he stated: "As, you know, we've talked about, he's worked 20-plus years as a correctional officer. Not only talking to him, but in talking to all the other correctional officers at this particular facility, there is significant amount of repetitive use of their hands. These keys are not always easy to open. The doors are not always easy to slide, often requiring significant force, pushing and pulling, kind of hitting on the keys, hitting on -- knocking on the doors. So…my medical opinion is that all of these activities over 20-plus years all kind of added together and contributed to, at least in some part, his development of his carpal and cubital tunnel." *Id.* at 17-18.

Dr. Bradley has treated approximately 30 correctional officers from Graham Correctional Center and when asked if the job duties described by Petitioner were consistent with the job duties of his other patients from Graham, Dr. Bradley stated, "They all have almost identical stories of their job duties, and the changes of their job duties in and around the COVID pandemic timeframe." *Id.* at 13.

Dr. Bradley testified that intraoperatively, Petitioner had findings of chronic, repetitive, inflammatory response with adhesions and inflammatory tissue. *Id.* at 15. He testified that Petitioner did "great" post-surgery. *Id.* at 16. He testified that Petitioner initially came in with symptoms that were waking him at night and causing him to drop objects; however, Petitioner had an excellent outcome as his symptoms had resolved with treatment. *Id.* at 47.

Documentary Evidence

Respondent's Exhibit 3 contained Petitioner's time sheets for the years of 2019 through 2022; however, there was no accompanying documentation or testimony to explain the entries noted therein. (RX3)

Respondent's Exhibit 4 contained position descriptions for a correctional officer at Graham Correctional Center that describe position's essential functions. (RX4)

Respondent's Exhibit 7 is a listing of Petitioner's job assignments that spanned from March 1 through December 31. The Arbitrator notes that there is no year listed on the job assignments that specify to which year the entries correspond, nor was testimony elicited that explained the entries or abbreviations noted therein. (RX7)

Petitioner's Exhibit 7 is a work history timeline/job description from Petitioner. (PX7) It indicates that Petitioner worked at Sam's Club for six years as an associate and his activities included pushing carts, stocking shelves, running the cash register, selling tires and placing them on vehicles and driving a forklift. *Id.* Subsequently, Petitioner worked as a driver for FedEx for three years and his activities included loading and unloading trucks with mail, driving and delivering packages. *Id.* Petitioner then worked as a salesman for Grant Automotive for two years where his duties included contacting people to sell vehicles. *Id.*

Lastly, Petitioner has worked for the Illinois Department of Corrections for over 22 years as a correctional officer. *Id.* He indicated his duties include maintaining security, opening and closing cell doors, putting on and removing restraints, training with weapons and moving inmates throughout the institution. *Id.*

Petitioner's detailed job description as a correctional officer indicated that he lifts boxes that weigh 15 to 20 pounds, he loads food trays to pass to individuals in custody and lift boxes of mail to and from the post office. *Id.* He performs pushing and pulling of cell doors, vehicle doors and all doors throughout the institution on a daily basis. *Id.* He performs bending and stooping daily when lifting mail, putting restraints on and when passing out trays and opening doors. *Id.* He performs gross manipulation with his hands on a daily basis by putting on and taking off restraints, using keys and writing. *Id.* He also uses his hands for fine manipulation while using the computer. *Id.* He performs loading and unloading activities with weights up to 100 pounds daily with activities involving mail, writ boxes and restraints. *Id.*

Petitioner's Exhibit 8 and Respondent's Exhibit 1 contain a Notice of Injury report completed by Petitioner on January 18, 2022, which indicates a date of injury of January 13, 2022. (PX8; RX1) It indicates that the injury occurred with repetitive turning of keys and putting restraints on and off for over 20 years and that the Petitioner's hands, wrists and elbows were affected. *Id.*

A supervisor's report was completed by Major Trevor Wright on January 18, 2022. *Id.* Major Wright indicated that Petitioner job duties were to "supervise inmates in a correctional institution, lock and unlock numerous doors, locks [and] gates multiple times a day, apply mechanical restraints to inmates, handwrite disciplinary reports [and] incident reports." Under Description of Accident/Incident, Major Wright wrote, "Over a period of 20 yrs as a correctional officer performing the above stated duties." *Id.*

Testimony of Trevor Wright, Major

Major Wright testified that he works at Graham Correctional Center and has worked with Petitioner ever since he transferred to the facility except for a year-and-a-half when Major Wright left the facility. (T. 56) Major Wright was asked if there was anything Petitioner testified to that was incorrect and he replied, "Not that I recall." (T. 57) He testified that Petitioner "does good" with regard to his employment with Respondent. (T. 57) When asked if

Petitioner was correct in his testimony that everyone's job duties increased exponentially during COVID, Major Wright said, "Yes." (T. 57)

Major Wright was recalled as a witness for Respondent. (T. 58) He testified that he has been employed at Graham Correctional Center for almost 18 years. (T. 59) He works as Petitioner's supervisor. (T. 60) He testified that Petitioner's assignments vary based on staffing, and that at times, he has to go to different positions. (T. 60-61) He testified that currently, Petitioner is on the road most days as a writ officer; however, he was asked if Petitioner worked approximately 30-40 percent as a writ officer and approximately 50 percent as a housing unit officer in 2020 prior to COVID, and he replied, "I would say so. I didn't review anything before COVID whenever I made job assignment histories." (T. 61) He could not remember Petitioner's job assignments post-COVID and deferred to Respondent's exhibit. (T. 61-62)

Petitioner's Current Complaints and Presentation

Petitioner testified that he does not have gout, hypothyroidism, rheumatoid arthritis, obesity, is not of the female sex, has not used tobacco in the past 10 years and does not engage in any hobbies that would be causative to his condition. (T. 23-24) He was diagnosed with sleep apnea in 2023 and uses a CPAP machine. (T. 28) Prior to being diagnosed with carpal and cubital tunnel, Petitioner had not suffered any other injuries to his hands or arms. (T. 48)

Petitioner testified that the surgeries worked and that he has no numbness and can perform his daily duties without much pain. (T. 24) Despite the improvement from his surgeries, he still experiences tiredness and soreness at the end of a shift. (T. 24) He testified that his symptoms depend on the amount of activities he performs, and are increased by his normal job duties of turning keys and cuffing and uncuffing. (T. 24-25)

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? & Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Major Wright, who serves as Petitioner's supervisor, heard Petitioner's testimony that his job required the strenuous, repetitive use of his hands for the majority of his employment history for Respondent, and testified that Petitioner's testimony was correct. (T. 57) Further, Major Wright confirmed Petitioner's testimony of how his job duties increased dramatically during the facility's lock down. (T. 57) Respondent's examiner, Dr. Stewart, found the Petitioner to be direct, appropriate and cooperative. (RX5; RX6, p. 18) Additionally, the Arbitrator observed the Petitioner and found him to be sincere, consistent and credible.

The Arbitrator notes that Petitioner spent over 20 years as a correctional officer for Respondent. (T. 12) Petitioner was specific and detailed in outlining the frequent, intensive activities that he performed with his hands and arms during his employment with Respondent, which he noticed created painful symptoms. (T. 12-18, 30-46, 49, 52-55, 62, 63; PX7) Further, the record demonstrates that Petitioner had no risk factors, comorbidities or outside repetitive hobbies that would potentially contribute to the development of carpal or cubital tunnel syndrome. (RX5; RX6, pp. 12, 32)

Respondent's examiner, Dr. Stewart, testified that repetitive traumas are cumulative in nature. (RX 5) He found that Petitioner rotated through three different positions, and that "none of these positions have the requisite amount of force for the activities that are completed." *Id.* He believed that there was a greater recovery time throughout the day where Petitioner was not exposed to repetition and stated that compression neuropathies have a 50% rate of idiopathic etiology. *Id.* Dr. Stewart did not question the Petitioner about his duties or the conditions he worked in as a correctional officer. He also did not question the Petitioner's personal experience in opening doors, cuffing and uncuffing inmates, or opening chuckholes in Respondent's facility. *Id.* Dr. Stewart conceded that Petitioner's job duties increased during the pandemic lockdown, a fact that was confirmed by Major Wright, but he did not find this to be correlated with Petitioner's condition. (RX6, pp. 42; T. 57) Dr. Stewart opined that there was no causal relationship between Petitioner's compression neuropathies and his work activities. (RX 6)

Conversely, Dr. Bradley reviewed Petitioner's complete work history and job duties, interviewed the Petitioner at length, performed objective testing to confirm, and opined that that Petitioner's 20 plus years of work in the Department of Corrections contributed to the development of both his carpal and cubital tunnel syndrome. (PX6, pp. 13, 17-18, 24-27)

The Arbitrator finds the opinion of Petitioner's treating surgeon, Dr. Bradley, to be persuasive on the issue of causation as he had a more complete understanding of Petitioner's job duties, and was therefore in the best position to judge the cause of Petitioner's complaints.

Relying on the credible testimony of the Petitioner, the persuasive opinion of Dr. Bradley, and the record taken as a whole, the Arbitrator finds that the Petitioner has met his burden of proof in establishing that he sustained accidental repetitive injuries that arose out of and in the course of his employment with Respondent, manifesting on January 13, 2022, which are causally connected to his current condition of ill-being in his bilateral arms and hands/wrists.

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?

Incorporating the above, the Arbitrator finds that all of medical services provided to Petitioner for the treatment of his bi-lateral arms and hands/wrists was reasonable and necessary. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care as outlined in Petitioner's Exhibit 1, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

The Respondent shall be given a full credit for payments made by its group health insurance carrier pursuant to Section 8(j).

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

Incorporating the above, the Arbitrator finds that Respondent is liable for the payment of temporary total disability benefits for a period of 5 3/7 weeks, commencing May 18, 2022 through June 6, 2022, and from June 22, 2022 through July 11, 2022.

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**: An AMA impairment report/rating was not submitted into the record. Therefore, the Arbitrator lends no weight to this factor.

ii. **Occupation**: Petitioner continues to serve in a full duty capacity as a correctional officer. The Arbitrator has considered and places greater weight on this factor.

iii. **Age**: Petitioner was 49 years of age at the time of his injury. The Arbitrator has considered and places moderate weight on this factor.

iv. **Earning Capacity**: There was no evidence of reduced earning capacity contained in the record. The Arbitrator has considered and places some weight on this factor.

v. **Evidence of disability corroborated by the treating medical**: As a result of his injuries, Petitioner developed bilateral carpal and cubital tunnel syndromes, for which he underwent bilateral carpal and cubital tunnel release surgeries. (PX5) Petitioner testified that the surgeries worked and that he has no numbness and can perform his daily duties without much pain. (T. 24) Despite the improvement from his surgeries, he still experiences tiredness and soreness at the end of a shift. (T. 24) He testified that his symptoms depend on the amount of activities he performs, and are increased by his normal job duties of turning keys and cuffing and uncuffing. (T. 24-25) Petitioner's treating surgeon, Dr. Bradley, reported an excellent result from Petitioner's surgeries, with no postoperative complications. (PX 3)

Based upon the above factors and the record as a whole, the Arbitrator finds that Petitioner sustained injuries that resulted in the 7.5% loss of use of Petitioner's right hand, a 7.5% loss of use of Petitioner's left hand, a 7.5% loss of use of Petitioner's right arm, and a 7.5% loss of use of Petitioner's left arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013112
Case Name	Jennifer Danosky v. Memorial Medical Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0445
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	David Rolf

DATE FILED: 9/18/2024

/s/Marc Parker, 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

Jennifer Danosky,

Petitioner,

vs. NO: 21 WC 13112

Memorial Medical Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, permanent partial disability, medical expenses, prospective medical care, occupational disease, and out of pocket expenses/mileage, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 11, 2023, is hereby affirmed and adopted.

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

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

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.

September 18, 2024

MP:yl
o 9/12/24
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/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013112
Case Name	Jennifer Danosky v. Memorial Medical Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	David Rolf

DATE FILED: 8/11/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jennifer Danosky
Employee/Petitioner

Case # 21 WC 13112

v.

Consolidated cases: n/a

Memorial Medical Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [x] Other Out of Pocket Expenses & Mileage

FINDINGS

On the date of accident, October 18, 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 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 $23,608.00; the average weekly wage was $454.00.

On the date of accident, Petitioner was 48 years of age, married with 0 dependent child(ren).

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

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

Respondent is entitled to a credit of $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.

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

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

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

William R. Gallagher

AUGUST 11, 2023

William R. Gallagher, Arbitrator
ICArbDec19(b)

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. The Application alleged that Petitioner sustained an injury to the "Body As A Whole" as a result of "COVID-19 exposure" which manifested itself on October 18, 2020 (Petitioner's Exhibit 1). This case was tried in a 19(b) proceeding and Petitioner claimed she was entitled to payment of medical expenses, temporary total disability benefits and reimbursement of out-of-pocket expenses and mileage as well as prospective medical treatment. Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner claimed she was entitled to temporary total disability benefits of 135 3/7 weeks, commencing October 18, 2020, through December 6, 2020, and January 9, 2021, through June 27, 2023 (date of trial). The prospective medical treatment sought by Petitioner was the treatment recommended by Dr. David Fletcher, Petitioner's Section 12 examining physician (Arbitrator's Exhibit 1).

Petitioner worked for Respondent for approximately 12 years in Patient Financial Services as a Collector. Petitioner's job responsibilities consisted of calling patients who owed Respondent balances on their accounts. Respondent was a hospital and a healthcare provider; however, Petitioner worked in a building totally separate from the hospital. Accordingly, Petitioner had no physical contact with patients.

Petitioner testified that at the onset of COVID in March, 2020, she worked from home until she was furloughed in June, 2020. The furlough extended through September, 2020. Petitioner testified she was not diagnosed with COVID during this period of time.

Petitioner returned to work for Respondent on October 1, 2020. At that time, Petitioner received computer based learning on October 1, October 2, and October 5, 2020, at her office. On October 5, 2020, Petitioner also underwent her annual review which was previously scheduled to take place in July when she was on furlough.

Petitioner testified regarding the setup of her office which was located in an old school gym. The office area has three aisles of cubicles with two rows back to back and the third row across an aisle. Petitioner estimated the height of the cubicle walls to be four to five feet. There were no other barriers. When questioned about how far away the employees in the cubicles were on either side or across the aisle from her cubicle, Petitioner was uncertain, but estimated she was four feet from the employee on the adjacent cubicle and the cubicle across the aisle was four to five feet away. Petitioner stated the office space contained approximately 30 cubicles.

Petitioner testified that when she and other employees were not working at their desks, they would wear masks. The masks worn by Petitioner and other employees were cloth masks. Cloth masks were provided by Respondent o the employees could wear their own masks, which is what Petitioner chose to do. Neither Petitioner nor any other employees wore medical grade or N-95 masks. Respondent did not provide the employees with any other protective devices, such as

gloves, safety glasses or face shields. When Petitioner and the other employees were seated at their desks, they were allowed to remove their masks.

Petitioner testified that when she returned to work on October 1 and October 2, she did not have any COVID symptoms. October 3, and October 4, were Saturday and Sunday, respectively so Petitioner did not work and spent that weekend at home with her husband and adult son. Petitioner testified that neither of them had been diagnosed with COVID nor did they have any COVID symptoms. Further, there were no visitors to Petitioner's home over that weekend.

Petitioner returned to work on October 5, and worked a half day on October 6. On October 6, Petitioner attended a departmental meeting which took place in the lunchroom of the building where Petitioner's office was located. Approximately 80 employees attended the meeting; however, the meeting was split into two separate meetings so approximately 40 employees attended each meeting. Petitioner testified it was not possible for the employees to socially distance themselves from one another, but confirmed everyone at the meeting was wearing a mask.

Petitioner testified that when she returned to work for Respondent, Respondent did not provide her with any information regarding CDC guidelines. Even though she had no information regarding the specifics of CDC guidelines, she opined Respondent did not comply with them.

Petitioner opined she contracted COVID from another employee who she identified as Rose Albright. Petitioner testified Albright worked in the cubicle across the aisle from hers. When Petitioner was at work between October 1, and October 6, she and Albright would interact with one another. Specifically, they would talk to each other while in their cubicles and would, on occasion, walk across the aisle. Petitioner testified that, on one occasion, Albright, while remaining seated in her chair, crossed the aisle to speak to her. Albright was not wearing a mask and, because Petitioner was seated in her cubicle, neither was she. Petitioner stated she was not aware of Albright's presence until she turned around and observed Albright was not wearing a mask. At that time, Petitioner put her mask on. Albright did not testify at trial and there was no evidence tendered she was ever diagnosed with COVID.

Respondent tendered into evidence the floor plan of the area where Petitioner's cubicle was located (Respondent's Exhibit 5). When Petitioner testified she looked at the Exhibit and identified her cubicle with a "J" and Albright's cubicle with an "R" (Respondent's Exhibit 5, A-2). This Exhibit confirmed their cubicles were across the aisle from one another

After Petitioner completed her half day of work on October 6, Petitioner worked from home until the time she became ill. Petitioner testified that from October 7, through October 14, she did not experience any COVID symptoms. During that same time period, neither Petitioner's husband nor adult son experienced any COVID symptoms.

Petitioner testified she began to experience COVID symptoms late in the day on October 14, which she described as being shortness of breath, achiness and a cough, but that the symptoms were very mild. The following day, October 15, Petitioner traveled from her home in Elkhart, Illinois, to Springfield, Illinois to a hotel where she attended and participated in a scrapbook event. Petitioner stayed at the hotel on both October 16 and October 17. Petitioner testified there were five other

individuals present at the scrapbook event and that they were socially distanced in a big ballroom, everyone was wearing a mask, and Petitioner had no knowledge of any one of them having COVID symptoms. Petitioner became very ill and, on October 18, her husband took her to the ER of Abraham Lincoln Memorial Hospital. At that time, Petitioner was diagnosed with COVID (Petitioner's Exhibit 2).

Petitioner was interrogated regarding the self screening process which Respondent began when Petitioner was on furlough and continued through the time she was diagnosed with COVID. The procedure required employees to take and report their temperatures every day as well as answering questions about whether they had been exposed to COVID or had any COVID symptoms. Petitioner acknowledged that if she had answered "yes" to any of the questions, she would not be allowed to log into her computer and would be required to call employee health.

When Petitioner was cross examined, she acknowledged a Facebook post in which, in response to a question as to how she got COVID, she responded she did not know (Respondent's Exhibit 17).

Respondent called four witnesses to testify at trial. Each of their testimony dealt primarily with the COVID protocols that were in place during the times in question. This included October 6, 2020, which was the last day Petitioner worked at Respondent's facility.

Andrew Hazelrigg, Respondent's Assistant Director of Environmental Care and Facilities Compliance, testified at trial. Hazelrigg has had this position for approximately seven years which included the time leading up to and including the onset of COVID. Hazelrigg's responsibilities dealing with the implementation of COVID precautions in Respondent's facilities, included the building Petitioner worked in. This included masking, social distancing and colleague screenings. Hazelrigg testified Respondent followed the CDC guidelines and it was his responsibility to keep track of the guidelines and implement new procedures as needed.

In respect to the cubicles, Hazelrigg testified each cubicle was 7'6" by 5'6" with six foot high sidewalls. The spacing of employees was in conformity with CDC recommended spacing in October, 2020.

In regard to the cafeteria where the meetings took place on October 6, 2020, he testified the space was a little over 1,500 square feet. Based on an attendance of 40 to 50 people at each meeting, Hazelrigg testified there was sufficient room for there to be appropriate spacing between individuals which conformed to CDC guidelines.

On cross-examination, Hazelrigg was interrogated about the minutes of a meeting which took place on October 6, 2020. He acknowledged the minutes noted "Masks at all-time unless you are in your cube and NO one is there talking" (Respondent's Exhibit 14). He agreed that permitting employees to remove their masks while sitting at their desks in the cubicles was inconsistent with the aforestated rule.

Tammy Rhoades, Respondent's Manager of Colleague Health Services, testified for Respondent. Rhoades also testified Respondent followed CDC guidelines which included social distancing and screening employees on a daily basis. Rhodes identified the screening log of Petitioner for the

period of October 1, through October 14, and Petitioner's recorded temperatures for each date (Respondent's Exhibit 6).

Rhoades identified a listing of other employees in Petitioner's department who worked there two weeks prior to October 18, and two weeks after October 18, who had tested positive for COVID. There were three names on the list, one of which was that of the Petitioner, which had a date of positive testing of October 19. The two other names were redacted, but they had positive testing dates of October 20, and October 28 (Respondent's Exhibit 7).

Based on the preceding, Rhoades testified that none of Petitioner's co-employees in her department tested positive for COVID in the two weeks prior to October 18. The Exhibit noted the third person on the list (who tested positive on October 20) had the same supervisor as Petitioner, Tara Dillon (Respondent's Exhibit 7).

On cross-examination, Rhoades agreed that an individual could have been exposed to COVID for several days or a week or two prior to experiencing symptoms. She said this was the "incubation period." Based on this, Rhoades agreed Petitioner could have been exposed to someone with COVID 10 or 14 days before she tested positive. Rhodes also testified that permitting employees to sit at their desks without wearing a mask would have been contrary to the policies issued by Respondent in October as well as CDC guidelines.

Marcena Urish, Respondent's Director of Patient Financial Services, testified at trial. She confirmed the protocols put in place by Respondent including masking, social distancing and employee screening. Irish testified there would have been no occasion for Petitioner using another employee's work space or equipment. On cross-examination, Urish also confirmed that permitting employees to work at their desks without masks would have been contrary to Respondent's policies and CDC guidelines.

Tara Dillon testified at trial. Dillon was a Credit and Collection Manager and Petitioner's immediate supervisor. She confirmed she met with Petitioner on October 5 for Petitioner's annual review. She stated that both of them wore masks and socially distanced at that time. Dillon also stated she had not been diagnosed with COVID.

In regard to employees not wearing masks when they were in their cubicle, Dillon testified that at the October 6 meeting, the message delivered to the employees was that they could lower their masks in order to be audible and understandable to the patient, but, at other times, they were required to wear their masks.

Dillon testified regarding the layout of the cubicles and the distance between employees. She stated she had measured the distance which would separate employees and found it to be over 14 feet. This was based upon the size of the cubicles and the aisle in between them.

On cross-examination, Dillon testified that in October, 2020, there were 10 to 12 employees who worked under her supervision. In October, 2020, Dillon had four employees, including Petitioner, who worked in the room where Petitioner's cubicle was located. She confirmed Albright was one of them and there were two others.

Petitioner tendered into evidence two Exhibits regarding the incubation period of COVID. According to the CDC, symptoms may appear two to 14 days after exposure to the virus (Petitioner's Exhibit 15). According to Pfizer, the most common incubation period was five days with 97% of the people who contract the virus showing symptoms within 11 days (Petitioner's Exhibit 16).

As aforestated, Petitioner began to experience COVID symptoms on October 15, and was diagnosed with COVID on October 18. Prior to Petitioner contracting the virus, Petitioner had multiple significant pre-existing medical issues. Petitioner was previously diagnosed with renal failure and underwent a kidney transplant surgery in 2011. The transplant was not successful and Petitioner received dialysis until she underwent a second kidney transplant surgery in 2014. Petitioner had good kidney function following second kidney transplant surgery and did not require dialysis until after she was diagnosed with COVID. Petitioner subsequently received dialysis from March, 2021, through May, 2021 (Petitioner's Exhibit 10).

Petitioner was previously diagnosed with type I diabetes and had to use a pump to administer insulin. Petitioner had also been diagnosed with congestive heart failure, pneumonia, and histoplasmosis.

Subsequent to her being diagnosed with COVID, Petitioner received a significant amount of medical treatment including two hospitalizations, both of which were over one month in duration (Petitioner's Exhibits 2 and 4).

At the direction of her attorney, Petitioner was examined by Dr. David Fletcher, an occupational/preventative medicine specialist, on October 7, 2022. In connection with his examination of Petitioner, Dr. Fletcher reviewed a voluminous amount of medical records provided to him by Petitioner's counsel. When evaluated by Dr. Fletcher, Petitioner informed him she contracted COVID in October, 2020, at her workplace. Petitioner also informed Dr. Fletcher of her medical conditions which pre-existed her contracting COVID. Petitioner had numerous complaints and advised she had not been able to return to work (Petitioner's Exhibit 14; Deposition Exhibit 2).

Dr. Fletcher opined Petitioner had a COVID acute infection superimposed on Petitioner's immune compromised state due to renal transplant which affected multiple organ systems. He opined Petitioner needed additional medical treatment for various organ systems and Petitioner was permanently and totally disabled (Petitioner's Exhibit 14; Deposition Exhibit 2).

Dr. Fletcher was deposed on February 15, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Fletcher's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Fletcher testified Petitioner contracting COVID aggravated or accelerated Petitioner's renal issues, neurological issues, neuro-psych issues, cardiomyopathy, respiratory and G.I. and speech issues (Petitioner's Exhibit 14; pp 42-43).

Dr. Fletcher also testified Petitioner was "working in the hospital during the pandemic" and had contact with a coworker who had the infection before she did. He also noted none of Petitioner's family had been diagnosed with COVID. Based on the preceding, Dr. Fletcher testified Petitioner's COVID condition was work-related (Petitioner's Exhibit 14; p 45).

At trial, Petitioner had numerous complaints which included joint pain, fatigue, memory issues and brain fog. Petitioner has not been able to return to work and her employment with Respondent was terminated on September 3, 2021.

Conclusion of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner did not sustain an accidental injury (occupational disease) arising out of and in the course of her employment by Respondent which manifested itself on October 18, 2020, and her current condition of ill-being is not related to her employment.

In support of this conclusion the Arbitrator notes the following:

Section 1(g)(1) of the Occupational Diseases Act provides that there is a rebuttable presumption in favor of compensability for "first responders and front-line workers" who contract COVID. Section 1(g)(4) of the Occupational Diseases Act provides this presumption applies to the qualified workers who were diagnosed with COVID between March 9, 2020, and June 30, 2021.

As noted herein, Petitioner worked for Respondent, Memorial Medical Center, which, as a hospital, was a healthcare provider. However, Petitioner's job related to collection of monies owed to Respondent by patients and she provided no patient care. Further, the building Petitioner worked in was totally separate from the hospital and Petitioner had no contact whatsoever with any patients.

In respect to front-line workers, this was defined in Governor Pritzker's Executive Order of March 20, 2020, which defined the term as including individuals whose work required them to encounter members of the general public or work in locations with more than 15 employees.

Petitioner's work for Respondent involved no contact with members of the general public and the testimony of Dillon, Petitioner's supervisor, was that there were only four employees, including Petitioner, working in the room where Petitioner's cubicle was located at the time of the alleged exposure.

Based on the preceding, the Arbitrator finds Petitioner is not entitled to the rebuttable presumption of compensability.

Petitioner's position is that she contracted the virus because of contact with a coworker, Rose Albright, specifically, on one occasion in which Albright was in close proximity to her and neither were wearing a mask. As noted herein, Albright did not testify at trial and there was no evidence tendered that Albright was diagnosed with COVID.

Petitioner's supervisor was Tara Dillon, and it was determined that one of the other employees who worked under Dillon's supervision had been diagnosed with COVID, on October 20, 2020. However, to conclude that this individual was Rose Albright and Petitioner contracted the virus from her would be totally speculative.

In respect to the social distancing of Petitioner's workplace, Petitioner testified as to her estimates of the height of the cubicle walls, the distance between her and the employee on the adjacent cubicle and the distance separating her cubicle from the one across the aisle. These were estimates/guesses on the part of Petitioner.

Respondent's witness, Hazelrigg, took measurements of the cubicle spacing of employees. Respondent's witness, Dillon, measured the distance between one employee and another. Obviously, the measurements obtained by Hazelrigg and Dillon were more precise and reliable then the estimates/guesses of Petitioner.

Respondent's Section 12 examiner, Dr. Fletcher, testified Petitioner contracted the virus while working in the hospital and had contact with a coemployee who had the infection before she did. The Arbitrator finds Dr. Fletcher's opinion in respect to causality to be unreliable because it is based on false assumptions.

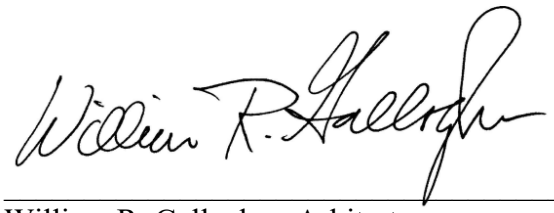
Petitioner first began to experience COVID symptoms on October 15, and was diagnosed with COVID on October 18. Based upon the CDC, symptoms could appear two to 14 days after exposure to the virus which would mean Petitioner could have been exposed to the virus from October 1, to October 13. Based on the Pfizer data, the most common time frame was five days after exposure for symptoms to appear which would have been October 10. Petitioner was present at Respondent's facility on October 1, October 2, October 5 and October 6. While it is conceptually possible that Petitioner contracted the virus during one of the four days she was at Respondent's facility, it is also conceptually possible that she did not.

In respect to Petitioner's working in her cubicle without a mask, Respondent may have violated its own policies and CDC guidelines; however, this does not mandate a conclusion that Petitioner contracted the virus while at work.

In regard to the meeting conducted on October 6, pursuant to the testimony of Hazelrigg, there were 40 to 50 individuals present in the meeting with an area that was 1,500 square feet which would allow for sufficient social distancing.

Based on the preceding, the Arbitrator concludes Petitioner did not prove by a preponderance of the evidence that her COVID condition was work-related.

In regard to disputed issues (J), (K), (L) and (O), the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011232
Case Name	Bradley Adams v. Olin
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0446
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Michael Keefe

DATE FILED: 9/18/2024

/s/Carolyn Doherty, 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

Bradley Adams,

Petitioner,

vs. NO: 22 WC 11232

Olin,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, and statute of limitations, 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 27, 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 $43,300.00. 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.

September 18, 2024

O: 09/12/24
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	22WC011232
Case Name	Bradley Adams v. Olin
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Michael Keefe

DATE FILED: 2/27/2024

/s/William Gallagher, Arbitrator

Signature

INTEREST RATE WEEK OF FEBRUARY 27, 2024 5.13%

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Bradley Adams
Employee/Petitioner

Case # 22 WC 11232

v.

Consolidated cases: n/a

Olin
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on January 31, 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 Statute of Limitations

FINDINGS

On the date of accident, January 13, 2022, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $71,589.44; the average weekly wage was $1,376.72.

On the date of accident, Petitioner was 42 years of age, married with 2 dependent child(ren).

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $1,570.58 for other benefits, for a total credit of $1,570.58.

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 4, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $917.81 per week for eight and one-sevenths (8 1/7) weeks, commencing January 13, 2022, through March 11, 2022, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the left upper extremity surgeries as recommended by Dr. Amy Kells.

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

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

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

William R. Gallagher, Arbitrator

February 27, 2024

ICArbDec19(b)

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Application alleged a date of accident (manifestation) of January 12, 2022, and that Petitioner sustained "Repetitive Trauma" to "Both Hands and Elbows." At trial, counsel for Petitioner and Respondent agreed the alleged date of accident (manifestation) could be changed to January 13, 2022. Accordingly, the Arbitrator changed the alleged date of accident (manifestation) on the Application to January 13, 2022 (Arbitrator's Exhibit 2).

This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. Respondent disputed liability on the basis of accident, notice and causal relationship. Further, Respondent alleged Petitioner's claim was barred because it was not filed within the time limit prescribed by Section 6(d) of the Act (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent on September 10, 2004. From January 5, 2009, through February 4, 2019, Petitioner worked as a shot shell plastics adjuster. From February 5, 2019, through March 15, 2020, Petitioner worked as a shot shell loading adjuster. Petitioner returned to working as a shot shell plastics adjuster on March 16, 2020, and continued to work in that capacity until January 13, 2022 (the date of accident/manifestation alleged in the Application).

As Petitioner was in the process of performing the two jobs indicated above, he began to experience pain/numbness in both of his hands sometime in 2017. Petitioner continued to perform his job duties, but the symptoms became worse.

Respondent tendered into evidence videos of individuals performing the job duties of a shot shell plastics adjuster and a shot shell loading adjuster which were approximately 26 minutes and 10 1/2 minutes long, respectively. The Arbitrator watched both videos (Respondent's Exhibit 1).

The video of the shot shell plastics adjuster showed individuals performing various tasks, many of which required individuals' elbows to be in a flexed position. Individuals were also observed actively using their hands adjusting handles/levers, turning cranks, cutting plastic tubes, etc. (Respondent's Exhibit 1).

The video of the shot shell loading adjuster showed individuals working with the product during various stages of assembly and packaging. While the individuals were carrying boxes, both elbows were in a flexed position and active use of both hands was likewise required (Respondent's Exhibit 1).

At trial, Petitioner testified he watched both videos and they did not show all of the duties associated with the jobs nor did they show all of the repetitive use of his hands/arms he engaged in while performing same. Petitioner also testified the videos did not accurately show the number of times he had to perform his various job tasks.

Petitioner testified his job duties required forceful gripping with both hands, in particular, when he had to cut PVC pipe with a handheld pipe cutter. Further, Petitioner stated he had to grip/move heavy boxes which required the use of both hands and flexion of both elbows.

On June 22, 2017, Petitioner was evaluated by Dr. James Ricci, in connection with a number of other health issues. At that time, Petitioner complained of carpal tunnel type symptoms, more on the right than left. Dr. Ricci noted Petitioner did "repetitive motions" while at work and he ordered EMG/nerve conduction studies of Petitioner's upper extremities (Respondent's Exhibit 3).

The EMG/nerve conduction studies were performed on July 6, 2017. The diagnostic studies were positive for bilateral median sensory neuropathy, more severe on the right than left. Dr. Ricci reviewed the studies that same day and opined Petitioner had bilateral carpal tunnel syndrome, greater on the right then left. Dr. Ricci indicated he was going to refer Petitioner to Dr. Susan McKenna for a surgical consultation (Respondent's Exhibit 3). Petitioner was not seen by Dr. McKenna and continued to work at his normal job for Respondent.

On April 25, 2019, Petitioner advised Respondent he was experiencing numbness in both hands/arms. According to Respondent's Incident Report of that date, Petitioner had been experiencing numbness in both arms since 2010, had been to a doctor and was informed it was carpal tunnel causing the numbness. Petitioner indicated he thought the numbness was related to his work duties (Respondent's Exhibit 2).

On May 22, 2019, Petitioner was evaluated by Dr. Michael Berg, a chiropractor, for bilateral hand/arm numbness which Petitioner advised started in May, 2010. Dr. Berg performed chiropractic manipulations to the cervical spine and the wrist/elbow joints (Respondent's Exhibit 3).

On June 27, 2019, Petitioner was evaluated by Dr. Ricci for various health issues. One of the diagnoses made by Dr. Ricci was bilateral carpal tunnel syndrome. Dr. Ricci subsequently saw Petitioner on August 7, 2020, again for various health issues and reaffirmed his prior diagnosis of Petitioner having bilateral carpal tunnel syndrome, but noted Petitioner had not undergone any surgeries (Respondent's Exhibit 3).

Petitioner continued to work during the aforestated periods of time and did not seek any further medical care until he was evaluated by Dr. Amy Kells, a plastic surgeon, on October 6, 2020. At that time, Petitioner complained of bilateral hand parasthesias and that he had undergone EMG studies in 2017 which revealed nerve pathology. Petitioner attributed the symptoms to his work activities. Dr. Kells examined Petitioner and reviewed the EMG studies. She opined Petitioner had bilateral carpal tunnel syndrome, slightly worse on the left than right. Dr. Kells recommended Petitioner undergo surgery, but Petitioner wanted to wait (Petitioner's Exhibit 1). Again, Petitioner continued to perform his regular work duties for Respondent.

Petitioner again saw Dr. Kells approximately one year later, on October 8, 2021. Dr. Kells again opined Petitioner had bilateral carpal tunnel syndrome, but also noted Petitioner had findings

consistent with bilateral cubital tunnel syndrome which she opined would also benefit from release surgery (Petitioner's Exhibit 1).

Dr. Kells performed surgery on Petitioner's right hand and right elbow on January 13, 2022 (the alleged date of accident/manifestation). The surgery on Petitioner's right wrist consisted of a carpal tunnel Guyon canal release. The surgery performed on Petitioner's right elbow consisted of a cubital tunnel release with ulnar nerve transposition (Petitioner's Exhibit 2).

Following surgery, Petitioner continued to be treated by Dr. Kells. When seen on February 15, 2022, Dr. Kells noted Petitioner was doing well and ordered physical therapy. Petitioner received physical therapy from February 21, 2022, through March 7, 2022 (Petitioner's Exhibits 1 and 3).

When Dr. Kells saw Petitioner on March 8, 2022, she authorized Petitioner to return to work at full duty effective March 11, 2022. At that time, Dr. Kells recommended Petitioner undergo a carpal tunnel Guyon release and cubital tunnel release on his left hand/arm. She subsequently renewed that recommendation when she saw Petitioner on June 7, 2022 (Petitioner's Exhibit 1).

At trial, Petitioner testified he continued to work for Respondent performing his regular job duties up until the time he underwent surgery on January 13, 2022. Pursuant to Dr. Kells' release, Petitioner returned to work for Respondent on March 11, 2022. Petitioner stated that, following surgery on his right hand/arm, his symptoms significantly improved. In respect to his left hand/arm, Petitioner testified he continues to experience numbness from his shoulder to the tips of his fingers as well as pain in his left hand especially at night which has caused him to incur sleep disruption. He wants to proceed with the left hand/arm surgery as recommended by Dr. Kells.

Dr. Kells was deposed on August 30, 2023, and her deposition testimony was received into evidence at trial. On direct examination, Dr. Kells' testimony regarding her diagnosis and treatment of Petitioner was consistent with her medical records and she reaffirmed the opinions contained therein. In respect to causality, counsel for Petitioner asked Dr. Kells a hypothetical question which asked her to assume Petitioner worked for Respondent and his job duties required him to forcefully grasp a tool used to cut tubes, flex his elbows beyond 90° during a workday, and that five years prior, Petitioner began experiencing numbness and pain in his hands which became progressively worse to where he sought medical treatment including nerve conduction studies and was subsequently referred to her. In response, Dr. Kells testified that Petitioner's job duties could have been a contributing factor to the development of his ulnar nerve pathology and carpal tunnel syndrome (Petitioner's Exhibit 5; pp 14-16).

On cross-examination, Dr. Kells stated she had no information in respect to Petitioner's gripping activities as to the torque required or frequency of same. However, Dr. Kells testified that this information was not needed for her to form an opinion as to causality because the hypothetical asked her to assume Petitioner had to have his elbows hyperflexed greater than 90° for long periods of time and that this was sufficient for her to opine that Petitioner's work activities would have been a contributing factor (Petitioner's Exhibit 5; pp 17-18).

At the direction of Respondent, Petitioner was examined by Dr. Mitchell Rotman, an orthopedic surgeon, on October 25, 2023. In connection with his examination of Petitioner, Dr. Rotman

reviewed medical records, Dr. Kells' deposition testimony and the videos of individuals performing what were purportedly Petitioner's job duties. Dr. Rotman opined Petitioner had recovered well from the surgeries performed on his right upper extremity and that he was at MMI in regard to same. In respect to Petitioner's left upper extremity, Dr. Rotman opined that Petitioner had left carpal tunnel syndrome and Petitioner would benefit from a carpal tunnel release, but a separate release of the Guyon's canal was not indicated. He also opined he did not have evidence of cubital tunnel syndrome and left elbow surgery was not indicated (Respondent's Exhibit 4; Deposition Exhibit 2).

In respect to causality, Dr. Rotman opined that Petitioner's work activities were not risk factors for the development of either carpal tunnel or cubital tunnel syndrome conditions. Dr. Rothman's opinion was based, to a large extent, on his review of the videos of individuals performing what were purportedly Petitioner's job duties. In Dr. Rothman's opinion, Petitioner's job duties as depicted in the videos did not represent forceful gripping throughout the day or repetitive hyperflexion of the elbows past 90° (Petitioner's Exhibit 4; Deposition Exhibit 2).

Dr. Rotman was deposed on December 5, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Rotman's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. In respect to causality, Dr. Rotman testified Petitioner's work for Respondent did not cause or aggravate his upper extremity conditions (Respondent's Exhibit 5; pp 13-15).

In regard to Petitioner's medical treatment, Dr. Rotman could not opine as to whether the surgeries performed on Petitioner's right upper extremity were reasonable and necessary. However, he reaffirmed his opinion that the only surgery indicated on Petitioner's left upper extremity would be a carpal tunnel release (Respondent's Exhibit 5; pp 12-13).

On cross-examination, Dr. Rotman stated that for job activities to aggravate carpal tunnel syndrome, the individual must engage in hand intensive activities for at least four hours a day for every day they are working. He conceded this four hour rule is not found anywhere in the medical literature (Respondent's Exhibit 5; pp 24-25).

Conclusions of Law

The Arbitrator will initially address disputed issue (O) regarding whether Petitioner's claim was filed within the time limit prescribed by Section 6(d) of the Act; and issue (E) whether Petitioner provided timely notice of the accident to Respondent.

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

The Arbitrator concludes that Petitioner's claim for compensation was filed within the time limit prescribed by Section 6(d) of the Act.

In support of this conclusion the Arbitrator notes the following:

Section 6(d) of the Act provides that the Application for Adjustment of Claim must be filed within three years after the date of accident or two years after the date of last payment of compensation, whichever is later.

The Application, as amended at trial, alleged a date of accident (manifestation) of January 13, 2022. It was undisputed that if January 13, 2022, was the date of accident (manifestation) that the Application was filed in a timely manner.

Counsel for Respondent has taken the position that January 13, 2022, is not the date of accident (manifestation) and that Petitioner's date of accident (manifestation) was either July 7, 2017, or April 25, 2019, and that, in either instance, the Application was not filed in a timely manner.

In the case of *Peoria County Belwood Nursing Home v. Industrial Commission*, 505 N.E.2d 1026 (Ill. 1987), the Illinois Supreme Court ruled that the date of accident in a repetitive trauma case is when an injury "manifests itself" which the Court defined as being the date on which both the fact of the injury and the causal relationship of it to an employee's employment would be plainly apparent to a reasonable person. *Belwood* at 1029.

In the case of *Durand v. Industrial Commission*, 862 N.E.2d 918 (Ill. 2007), the Illinois Supreme Court referenced other Appellate Court decisions and provided further guidance as to when a repetitive trauma injury "manifests itself." The Court specifically noted that Illinois cases have looked at when an employee receives medical treatment or becomes unable to work to determine the date of manifestation. *Durand* at 925.

In *Durand*, the Supreme Court made specific reference to the Appellate Court case of *Oscar Mayer & Co. v. Industrial Commission*, 531 N.E.2d 174 (Ill. App. 4th Dist 1988). In the *Mayer* case, Petitioner was diagnosed with bilateral carpal tunnel syndrome in 1981 and surgery was recommended which Petitioner declined. One year later, Petitioner underwent a second EMG study and was informed his condition was deteriorating. Petitioner still declined surgery. Another year later, a further EMG study was performed and further deterioration was noted. Petitioner ultimately underwent surgery on May 12, 1983, which was the date of accident (manifestation) alleged in the Application which was filed on April 5, 1984. In *Durand*, the Supreme Court noted that the Appellate Court in *Mayer* applied the flexible standard and that the date of accident (manifestation) was the date Petitioner underwent surgery. *Durand* at 926-927.

The Supreme Court in *Durand* ruled that the date an employee notices a repetitive trauma injury is not necessarily the date of manifestation, but the date of manifestation is when the employee becomes unable to work because of physical collapse or medical treatment. *Durand* at 927.

In the instant case, there was no question Petitioner was previously diagnosed with bilateral upper extremity conditions and their probable relationship to Petitioner's repetitive work activities. However, Petitioner continued to work for Respondent performing his regular duties in spite of his upper extremity conditions getting progressively worse. Petitioner did not lose any time from work until he underwent surgery on January 13, 2022. Pursuant to *Durand*, the Arbitrator concludes the date of accident (manifestation) is January 13, 2022.

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

The Arbitrator concludes Petitioner gave timely notice to respond that as required by Section 6(c) of the Act.

In support of this conclusion the Arbitrator notes the following:

As noted herein, Respondent was aware of Petitioner's bilateral upper extremity conditions and asserted that the date of accident (manifestation) was either July 7, 2017, or April 25, 2019.

Respondent apparently is asserting it had no knowledge of the nature of Petitioner's surgery of January 13, 2022. However, Respondent claimed credit for non-occupational disability benefits paid during Petitioner's period of temporary total disability following the surgery. Section 8(j) of the Act provides that "…the period of time for giving notice of accidental injury and filing application for adjustment of claim does not begin to run until the termination of benefits."

Further, even if notice by Petitioner to Respondent was defective, Section 6(c) of the Act requires that Respondent prove he was "unduly prejudiced" by such a defect. No evidence of same was tendered by Respondent.

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent which manifested itself on January 13, 2022, and his current condition of ill-being is causally related to his work activities.

In support of this conclusion the Arbitrator notes following:

Petitioner credibly testified regarding the repetitive nature of his job duties.

Respondent tendered into evidence videos of individuals purportedly performing the job duties also performed by Petitioner; however, Petitioner testified that he watched the videos and they did not accurately depict the repetitive use of his hands/arms or the frequency in which he had to perform various tasks. In this respect, Petitioner's testimony was unrebutted.

Petitioner's treating physician, Dr. Kells, testified that Petitioner's job duties would have contributed to the development of his upper extremity conditions.

Respondent's Section 12 examining physician, Dr. Rotman, testified Petitioner's job duties did not contribute to his upper extremity conditions; however, as noted herein, Dr. Rotman's opinion was based, to a large extent, on his review of the job videos, the accuracy of which is highly questionable.

Further, Dr. Rotman's opinion that the work activity to aggravate carpal tunnel syndrome must be a minimum of four hours a day is not supported by medical literature.

Given the preceding, the Arbitrator finds the opinion of Dr. Kells to be more persuasive than that of Dr. Rotman in respect to causality.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 4, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

Dr. Kells diagnosed Petitioner with right carpal tunnel and right cubital tunnel syndrome conditions, performed corrective surgery and Petitioner had a good surgical result.

Respondent's Section 12 examiner, Dr. Rotman, had no opinion regarding the reasonableness and necessity of the medical treatment provided by Dr. Kells.

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

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the left upper extremity surgeries recommended by Dr. Kells.

In support of this conclusion the Arbitrator notes the following:

Dr. Kells diagnosed Petitioner with the same conditions in respect to both the right and left upper extremities. She performed surgery on both Petitioner's right hand and right elbow and Petitioner had a positive result.

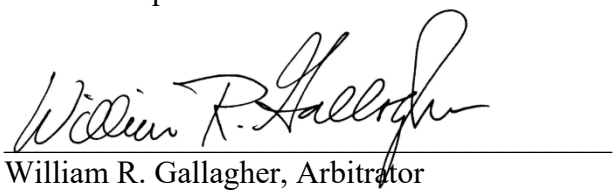
While Dr. Rotman opined Petitioner only needs left carpal tunnel surgery, the Arbitrator finds the opinion of Dr. Kells be more persuasive in respect to Petitioner's need for prospective medical treatment and her surgical recommendations.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of eight and one-seventh (8 1/7) weeks, commencing January 13, 2022, through March 11, 2022.

In support of this conclusion the Arbitrator notes the following:

Petitioner and Respondent stipulated Petitioner was temporarily totally disabled during the aforestated period of time.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC040037
Case Name	Joseph Nemergut v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0447
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Bradley Defreitas

DATE FILED: 9/18/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Nemergut,
Petitioner,

vs. NO: 14 WC 40037

State of Illinois - Pontiac Correctional Center,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, 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 January 3, 2024 is hereby affirmed and adopted.

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

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

Pursuant to §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.

September 18, 2024

O: 09/12/24
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	14WC040037
Case Name	Joseph Nemergut v. Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Bradley Defreitas

DATE FILED: 1/3/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 3, 2023 5.04%

/s/ Kurt Carlson, Arbitrator
Signature

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

January 3, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joseph Nemergut Case # **14** WC **040037**
Employee/Petitioner/
v.
Pontiac Correctional Center
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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **November 30, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 7, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**69,904.64**; the average weekly wage was $**1,344.32**.

On the date of accident, Petitioner was **61** 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 $**140,133.54** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**140,133.54**.

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

ORDER

Petitioner's current condition of ill-being is unrelated to the work injury on September 7, 2014.

No medical bills incurred after October 31, 2018 are compensable under Section 8(a) of the Act.

Respondent shall pay outstanding lost time or TTD benefits from 06-16-15 to 07-16-15 (4.286 weeks) and again from 11-09-17 to 04-12-18. (22 weeks), totaling to 26.286 weeks at the rate of $896.12 or $23,555.41. Respondent is due a credit for any TTD already paid during this time.

Respondent shall pay Petitioner $735.37 for 17.5 weeks as the injury sustained caused 3.5% loss of use of a person as whole pursuant to Section 8(d)2 of the Illinois Workers' Compensation Act or $12,868.98.

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

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

Kurt A. Carlson **JANUARY 3, 2023**

Arbitrator

Joseph Nemergut v Pontiac Correctional Center

Findings of Fact

This matter was heard on November 30, 2023 by Arbitrator Carlson in Bloomington, Illinois. Petitioner was the only witness who testified.

The disputed issues are causal connection, liability for medical bills after October 31, 2018, lost time or TTD benefits from November 1, 2018 through September 8, 2020, and the nature and extent of the neck (cervical) injury.

Petitioner's application for adjustment of claim on this matter states that the accident occurred "during the course of his employment" (AX #1) and the part of the body affected was stated to be "multiple body parts." (Id.)

The IWCC database shows that Petitioner has filed and settled three prior workers' compensation claims –

98 WC 033340 a back claim which settled for 2.2% of a person;
04 WC 036319 which settled for 15% & 17% per hand, but also claimed a neck injury;
06 WC 027531 which settled for 25% & 35% of each arm.

The last two claims were against The State of Illinois – Pontiac Correctional Center.

Petitioner's testimony

Petitioner testified that he was employed by Respondent as a correctional medical technician ("CMT") and he was hired in 2004. (TX p.8) He delivered prescription medications to the cell houses, attended sick calls with the doctors, carried crates to the cell houses and was on call for emergencies. (Id.) He further testified that he would reach into cabinets to load medications and he estimated that the boxes weighed around 30 pounds. (Id. p. 9) He'd pile medical charts into milk crates which weighed between 40 and 50 pounds and then tote them on his rounds.

When on emergency services, he testified that they would lift prone inmates pick and place them on a gurney to remove them from their cells. He claimed to be able to do this on his own, but usually had help. (Id. at 10-11) He agreed that the job description (PX #17) was mostly accurate except for the weights listed.

Petitioner's initial testimony on direct exam was evocative of repetitive trauma, but it is not such a claim. Instead, this is a specific loss claim involving the neck or cervical spine.

Petitioner next testified about his wages. He agreed that he was unable to testify whether the overtime listed was mandatory or not. He did agree that on overtime he did the same job duties he already had testified about. (Id. at 13-14)

Petitioner then testified about a motor vehicle accident that he was in which injured in 2003 which included injuries to the cervical spine and neck. He treated with Dr. Ann Stroink for that injury. (Id. p.15) Those records are not in evidence, but he had a cervical MRI in 2006, which was three years after the MVA. He further testified that he was referred to Dr. Joseph Newcomer for surgeries on his shoulders at that time. (Id. 15-16) Ostensible, this is related to his prior workers' compensation claims and not the motor vehicle accident.

Petitioner was asked, "[i]n the seven years before September 7, 2014, were you experiencing any radiating pain from your neck into your bilateral shoulders and between your shoulder blades?" (Id. at 17) He responded no. He further denied any headaches that radiated to the base of his skull, denied weakness in his upper extremities, denied any difficulties with fine motor skills and function of his bilateral hands, denied difficulty with daily activities. (Id. at 18-19) He did agree that he has a lumbar spine condition that causes numbness in his lower extremities and it undisputed that he suffers from a peripheral neuropathic condition, among a host of other maladies.

Accident at work

On September 7, 2014, Petitioner testified that, "I collected up all my boxes and my medications…and I went to leave the facility, and there's steps going down the front of the hospital…so I walked down the steps with his box of meds in my arms…I tripped over the cart and then I landed on my left side." (Id. at 20-21) This occurred at 7:45 am (PX #19) He testified that he landed on his left hip and left arm but also claimed his head hit the cement. (Id. at 22) He continued with his duties that day but later went to the infirmary on premises. He filled out an injury report that mentioned no neck injury or pain, nor did he claim to have stuck his head. (PX #19)

Dr. Purnell – family doctor – initial treatment

He called in sick the next day and went to see his primary care doctor, Dr. Purnell who took him off work. He returned to work on September 16 but testified that his neck pain was worse and now radiating to his fingertips. Dr. Purnell ordered a cervical MRI and then referred Petitioner to Dr. Pegg, a neurologist, and Dr. Stroink, a neurosurgeon. (Id. at 32) He was further referred to Dr. Jhee, a physiatrist.

He testified that Dr. Jhee had him off work but that he returned from September 2015 through December 2015 to work light duty which was to look over SOAP notes and make sure they were correct. (Id. at 34) He eventually underwent an FCE which provided more restrictions than just sedentary work and 10 pound lifting limit.

Petitioner never returned to work after December 2015 and is currently on social security disability for undisclosed reasons.

He got a second opinion from Dr. Jesse Butler who said the surgery was not indicated. (Id. at 40) However, he eventually underwent a cervical fusion surgery with Dr. Stroink in March of 2020 (over five years after the accident) and she released him from care in September of 2020. (Id at 41) with no permanent restrictions and he stated that his pain had diminished for the most part.

On cross-examination, Respondent questioned Petitioner about his issues with Respondent's exhibit 2 which was the supervisors report of injury. He noted that it had the wrong location but agreed that the report is based on what is reported to the supervisor. (Id. at 49-50) He further agreed that he did receive his 5 service connected days at full pay and that TTD did not start until September 15, 2014.

When asked whether he was previously diagnosed with degenerative disc disease in the cervical spine he was unsure. He did agree that he was in a motor vehicle accident in 2003 and had other issues in 2006.

Petitioner's Trial Exhibits

Petitioner submitted 22 exhibits at the time of trial. All were admitted without objection. Petitioner's exhibits 1 and 2 are records from Dr. John Purnell, a family doctor.

Dr. Purnell's handwritten notes (PX #1) – initial treater – primary care physician

Petitioner's first exhibit are Dr. Purnell's handwritten notes, for the most part. They begin in 2001 and cover Petitioner's heart issues, sleep apnea, and other various maladies including peripheral neuropathy and high blood pressure.

Petitioner presented in March of 2005 with peripheral neuropathy in his legs. In February 2006 he presented with pain and numbness in the right arm and he was referred "back to the neurologist." (PX 1 p. 5)

Petitioner presented in November of 2006 and Dr. Purnell noted that "[h]e also has a neck problem that he is seeing Dr. Stroink for." (Id. at 6) He again presented in December of 2006 with pain between his shoulders. (Id. p.7)

There are further complaints of neck pain in 2007 where physical therapy was ordered. (Id.) At one point, that Dr. Purnell wrote thought he "probably has MS." (multiple sclerosis), which occurs when the body's immune system attacks the nervous system. There is evidence of a cervical MRI in 2008. (PX 3)

Even though the MS was eventually ruled out, The Arbitrator notes that Petitioner still suffered from peripheral neuropathy as documented by Dr. Purnell in 2012 (PX #1 p.12) Dr.Stroink refers to cervical issues in 2012 and 2014. (p.9 & 15)

Upon close inspection of Dr. Purnell's handwritten note on February 14, 2014, (seven months before the work occurrence) it appears that Petitioner was examined by Dr. Purnell who wrote "C-spine….." (PX 1 p.15) If one compares that handwritten word with the same "MRI of C-Spine" handwriting after the accident on the next page. (PX 1 p.16), it's a clear match. But there are no transcribed notes to fully explain that pre-accident office visit. No pre-accident notes of Dr. Purnell were transcribed. Later, on December 10, 2014, a handwritten note states, "refer to Dr. Stroink for neck." (Id. p.16)

Dr. Purnell's transcribed (typed) notes – (PX #2) - treater

Petitioner's second exhibit are Dr. Purnell's typed notes and begins with a report from the day after the occurrence on September 8, 2014 noting that Petitioner tripped at work and fell resulting in abrasions and contusions, including a strained neck. (p.1) The Arbitrator notes that Petitioner never gave a history of striking his head and no x-rays of the head or neck were prescribed. Nothing was documented about a bump, scrape or contusion of the Petitioner's head. (Id.) The focus of the treatment was on Petitioner's barked shins. While the above is true, it is also true that two days later, Dr. Purnell wrote that "his neck is better today" and was diagnosed with abrasions of multiple sites as well as left hip and left leg pain. (p.4)

On September 15th, the Petitioner was returned to work with no restrictions.

On September 29, 2014, Petitioner was diagnosed with a C2 spinal cord injury. (p.8)

On December 1, 2014, (three months after the accident), Dr. Purnell's office diagnosed a concussion even though Petitioner never reported striking his head. Petitioner was stating that he had "neck pain all of the time." (p.10)

On October 12, 2015, Dr. Purnell wrote that "Patient had presented for work at Pontiac….He states that he does not do anything; just sits there, but he gets headaches and neck spasms, occipital headaches that go around his eyes. He gets some blurry vision too…" (p.27)

On July 31, 2017, Dr. Purnell wrote to Petitioner's workers' compensation attorney that the Petitioner cannot return to work full-time due to numbness in his left arm if he raises it above his head. He also has pain in the cervical spine area. This pain is a direct result of his work accident. (p.39)

St. James Medical Center – (PX #3) - treater

Petitioner's third exhibit are the records from St. James Medical Center. The Arbitrator notes that the initial diagnostic studies focused ordered by Dr. Purnell were on the Petitioner's left hip, tibia and fibular. There were no cervical or head x-rays. (p. 1 & 2) Dr. Purnell never prescribed any treatment related to a concussion or head injury at any time.

Petitioner would undergo four cervical spine MRIs:

Cervical Spine MRI #1 – 12-05-14

Dr. Simon Pegg ordered the first cervical spine MRI on December 5, 2014 that showed "multilevel degenerative changes with most severe at C4-C5, where there is moderate foraminal stenosis at C5-C6. (p.3) The records further show complaints of neck pain on right worse than left.

Cervical Spine MRI #2 – 08-09-17

This MRI showed multilevel degenerative disc changes with moderate to severe on the right and least mild to moderate left C5 foraminal narrowing; and longitudinally oriented zone of posterior mesial intramedullary cord signal abnormality at C3-C4 level. (p.17)

There is an x-ray of the cervical spine where it is noted that an MRI of the cervical spine was done in 2008 and the x-ray report notes mild to moderate degenerative cervical spondylosis which has increased since 2008. (p.18) There is no mention of the 2014 study.

Cervical Spine MRI #3 -12-26-18
A third study was performed on December 26, 2018 and notes no acute abnormality; nonspecific gliosis involving the dorsal aspect of the spinal cord at C3-C5 is unchanged; multilevel spondylosis is not significantly changed. (p.19)

Cervical Spine MRI #4 – 02-14-20
Petitioner underwent another MRI on February 4, 2020 which showed nonspecific gliosis involving the posterior aspect of the cord from C3-C5; mild to moderate facet arthropathy at C2-3 greater on the right; mild facet arthropathy ay C4-5 and C5-6; posterior disc bulge at C6-7 with mild spinal canal stenosis; and facet arthropathy at C7-T1. (p.47)

A CT of the cervical spine was performed on March 3, 2020 which showed no acute cervical fracture; multilevel degenerative disc disease at C4-5 through C6-7 with some mild narrowing of the central spinal canal. (p.50)

Dr. Edward Pegg (neurologist) (PX #4) – treater (1st treater – chain of referrals)

Petitioner's exhibit 4 are the treating records from Dr. Edward Pegg. The relevant records reflect that Petitioner was first seen by Dr. Pegg on December 15, 2014 where he noted the MRI showed degenerative disc disease. Petitioner denied pain into the arms and had no numbness or weakness in his arms at that visit. (pp.1-2) An MRI of the thoracic spine was done on December 24, 2014 and it showed mild multilevel endplate degeneration. (p.4)

Six months later, Dr. Pegg wrote that Petitioner cancelled several appointments and then never rescheduled so he was referring him back to Dr. Purnell. (p.5)

To summarize, Dr. Pegg did not find anything remarkable in the MRIs; as there was nothing in the way of a trapped nerve that might explain the Petitioner' discomfort. It only showed mild degenerative changes.

Dr. Ann Stroink – PX #5 (treater – 1st choice)

Instead of following up with Dr. Pegg, Petitioner sought medical treatment with Dr. Ann Stroink.

Petitioner's fifth exhibit are the medical records of Dr. Ann Stroink, who had treated him the past for carpal tunnel syndrome, most likely in 2004, but also in 2012 and 2014. (PX #5 p.9)

It's seems that Dr. Purnell referred the Petitioner to Drs. Stroink and Pegg.

In any event, the first post-accident appointment with Dr. Stroink was on March 12, 2015 (six months after the occurrence) and she reviewed the first cervical MRI. She diagnosed him with axial neck pain aggravating an underlying condition of multiple level degenerative disc disease and referred him to physical therapy and placed him under the care of Dr. Won Jhee (Physiatrist). (p.3) Clinically, Petitioner had no sensory deficits to his upper extremities. She found no indication for surgery.

Dr. Stroink would not see the Petitioner for another 2.5 years.

On July 13, 2017, (three years after the accident) she would write that the "[p]atient recognizes that he has had neck problems on and off for years, however…claims that this pain became markedly worse," from the work accident. (p.6)

At the next appointment, Dr. Stroink discussed a previous neck operation from 2006 where there was a noted white spot on the imaging that is still present 11 years later." (p.7) Dr. Stroink referred the Petitioner back to the physiatrist stating, "We have concluded neurosurgical care." (p.9)

This is three years after the occurrence.

While it might seem as if Petitioner had not disclosed his 2006 neck surgery to any of his post-accident doctors. There is nothing in Petitioner's medical history to corroborate a cervical surgery back in 2006. In short, the Arbitrator does not believe the Petitioner had neck surgery in 2006. Instead, he finds that the most accurate history of Petitioner's pre-accident neck condition is probably later in Dr. Stroink's August 17, 2017 progress note stating the following:

"He had a history of neck pain since 2006. He had been seen a neurological consult for this complaint. Surgery was not recommended." Petitioner had a linear white abnormality in the cervical cord at that time. "He was treated conservatively and returned to work for 11 more years…A recent MRI done in 2017 does not demonstrate any significant changes than what we knew in 2014 and 2012." (p.9)

The Arbitrator notes that "what we knew in 2012" is a revelation, but like the hand-written "C-spine" note in Dr. Purnell's record, it is not enough form any definitive conclusion. Instead, what is more compelling that the MRIs showed no interval change. Stated another way, the Petitioner's diagnostic pathology was unchanged after the accident.

Nevertheless, six years after the original occurrence, Dr. Stroink offered the Petitioner an anterior cervical spine fusion at C4-5 and C5-6 and based her decision on the third MRI study. (p.17) Approval was denied and then Petitioner's symptoms suddenly became worse, prompting the fourth and final cervical MRI on 02-14-20, revealing what Dr. Stroink described as "cord compression now" and "evidence of myleomalcia" (p.25)

The third and fourth MRIs are only seven weeks apart from each other.

Petitioner was 67 years old at the time of the fusion.

Ultimately, Dr. Strionk would described the fusion a successful and stated that "all along I have told the patient that I think the condition for which he was seeing me was due to aggravation of an underlying disease." (p.38)

Dr. Strionk did not place the Petitioner under any work restrictions.

Dr. Won Jhee (physiatrist) – PX #6 (2nd choice chain -treater)

Petitioner's sixth exhibit are the medical records from Dr. Won Jhee.

Dr. Jhee first examination was on April 16, 2015 and he noted that the Petitioner was in no apparent distress and documented a self-reported pain level to be a constant 3/10, but also sometimes as high as a 6. Dr. Jhee reviewed the MRI and diagnosed a cervical strain, left upper cervical radicular symptoms and mild case of myofascial pain syndrome. He recommended physical therapy at St. James. (p.1-2) Petitioner could return to work with no restrictions. (Id.)

Physical therapy records at St. James show that Petitioner attended six therapy sessions from April 21, 2015 to May 8, 2015. (PX #3) At his May 4, 2015 visit, Petitioner stated that his maximum 24 hour pain was 1/10. (p.14)

On May 12, 2015 Dr. Jhee noted that Petitioner was discharged from PT and he released him to return to work with no restrictions. (p.3) He noted that his patient was in no acute distress and stated there was no radiating pain from the neck to the upper extremities. This is eight months after the work accident.

Petitioner went back to work for one day and then returned to Dr. Jhee, who ordered an EMG to determine the cause on the numbness and tingling in Petitioner's last two fingers.

It does not appear from the records that Dr. Jhee was aware of the Petitioner's pre-existing peripheral neuropathic condition, shoulder surgeries or prior carpal tunnel syndrome and surgery.

In any event, on June 25, 2015, an EMG/ NCV was performed and interpreted by Dr. Jhee to find mild C8 radiculopathy and C7 radiculopathy. The majority of the report was normal. There were some carpal tunnel findings.

As a result of the above, Dr. Jhee recommended epidural injections and placed the Petitioner off work again as Respondent had no light duty. (p.6)

Respondent initially refused to approve future treatment to the pain clinic or injections. On July 9, 2015, Dr. Jhee examined the Petitioner and found constant neck pain and radiation to the upper extremities, more on the right side. He placed the Petitioner at a sedentary level and gave him 10 pound lifting restrictions. (p.11)

The Arbitrator notes that this is first record of any radiating pain in the medical records.

Petitioner would continue to treat with Dr. Jhee every other month or less. Ultimately, injections could not be performed because of the Petitioner's use of Plavix (an antiplatelet medication used to reduce the risk of heart disease and stroke to those who are high risk).

As a result of the above, Dr. Jhee prescribed a functional capacity examination (FCE) and based on those results, gave permanent restrictions of no frequent lifting over 10 pounds; no lifting over 20 pounds occasionally; no lift over 35 pounds on any occasion; no overhead work; no frequent carrying over 10 pounds; no carrying over 20 pounds occasionally; no carrying over 35 pounds; no static push over 80 pounds and no static pull over 180 pounds. (p.22)

These permanent restrictions were years before Petitioner ever underwent a cervical fusion, nor ever adopted by a neurologist. There was never a complete inventory of Petitioner's prior injuries and surgeries.

Dr. Ramsin Benyamin – Millenium Pain Center –(PX #7) -(treater)
Petitioner's seventh exhibit are the medical records from Dr. Ramsin Benyamin at Millenium Pain Center. The records show that due to Petitioner's use of Plavix, the cervical injections could not be performed. (p.18) Dr. Benyamin was under the impression that Petitioner had failed physical therapy. (p.7)

Functional Capacity Examination – 2016 – (PX #8)
Petitioner's exhibit 8 is the functional capacity examination from April 12 and April 13, 2016. It is noted that he was completely cooperative and made a good effort throughout. It is also noted that some inhibition is from low back and lower limb pain as well as neck and upper limb pain. (p.3) The results were used by Dr. Jhee to determine his restrictions.

Dr. Patrick Tracy (neurosurgeon) (PX #9) – 3rd choice - treater
Petitioner's 9th exhibit are the medical records from Dr. Patrick Tracy. There is no referring physician. As a result, it constitutes Petitioner's third choice of physician. On April 26, 2016, Dr. Tracy examined the Petitioner and wrote that "he has had several MRIs on his cervical spine before. None of these show any indication for neurosurgical treatment." No instability, no neurocompression. (p.1) He also wrote that Petitioner had cervical imaging and consultation for possible surgery of his cervical spine seven to eight years ago. (Id.) Dr. Tracy noted that his degenerative changes were fairly average with his age. (Id.) He had no additional treatment recommendations.

Dr. Mukesh Patel – OSF Glen Park – (treater) - PX #10

Petitioner's 10th exhibit are the medical records from Dr. Mukesh Patel at OSF Glen Park. Dr. Patel appears to have become the Petitioner's primary treater as of late 2017 as Dr. Purnell retired. There is no new information in these records, except that Petitioner's overall physical habitus had deteriorated quite remarkably as the result of a myriad of conditions. By February 2022, Dr. Patel was creating justification for a handicapped parking permit for Petitioner because

he claimed that he could no longer walk more than 100 yards as the result of bilateral hip arthritis. (p.29)

INI Neurology – Dr. Chris Zallek – (treater) PX #11

Petitioner's exhibit 11 is the medical records from Dr. Chris Zallek at Illinois Neurological Institute. Dr. Stroink referred to the Petitioner to INI for an EMG on On December 27, 2017. While it showed some left ulnar mononeuropathy at the elbow, Dr. Zallek wrote that "This would not explain the majority of the patient's symptom complexes." (p.3) Conservative treatment was recommended due to normal strength and the unremarkable EMG findings. (Id.)

OSF Pain Center – (treater) PX #12

Petitioner's exhibit 12 is the records from OSF Pain Center. On February 23, 2018 Petitioner underwent an injection at C5-6 level and tolerated it well. (Id. p.14) Dr. Zalleck was listed as the referring physician. It seems that they took Petitioner off Plavix for a short time to administer the injection.

Dr. Joseph Newcomer – (PX #13) treater (3rd choice)

Petitioner's exhibit 13 are the records from Dr. Joseph Newcomer who saw Petitioner on January 24, 2019 for a left shoulder pain, achiness, numbness and tingling. There is no referring physician. It appears that Dr. Newcomer had performed surgery on Petitioner's shoulder in 2006. Petitioner gave a history of left shoulder pain "since 2014 when he had fallen, he had surgery in 2006 and "did great all the way up until 2014." On left shoulder exam, Dr. Newcomer "could not reproduce the symptomatology whether type II or type I impingement test." (Id.) This is nearly five years after the occurrence at work.

Dr. Jesse Butler – PX #14 – treater (3rd choice)

Petitioner's exhibit 14 are the medical records from Dr. Jesse Butler who examined Petitioner for a second opinion on May 9, 2019. Dr. Butler did not believe he was a surgical candidate due to his morbidities and the multiple "less than impressive" MRI scans. The neurological exam was normal. (Id.) The Arbitrator notes this is not a Section 12 exam requested by Respondent. Dr. Butler is a treating physician.

St. Joseph Medical Center – (PX #15) - treater

Petitioner's exhibit 15 is the medical records from St. Joseph Medical Center. Petitioner originally underwent surgery on March 11, 2020 and the operation was an anterior cervical discectomy and fusion of C4-5 and 5-6 with allograft and anterior spinal plating. (p.11)

Petitioner underwent a second surgery on March 13, 2020 which included re-exploration of cervical wound, removal of anterior cervical hardware, repair of cerebrospinal fluid leak and re-instrumentation of new hardware. (p.2)

The Arbitrator notes that Petitioner' neck surgery (two level fusion) occurred 5.5 years after the occurrence at work.

Written Job Description - SRS – PX #17
Petitioner's exhibit 17 is a job description for a medical tech from the State Retirement System. On direct Petitioner agreed this was mostly accurate except for the weights listed.

Wage Statement re: AWW – (PX #18)
Petitioner's exhibit 18 is a wage statement with printouts for each pay period. The average weekly wage is calculated at $1,344.32. This does not include overtime as Petitioner testified, he was unable to tell which overtime was mandatory and which was not.

Notice of Injury – (PX #19)
Petitioner's exhibit 19 (as well as Respondent's exhibit 1) is the notice of injury authored by Petitioner. This report notes that he was leaving the hospital to get on ERV and he tripped on a cart and he lists the injured body parts as his left and right shin.

Photo of metal cart – PX #20
Petitioner's exhibit 20 is a photograph of a metal cart.

Physical Therapy Records - PX #21
Petitioner's exhibit 21 is prior PT notes where Petitioner complains of neck pain on a note dated in 2009.

Medical Bills Summary – (PX #22)
Petitioner's exhibit 22 is a medical bill exhibit which shows bills for all of Petitioner's treatment.

Deposition of Dr. Ann Stroink

Petitioner's exhibit 16 is the deposition of Dr. Ann Stroink. She testified that she is a neurosurgeon licensed in Illinois and board certified in neurological surgery. (PX 16 p. 7) She referred to her notes to testify and she noted that she saw Petitioner as far back as 2007. She testified that she saw Petitioner on March 12, 2015 based on a referral from Dr. Purnell and she noted a history of neck pain that started after he fell over a cart on 9/7/14. (Id. p.10) She further testified that she reviewed a MRI that showed degenerative disc disease and osteophytic disease. At that visit she diagnosed him with axial neck pain aggravating an underlying condition of multiple level degenerative disc disease and referred him to physical therapy. (Id. p.11) She noted that he had neck problems on and off for many years but did not address how the pain on July 13, 2017 was different. She did testify that she performed a physical exam and she could not determine a definitive dysfunction and she further ordered another MRI. (Id. p.14) At his next visit she testified that they went over the MRI which "does not demonstrate any significant changes than what we already knew in 2014,2012…[h]e has degenerative disk disease at C5-6 with minimal foraminal stenosis. Regarding the note that he had a white spot on his imaging she was unable to render an opinion as she did not recall the exact events and was unsure whether she referred him to Dr. Zallek or whether Dr. Zallek was already seeing him. (Id. p.16)

Dr. Stroink next testified that she saw Petitioner on December 20, 2018 and on physical exam she noted longstanding neck pain but worsening which prompted a recommendation for another MRI. (Id. p.17-18) The MRI on December 26, 2018 showed "advanced degenerate changes at

the C4-5 and C5-6 level…also he had changes in the cord signal." (Id. p.18) She then testified that, "because of the worsening degenerative changes and because of the signal change within the cord, I was going to recommend a two-level ACF at that juncture." (Id. at 19) When asked whether she believed that his condition in 2019 started with his fall in September 2014 she stated,

> "I think that what has happened with his work injury was something that aggravated an underlying condition. Because I think his neck was already degenerated when I first saw him. And then, of course, when you age, it just degenerates more. And when it degenerates more, sometimes the disks then develop a larger volume because they pick up – because of inflammatory changes, they pick-up calcium deposits. And then this increases the size of the bulging, and then the bulging affects the cord even more." (Id. p. 20-21)

At his visit on January 30, 2020 she noted the recommendation of a two level ACF and new complaints of headaches and numbness into his arm so another MRI was ordered. Petitioner ultimately underwent surgery on March 11, 2020 which showed cervical spondylitic disease C4-5, C5-6 with early cord compression and white signal changes indicative of myelomalacia. (Id. p.25) (myelomalacia is a spinal condition where the cord softens due to a lack of blood supply to the spine. It can be caused by an acute injury or degeneration of the spine over time). Dr. Stroink testified that the procedure performed was a two-level anterior cervical discectomy and fusion. (Id.) When asked whether it was her opinion that the need for surgery was due to the aggravation of his underlying condition which occurred in September of 2014 Dr. Stroink replied yes. (Id. p.35)

On cross-examination, Dr. Stroink agreed that the note from August 17, 2017 notes that Petitioner previously underwent neck surgery in 2006 but she had no knowledge of that. (Id. at 38) When asked about the notes of MRIs from 2012 and 2014 being like the one in 2017, Dr. Stroink was unable to answer the question because she did not recall. She was next asked about the January 31, 2019 note that mentions neck pain from 2004 and MRIs from 2006 and 2008 with similar findings of degenerative changes. When asked whether it is normal for a man in his 60s to develop worse degeneration over the course of 12 to 15 years she responded, "yeah, one could easily do that, yeah." (Id. p.41) When asked whether his degenerative changes were asymptomatic before 2014 she responded with, "I don't – I don't know." (Id.)

When asked whether she provided any off work slips she answered that she does not do off-work notes. Further, when asked whether she gave Petitioner any permanent restrictions she did not believe that she did. (Id. p.43)

Respondent's Exhibits

Respondent's exhibit 1 (as well as Petitioner's exhibit 19) is the notice of injury filled out by Petitioner. This report notes that he was leaving the hospital to get on ERV and he tripped on a cart and he lists the injured body parts as his left and right shin. (PX 19)

Respondent's exhibit 2 is the Supervisor's Report of Injury filled out by Teri Arroyo which states that Petitioner tripped over a cart and fell in the Healthcare Unit. Respondent's exhibit 3 is a wage statement with printouts for each pay period. The average weekly wage is calculated at $1,344.32. This does not include overtime as Petitioner testified he was unable to tell which overtime was mandatory and which was not.

Respondent's exhibit 4 is the Section 12 examination report prepared by Dr. Andrew Zelby and dated as April 10, 2017. In the history from Petitioner Dr. Zelby notes that Petitioner said he has had no other problems with his neck until September of 2014. Petitioner gave a history of carrying boxes of medicine while descending a flight of stairs when he tripped over a food cart and fell on his left side. (RX 4 p. 1) The report details a neurologic exam and Dr. Zelby also reviewed the imaging studies that were sent to him. Dr. Zelby opined that the MRI in December 2014 showed no acute post-traumatic abnormalities and only showed degenerative changes. (Id. at 7)

Dr. Zelby was sent additional records and prepared an addendum, dated September 10, 2018, which was entered as Respondent's exhibit 5. He reviewed records starting in 2003 from Dr. Purnell. Based on the new records reviewed Dr. Zelby opined that Petitioner suffered a temporary exacerbation of a pre-existing degenerative condition. He opined that Petitioner needed no work restrictions and that no surgical intervention was needed. (RX 5 p. 3)

Respondent's exhibit 7 is the payment ledger that show medical bills and TTD paid by Respondent. This record shows that Respondent paid TTD for the day of 09-15-14; then

12-16-14 through 06-15-15;
07-17-15 through 09-30-15;
12-31-15 through 11-08-17;
04-13-18 through 10-31-18.

Deposition of Dr. Andrew Zelby

The deposition of Dr. Andrew Zelby was taken on December 19, 2022 and the transcript was entered as Respondent's exhibit 6. Dr. Zelby testified that he is a neurosurgeon at Northshore Westchester Neurosurgery and is a board-certified neurosurgeon. He further testified that on April 10, 2017 he examined Joseph Nemergut at the request of the State of Illinois. (RX 6 p. 5) He testified that Petitioner gave a history of carrying medication down the stairs and that he tripped on a cart. On the date of exam, Petitioner complained of fairly constant pain in the neck with intermittent pain and numbness in the same distribution of both fingers.

Dr. Zelby testified that he believed that Petitioner had a degenerative condition in the cervical spine without myelopathy and without radiculopathy. (Id. p.10) In regard to the addendum he did agree that the additional records were used to change some of his opinions about the nature of Petitioner's condition. (Id. p.11) He then opined that the accident at work was a temporary exacerbation of a degenerative condition based on the fact that the MRI showed no acute or post-traumatic abnormalities. (Id. p.12) He further opined that Petitioner needed no further treatment and was at MMI as of January 2015. (Id. at 13)

When asked why he ruled out radiculopathy as a diagnosis he testified that "I rule out radiculopathy from a physiatrist…I don't see any diagnosis from any neurologically trained physicians. (Id. p.20) When asked whether radiculopathy could be numbness throughout the neck and into the shoulder, Dr. Zelby answered, "[t]hat's not radiculopathy." (Id.)

Conclusions of Law

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

It should also be stated that the Arbitrator did not find the Petitioner's testimony to be particularly credible. Petitioner did not claim to strike his head to any doctor throughout the course of his extensive medical treatment, yet he began his sworn testimony by stating that he struck his head in the fall.

At the time of occurrence, Petitioner was 61 years old, stood at 5'8" and weighed over 200 pounds. As a result, it fair to conclude he was not an industrial athlete, yet he claimed to be able to single-handedly carry unconscious inmates out of their cellblocks.

The Arbitrator finds it unlikely that medical charts weighing between 30 pounds were stored at the "above shoulder level" at the facility.

The Arbitrator did not find the Petitioner's testimony regarding his pre-existing symptomatology to credible. Petitioner stated he was "unsure" about it, but it seems clear that he had a full-cervical spine work up in 2006, and was suspected to have had polyneuropathy, MS - a virus that affects the nerves as well as carpal tunnel syndrome. None of which are related to this accident and there is nothing in the record to suggest that fall at work caused or aggravated Petitioner's those conditions, but it appears to the Arbitrator that the Petitioner presented similar symptomatology to his doctors as if it were related and probably did so knowingly. Afterall, he was a certified medical technician.

As a CMT, he would also be acutely aware of the importance of giving an accurate medical history to a treating physician. Petitioner reported no significant head injury nor neck injury in the initial trip and fall.

Please review Petitioner's Exhibit #3, again which are the physical therapy records showing that the Petitioner was ostensibly discharged with no restrictions after only 6 sessions. Petitioner attended six therapy sessions from April 21, 2015 to May 8, 2015. (PX #3) At his May 4, 2015 visit, Petitioner stated that his maximum 24 hour pain was 1/10. (p.14) His complaints eight months after the accident were not very compelling and then seemed to spike dramatically after returning to work for only a day of sedentary duties. It seems to the trier of fact that Petitioner had decided for one reason or another that he was done working. He had enough of it and was ready to quit.

In a claim where so much of the medical treatment is based on the Petitioner's subjective complaints and little or no corroborating pathology, the credibility of the Petitioner is of paramount importance and the Arbitrator did not find him to be particularly believable and looked instead to objective pathology which failed to corroborate much of his claim.

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

It is well accepted that Petitioner bears the burden of proof to establish the elements of the right to compensation, including that the condition of ill-being was causally connected with employment, rather than a cause unrelated to employment. *Rice v. Industrial Comm'n*, 81 Ill.2d 544, 547 (1980). Indeed, to meet the burden of establishing elements by a preponderance of the evidence, a petitioner must "prove by positive evidence or by reasonable inference" that her condition of ill-being is the causal result of the injury at bar. *Mirific Products Co. et al. v. Industrial Comm'n, 356 Ill. 645, 650 (Ill. 1934)*. Indeed, such evidence must outweigh evidence or the absence thereof which favors the opposite conclusion. *Id*. As such, liability cannot rest upon imagination, speculation, or conjecture. *Finch v. Industrial Comm'n, 08 IL.W.C. 39483, 12 I.W.C.C. 0638 (2012).*

In her deposition Dr. Stroink gave causation and stated that she believed that Petitioner suffered an aggravation of a pre-existing degenerative condition. On the other hand, Dr. Zelby found that Petitioner's current condition of ill-being was not related and that any injury on the date of accident was a temporary exacerbation of Petitioner's underlying degenerative condition. Dr. Stroink did not recall the pre accident MRIs that were noted in Petitioner's medical records but she did agree that degeneration from 2006 to when she saw Petitioner could be considered normal for a man in his 60s.

"It has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease 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." *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill.2d 30, 36-37.

Here, the records presented show that Petitioner has long standing neck complaints going back to at least 2004. There is a record that claims he had previous surgery in 2006 but that appears to be an error. However, it is clear that Petitioner has a pre-existing condition. Respondent's section 12 examiner believes it was a temporary exacerbation while Petitioner's surgeon believes it was an aggravation. Even if the condition were permanently aggravated, it does not seem to have required a fusion nor would it have disabled the Petitioner to extent he claimed.

The Arbitrator finds that Dr. Zelby was the more credible witness as he reviewed more records than Dr. Stroink and testified with more certainty. Further, his opinion is more consistent with other neurosurgeons who examined the Petitioner. No other treating neurosurgeon (Drs. Pegg, Tracy and Butler) found any compelling pathology either from a clinical or diagnostic standpoint. Even Dr. Newcomer could not reproduce the Petitioner's left arm complaints. It is also true that Dr. Stroink was unconvinced for years after the occurrence and her testimony often

contradicts what she wrote her medical records. And these are opinions of treating physicians, not Section 12 examiners.

Dr. Stroink seemed unsure in her responses about Petitioner's past neck issues and was not able to testify one way or the other about it.

Based on the opinion of Dr. Zelby and other treating doctors, the Arbitrator finds that the fusion surgery and current condition of ill-being is not related to this work injury. Respondent terminated benefits as of October 31, 2018 based on the addendum report from Dr. Zelby and therefore no medical bills or further TTD will be awarded after that date.

Issue (J): Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Respondent shall pay all reasonable and related bills through October 31, 2018. All bills after that date denied.

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

The Issue of TTD is admittedly confusing as there are gaps in treatment and off work slips, there is also a pre-surgical FCE created by a physiatrist claiming permanent restrictions despite not knowing about Petitioner's other maladies and well before MMI. The Arbitrator specifically fails to find the FCE results to be credible as they do not remotely match the Petitioner's work injury. Further, in reading the report, it is hard to believe that report was the result of two day of testing. In any event, Petitioner has claims to be owed TTD from the following dates:

09-08-14 through 09-15-14
12-06-14 through 09-30-15
12-31-15 through 09-08-20

Respondent entered evidence that showing TTD paid for the following:

The day of 09-15-14; then from:

12-16-14 through 06-15-15
07-17-15 through 09-30-15
12-31-15 through 11-08-17
04-13-18 through 10-31-18.

Thus, there appears to a TTD dispute from:

09-08-14 through 09-14-14
06-16-15 through 07-16-15
11-09-17 through 04-12-18
11-01-18 through 09-08-20.

The Arbitrator finds that Petitioner is entitled to TTD from:

06-16-15 through 07-16-15
11-09-17 through 04-12-18.

Ultimately, in reviewing the evidence and arguments by Respondent, the above dates appear to be undisputed by Respondent. In adopting most of Dr. Zelby's opinion, the Arbitrator finds no benefits due after October 31, 2018. The Arbitrator finds that the amount of TTD Respondent voluntarily paid to be excessively generous under the circumstances. In any event, all benefits after that date are denied. Respondent is entitled to a credit for TTD already paid.

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

With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

With regard to subsection (i): The Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (ii): the occupation of the employee: the Petitioner was employed as a medical tech for Respondent. Respondent's Section 12 examiner has opined that he was able to return to this occupation. Therefore, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iii): the Arbitrator notes that Petitioner was 61 years old at the time of the accident. The Petitioner is older than most employees and since he will not have a significant time left in the labor force, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iv): Petitioner's future earnings capacity: Petitioner credibly testified that he is retired and the records indicate that he is on social security disability for other medical conditions unrelated to this claim. He was given no restrictions by his surgeon Dr. Stroink and based on the opinion of Dr. Zelby he is able to work without restrictions. Therefore, the Arbitrator places significant weight on this factor.

With regard to subsection (v): evidence of disability corroborated by the treating medical records: the Arbitrator notes Petitioner tripped over a cart at work and sought treatment immediately. Having already determined that his current condition is not related and that Petitioner suffered a temporary exacerbation of his degenerative condition then, the Arbitrator places significant weight on 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 3.5% loss of person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026827
Case Name	Marquita Buckley v. Hobby Lobby
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0448
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Christine Keys
Respondent Attorney	Michael Scully

DATE FILED: 9/18/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARQUITA BUCKLEY,

Petitioner,

vs. NO: 22 WC 26827

HOBBY LOBBY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, 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 December 11, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $11,100.00. 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.

September 18, 2024

CAH/tdm
O: 9/12/24
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	22WC026827
Case Name	Marquita Buckley v. Hobby Lobby
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Christine Keys
Respondent Attorney	Julie Schum

DATE FILED: 12/11/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 5, 2023 5.19%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
) SS
COUNTY OF **ROCK ISLAND**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Marquita Buckley
Employee/Petitioner

v.

Hobby Lobby
Employer/Respondent

Case # **22** WC **026827**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of 19(b) Hearing* was mailed to each party. The matter was heard by the HONORABLE BRADLEY GILLISPIE, Arbitrator of the Commission, in the City of **ROCK ISLAND**, on November 8, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 7, 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 $60,840.00; the average weekly wage was $1,154.94.

On the date of accident, Petitioner was **35** years of age, ***single*** with **2** 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 for TTD prior to June _5__, 2023 , $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**-0-**.

Respondent is entitled to a credit of $**323.77** under Section 8(j) of the Act for payments and write offs through its group health insurance plan.

ORDER

The Arbitrator finds Petitioner's current condition of ill-being in her right upper extremity and shoulder to be causally related to her November 7, 2020, work injury.

The Arbitrator finds that the medical bills submitted as Petitioner's Exhibit #1 are reasonable and necessary to treat Petitioner's injuries resulting from her November 7, 2020, work accident. Respondent shall pay the bills set forth in Petitioner's Exhibit #1 pursuant to the fee schedule or at a rate negotiated with the provider.

Respondent shall pay Petitioner Temporary Total Disability at the rate of $769.96 for the period of June 7, 2023, through August 14, 2023, a period of 9 6/7 weeks. $769.96 x 9 6/7 weeks = $7, 589.60.

Respondent shall also pay Temporary Partial Disability as set forth in Section 8(a) of the Act.

August 20, 2023, thru September 2, 2023	$638.68
September 3, 2023, thru September 16, 2023	$558.26
September 17, 2023, thru September 30, 2023	$553.94
October 1, 2023, thru October 14, 2023	$423.66
Total	**$2,174.54**

(Please see the full calculations set forth in the attached 19(b) Decision of Arbitrator)

The Arbitrator awards the prospective right shoulder arthroscopy with rotator cuff repair, a bicep tenodesis versus tenotomy recommended by Dr. Hussain.

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

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

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

Bradley D. Gillespie **DECEMBER 11, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARQUITA BUCKLEY,	)	
	)	
Petitioner,	)	**Case Nos.: 22WC026827**
	)	
v.	)	
	)	
HOBBY LOBBY,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

This matter proceeded to hearing on November 8, 2023, in Rock Island, Illinois under Section 19(b) of the Act. (Arb. Ex. #1). Marquita Buckley [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on July 13, 2022, alleging accidental injuries to her right shoulder and the body-as-a-whole while working for Hobby Lobby [hereinafter "Respondent"] occurring on or about November 7, 2020. (Arb. Ex. #2) The following issues were in dispute:

- Causal Connection;
- Medical Bills;
- Temporary Total Disability; Temporary Partial Disability; and
- Prospective Medical Treatment

FINDINGS OF FACT

At the time of trial, Petitioner was a 38 year-old high school graduate, single with two minor children. On November 7, 2020, Petitioner was employed by Respondent as a co-manager. She began working for Respondent in 2013 as a temporary employee and moved to full time later that year. In the fall of 202, she was a salaried employee earning approximately $60,000.00 per year. Petitioner indicated that she worked approximately 70 hours per week because it was the busy season. Petitioner testified that they were receiving an influx of inventory for the holiday season. Petitioner stated that she was in an area of the store to which the public had no access. She was unloading trucks in the receiving area of the store. At the time, she was working with a stockman, named Jacob. Petitioner described the area where the accident took place as being near a table in the middle of receiving where they were unboxing products. She stated she slipped on a piece of plastic on the ground and fell. Petitioner testified that she put her right arm out and fell onto her outstretched right arm catching herself. She testified that she immediately felt burning in her shoulder and couldn't really move her elbow. Petitioner testified she grabbed her shoulder and started crying. She said that Jacob came over and asked her if she needed help. She talked to Jacob after her fall. At the time of the accident, she testified she was the highest ranking person present.

Petitioner testified that Lanny Herring was the manager of the store. She indicated that she understood that she should tell the manager. Lanny called that night, and she told him about the fall. Petitioner admitted that she did not seek immediate medical treatment and did not fill out a

report. She testified that Lanny encouraged her to ice her arm and "baby it over the weekend.". Petitioner testified that her manager told her not to off load trucks on Monday. She said that Lanny didn't want her to report her injury. Petitioner testified that Lanny just kept telling her to "baby it." At another point in her testimony, Petitioner stated that she was told that she would not have a job if she filed for workers' comp. She testified that she had reported previous incidents to Respondent through the office or HR personnel.

Petitioner testified that she did not go to a doctor immediately following the accident and she just kept "babying" her arm. Petitioner indicated that she used ice, heat, Tylenol, ibuprofen, and ice baths to care for her arm at home. She testified at trial that from the date of accident, nothing helped the condition of her arm, and it was basically unusable. She testified that she delegated a lot of her tasks at work because she could not move her arm and couldn't reach overhead to retrieve items. She had other workers do tasks that she could not do. She testified that she continued to work and delegated unloading trucks and other tasks she could not do to others. Petitioner denied having any problems with her right upper extremity prior to November 7, 2020.

Petitioner first sought care for her shoulder on April 28, 2021, when she was seen by NP Livengood at Unity Point Internal Medicine. (PX #3 p. 4) The records reflect that Petitioner reported falling at home 9-10 months before, when she slipped and landed on her right shoulder and arm. *Id.* She reportedly iced it to resolve the symptoms and did not have any issues until a month prior. *Id.* Since then, she started to experience more pain with range of motion and some numbness and tingling to the right hand with loss of strength in her right upper extremity. *Id.* Her physical examination revealed, Petitioner had tenderness, decreased range of motion and strength in her right shoulder. (PX #3 p. 5) She was referred to orthopedics for her shoulder and her prescriptions for depression were adjusted. *Id.*

Petitioner testified that she reviewed the foregoing records. She testified that she gave the nurse practitioner the whole history of her injury, then later clarified that the nurse who did her intake was not the nurse practitioner.

On May 7, 2021, Petitioner sought treatment at ORA Orthopedics with Dr. Waqas Hussain. (PX #4 p. 4) On her intake form, she noted pain in her right shoulder, arm, hand and right side of her spine. (PX #4 pp. 1-3) She noted her problem started in November of 2020. Under description of the injury, Petitioner wrote "Fell outside, fell to the right, landed on shoulder arm and I tried to catch my fall with hand, but it didn't help. The whole arm was swollen for 2 days." (PX #4 p. 1) Dr. Hussain's record reflects Petitioner reported a history of right shoulder and arm pain and numbness that began in November 2020 when she fell. (PX #4 p. 4) She reported pain, numbness, tingling, weakness, instability, and stiffness. *Id.* On exam, mild tenderness was noted on palpation with numbness going down her right arm into her fingers. *Id.* She had near full ROM. *Id.* Dr. Hussain diagnosed subacute traumatic right shoulder and right arm pain and numbness with periscapular shoulder pain and possible cervical radiculopathy. (PX #4 p. 4) A trigger point injection was recommended and performed as well as physical therapy. (PX #4 p. 5) She was to return to work with restrictions of no lifting over 20lbs. *Id.* Petitioner testified that she continued to work.

On June 18, 2021, Petitioner returned to Dr. Hussain. (PX #4 p. 7-8) She reported continuing physical therapy with no improvement from therapy or medications. (PX #4 p. 7) Dr. Hussain noted that Petitioner was accompanied by a nurse case manager for this appointment. *Id.* She was to continue in physical therapy. Petitioner returned to Dr. Hussain on July 30, 2021. PX #4 p. 10) She reported an 80% improvement in her symptoms. *Id.* She reported doing well but still had problems with overhead reaching at that point. *Id.* An MRI was ordered, and Petitioner was continued in physical therapy and over-the-counter medications were recommended for pain and/or swelling. *Id.* She was returned to work with restrictions of light duty, no overhead activities with right upper extremity and no loading trucks until further notice. (PX #4 p. 10)

Petitioner underwent an MRI of her right shoulder at Corridor Radiology on August 12, 2021. (PX #5 pp. 3-4) It was interpreted to show mild superior rotator cuff tendinopathy and mild distal clavicle edema at the AC joint suggestive of overuse phenomenon. *Id.*

On August 27, 2021, Petitioner had continued complaints of right shoulder pain. (PX #4 p. 13) Dr. Hussain reviewed the MRI and diagnosed a partial thickness tear of the rotator cuff with tendinopathy and edema in the distal clavicle with symptomatic AC joint primary osteoarthritis. *Id.* A lidocaine injection was performed and offered good relief. (PX #4 p. 14) Dr. Hussain recommended right shoulder arthroscopy. *Id.* Petitioner testified that she was taken off work at this point as she since she could not perform the duties of a manager without the ability to lift 40 lbs. The records reflect she remained on light duty work at this time. (PX #4 p. 15)

On December 6, 2021, Petitioner underwent surgery at Crow Valley Surgery Center. (PX #7) Dr. Husain performed a right shoulder arthroscopy with rotator cuff debridement, humeral chondroplasty, subacromial bursectomy, subacromial decompression with acromioplasty and coracoacromial ligament release with AC joint resection and distal clavicle excision. (PX #7 pp. 1-3) The post operative diagnosis was right shoulder partial thickness rotator cuff tear, subchondral delamination, subacromial bursitis, subacromial impingement and symptomatic AC joint primary osteoarthritis. (PX #7 p. 1) No complications were noted, and Petitioner was discharged the same day. (PX #7 p. 3)

Petitioner followed up with Dr. Hussain's PA on December 20, 2021. (PX #4 p. 21) She reported ongoing moderate pain in her right shoulder. *Id.* Physical therapy was recommended, and she was placed on work restrictions of no use of the left arm and no driving while taking narcotics. *Id.* Her complaints were consistent, and recommendations were unchanged at her February 3, 2022, follow up. (PX #4 p. 24)

On March 17, 2022, Dr. Hussain noted Petitioner complained of stiffness. (PX #4 p. 27) He diagnosed mild post operative adhesive capsulitis. *Id.* He recommended a cortisone injection, physical therapy, and over the counter medications. *Id.* Petitioner remained on light duty work. *Id.*

Petitioner had no improvement at her follow up on April 14, 2022, and manipulation under anesthesia was recommended. (PX #4 p 30) On May 6, 2022, Petitioner underwent right shoulder manipulation under anesthesia for right shoulder postoperative adhesive capsulitis at Quad City Ambulatory Surgery Center. (PX #4 p. 33; PX #9) No complications were noted. *Id.*

At her May 19, 2022, follow up with Dr. Hussain, Petitioner reported that she was doing well and had a much greater range of motion. (PX #4 p. 36) She denied any further complaints. Petitioner was continued in physical therapy and on restricted duty. She continued to report the same improvement at her June 17, 2022, visit. (PX #4 p. 39) Continued physical therapy was recommended along with continued work restrictions. *Id.* However, Dr. Hussain noted Petitioner should attempt a trial return to full duty work soon. *Id.*

On July 29, 2022, Petitioner reported a feeling of pressure build up in her shoulder with popping and clicking with overhead usage. (PX #4 p. 42) A repeat MRI was recommended and she remained on restricted duty of no overhead use of the right arm. *Id.*

Petitioner underwent an MRI of the right shoulder on August 11, 2022. (PX #5 pp. 1-2) It was interpreted to show focal supraspinatus tendinitis with probably minimal partial thickness tearing but no evidence of a high grade or full thickness rotator cuff tendon tear. *Id.*

At her August 18, 2022, follow up with Hussain, Petitioner reported pain, weakness and stiffness in her right shoulder. (PX #4 p. 45) Dr. Hussain diagnosed an acute right shoulder partial thickness tear for which he recommended a repeat right shoulder arthroscopy. *Id.* Petitioner remained on restrictions of no overhead use of the right arm. *Id.*

On January 31, 2023, Petitioner was seen by Dr. Albert Park at Unity Point Health for an EMG/NCS. (PX #10 pp. 1-4) The EMG/NCS was interpreted to be normal with no evidence of neuropathy. (PX #10 p. 3)

Petitioner's complaints continued at her February 3, 2023, follow up. (PX #4 p. 48) Her exam and recommendations remained unchanged. *Id.* Petitioner testified at trial that she wishes to pursue the surgery.

At trial, Petitioner testified that she returned to work on August 15, 2023. She is currently working as a cashier. Petitioner testified that she is making $19.00 per hour as opposed to her pre-injury salary of $60,000.00. She testified that she's helping train other cashiers. She asserted that her return to work has been "hell" and that she's working extra hours to fill in and has been given overtime without being asked. Petitioner submitted her paystubs from August 20-October 14, 2023. These checks represent two week pay periods and two of the four checks show at least 5 hours of overtime. Petitioner testified that she's had to leave early after working her shoulder too hard, but this fact is hard to establish based upon the pay stubs.

Anthony Weathers, Petitioner's fiancée, testified at trial. He testified that Petitioner told him about the fall in November. Mr. Weathers stated that he went to pick up Petitioner from work on November 7, 2020, and he noticed that she was in obvious pain. Mr. Weathers testified that, after that point, she continued to "baby" her arm around the house. He testified he had to take on more of the house keeping duties such as cleaning, laundry, and helping her wash her hair and put on items of clothing.

Petitioner's treating physician, Dr. Waqas Hussain, was deposed on August 11, 2023. (*See* PX #11) Dr. Hussain is a board certified orthopedic surgeon. (PX #11 pp. 4-5) He testified that he first saw Petitioner on May 7, 2021, with right shoulder/arm pain and numbness and she provided a history of a fall in November of 2020. (PX #11 p. 6) His initial physical exam demonstrated mild tenderness to palpation, with numbness down to her right arm into her fingers, near full range of motion with no frank evidence of instability and normal tone. (PX #11 p. 7) Dr. Hussain reviewed prior medical records and x-rays and ordered additional x-rays. Based on his review of the prior records, review of prior x-rays and the x-rays performed at his office, he assessed Petitioner with subacute traumatic right shoulder and right arm pain and numbness, with parascapular shoulder pain, with possible cervical radiculopathy. *Id.* He provided a corticosteroid injection on that date, ordered physical therapy and a prescription anti-inflammatory. He provided her with work restrictions as Petitioner indicated that this was a work injury. (PX #11 p. 9)

Dr. Hussain next saw Petitioner on June 18, 2021, for a recheck. (PX #11 pp. 10-13) He continued her in conservative treatment including physical therapy, anti-inflammatory medications and restricted work. (PX #11 p. 11) Petitioner returned to Dr. Hussain on July 30, 2021. Petitioner advised that she was 80% better but that she continued to have difficulty with overhead reaching activities. (PX #11 p. 13) He indicated that this can be associated with rotator cuff pathology, impingement, or some sort of internal structural problem with the shoulder. *Id.* Dr. Hussain recommended an MRI, continued physical therapy and restricted overhead activity. (PX #11 p. 14) Petitioner returned to Dr. Hussain after the MRI. He interpreted the MRI to demonstrate a partial undersurface tear of the rotator cuff with tendinopathy, with edema in the distal clavicle. (PX #11 p. 15) Based upon the findings, Dr. Hussain offered a diagnostic injection. (PX #11 p. 17) Based on his review of the history, the mechanism of injury, the physical exam and imaging, Dr. Hussain opined that the diagnoses were work related and therefore the ongoing treatment was work related. (PX #11 p. 18)

Petitioner underwent surgery on December 6, 2021. (PX #11 p. 20, PX #7) His postoperative diagnosis was right shoulder partial-thickness rotator cuff tear (supraspinatus), femoral head chondral delamination, subacromial bursitis, subacromial impingement, and symptomatic acromioclavicular join and primary osteoarthritis. (PX #11 p. 20) Petitioner continued to follow up with Dr. Hussain. When Petitioner returned on March 17, 2022, she continued to demonstrate stiffness in her shoulder. (PX #11 p. 23) He provided an additional cortisone injection and continued her physical therapy. (PX #11 p. 24) When Petitioner returned on April 14, 2022, she had not improved, and he discussed a shoulder manipulation under anesthesia. *Id.* She underwent a manipulation under anesthesia on May 6, 2022. (PX #11 p. 25; PX #9) Petitioner followed up with Dr. Hussain's physician assistant on May 19, 2022, and reported doing well, continued to participate in therapy and had a much greater range of motion. (PX #11 p. 26) Petitioner continued follow up with Dr. Hussain's office. On July 29, 2022, Petitioner reported feelings of pressure in her shoulder, popping and clicking with overhead lifting. (PX #11 p. 27) A new MRI was recommended. (PX #11 p. 28) Petitioner underwent the MRI on August 11, 2022, and followed up with Dr. Hussain on August 18, 2022. *Id.* Dr. Hussain assess a right shoulder partial-thickness rotator cuff tear, approximately 50%; biceps tendon splitting with tenosynovitis; status post right shoulder manipulation under anesthesia with intra-articular corticosteroid injection. (PX #11 pp. 28-29) Dr. Hussain opined that the partial-thickness rotator cuff tear was a progression of the previous partial-thickness rotator cuff tear that she incurred due

to her initial work-related injury. (PX #11 p. 30) He felt that, in the absence of another injury or accident, that it was attributable to her postsurgical care, and therefore work related. *Id.* Dr. Hussain offered permanent restrictions or surgical treatment, consisting of right shoulder arthroscopy with a rotator cuff repair, a bicep tenodesis versus tenotomy. (PX #11 p. 31) Petitioner chose to move forward with the surgical option. *Id.*

On November 4, 2022, Petitioner was evaluated by Dr. Michael Merkley for an Independent Medical Evaluation (IME). (RX #1, Ex. 2) He issued a report and was deposed on September 30, 2023. (RX #1) Dr. Merkley is a board certified orthopedic surgeon. (RX #1, Ex.1) Dr. Merkley testified that Petitioner provided a history that on November 7, 2020, she was unpacking boxes when she slipped on a bit of cellophane and fell on her outstretched right upper extremity. (RX #1 p. 8) She reported immediate pain in her hand and forearm but confirmed she did not seek care. *Id.* Petitioner told Dr. Merkley that in May, she began to notice the onset of neck and shoulder pain aggravated by reaching for which she sought care. (RX #1 pp. 8-9) Petitioner denied any previous history of problems at her neck, shoulder or right upper extremity. (RX #1 p. 9) Dr. Merkley did a cervical spine examination and noted Petitioner had full flexion, extension and lateral rotation; she did not have pain with axial compression and had a negative Spurling's maneuver. (RX #1 pp. 13-14) Dr. Merkley stated that Petitioner's neurologic examination showed her deltoid, upper arm strength, was symmetric, and she had symmetric biceps and triceps strength. (RX #1 p. 14) Her grip strength was relatively symmetric, she showed no muscular atrophy was noted in her hand, she had negative Tinel's and Phalen's tests at the wrist, a positive Tinel's at the cubital tunnel on the right, tenderness along the ulnar nerve and worsening numbness, tingling and pain with stretching of the brachial plexus. *Id.* At the shoulder, Dr. Merkley noted symmetric elevation with pain with elevation to about 140 degrees on the right, a painful arc, positive Neer and Hawkins impingement signs, tenderness at the acromioclavicular joint, pain with crossed arm adduction, pain on top with active compression testing, mild weakness of the supraspinatus, and very minimally weak external rotation or the right. (RX #1 pp. 15-16) He was unable to elicit a labral click at either shoulder. (RX #1 p. 16)

Dr. Merkley reviewed x-rays taken in his office and opined that they showed postoperative changes with evidence of decompression that had been performed, limited distal clavicle excision and that they were otherwise unremarkable. (RX #1 pp. 16-17) Dr. Merkley opined that Petitioner sustained a fall on an outstretched upper extremity but since there was no diagnostic testing or examination done immediately after the fall, he could not make a more specific diagnosis of the acute injuries related to the fall. (RX #1 p. 17) Dr. Merkley diagnosed Petitioner with recalcitrant right shoulder pain and persistent ulnar neuritis of the right upper extremity. (RX #1 pp. 17-18) Dr. Merkley opined that the only diagnosis which he could related to Petitioner's November 7, 2020, fall was persistent ulnar neuritis as she did not develop shoulder pain until well after the fall. (RX #1 p. 18) He did not believe that Petitioner's neurologic symptoms had resolved following the injury. (RX #1 pp. 18-19) He recommended that Petitioner undergo an EMG/NCV testing of her bilateral upper extremities to assess her ulnar neuritis. (RX #1 p. 19) Dr. Merkley opined that Petitioner needed work restrictions of 20-pound occasional bilateral lift at the waist level, 10-pound rare unilateral lift restriction at waist level with the right upper extremity, and a five-pound waist to shoulder level lift on the right based on her neurologic symptoms and her rotator cuff weakness. (RX #1 pp. 19-20)

Petitioner underwent an EMG/NCV study on January 31, 2023. (PX #10) Subsequent to the EMG, Dr. Merkley issued an addendum report after reviewing additional clinical notes and a repeat MRI. (RX #1, Ex. 3) Dr. Merkley opined that there was no information that changed his opinion regarding the diagnoses. (RX #1 p. 23, Ex. 3) Dr. Merkley felt that Petitioner was indicated for a revision surgery for her right shoulder but did not relate that need to the fall she had on November 7, 2020. (RX #1 p. 24) Dr. Merkley stated that he did not see any documentation of further complaints of forearm pain, numbness, or tingling, and that if that had resolved, he would consider Petitioner to be at Maximum Medical Improvement. (RX #1 p. 25) Dr. Merkley admitted that he did not review the EMG/NCV results and did not know that it was negative. (RX #1 p. 26) Dr. Merkley testified that he was not able to make any diagnosis or give an opinion regarding what happened in the fall acutely. (RX #1 p. 28) He found it unlikely that Petitioner sustained injury to her rotator cuff in the fall and did not develop symptoms at the shoulder for six months, which was his understanding. *Id.*

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (F) whether Petitioner's present condition of ill-being is causally related to the injury the Arbitrator finds and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact as set forth in foregoing paragraphs. The Arbitrator found Petitioner to have testified credibly regarding the facts surrounding her accident and the reason that she delayed seeking medical treatment. Petitioner described her right shoulder as being symptom and pain free prior to November 7, 2020. Her lack of prior right shoulder pain or treatment was corroborated by the testimony of her fiancée. Petitioner testified with clarity and demonstrated precisely how she fell on her right arm extended at work on November 7, 2020. She testified that she felt immediate pain in her right shoulder and right arm after her fall.

Petitioner testified that during a telephone conversation on the evening of November 7, 2020, she advised her manager, Lanny, that she fell at work and her right shoulder and arm were painful. Petitioner testified that she was instructed by her manager, Lanny, to just “baby” her arm and they would talk about it on Monday as November 7, 2020, was a Saturday. Hobby Lobby is closed on Sundays. Petitioner testified there was no conversation on Monday other than her manager telling Petitioner to again, just “baby” it. Both Petitioner and Lanny made accommodations at work to allow her “baby” her right shoulder and right arm. They both had other employees perform tasks Petitioner was unable to complete. Overhead movement of the right arm was very problematic and painful as was lifting heavier boxes. Petitioner continued to “baby” her right upper extremity by delegating duties that needed to be completed. Petitioner did not unload the boxes of inventory that came into the store. This was an unusual management style as Petitioner testified delegating was not her how she worked before November 7, 2020; she was a doer.

Petitioner testified that her at home ”baby” treatment consisted of ice, heating pads, over the counter NSAIDs, and avoiding chores that were too painful to do. Petitioner’s fiancée testified at home he helped Petitioner get dressed, put her bra on, (even testifying they switched

to a sport's bra because it was easier to get on and off), fix Petitioner's hair, and performing other chores around the house that he had not done, such as cooking, prior to November 7, 2020.

Petitioner continued this "baby' treatment until April 18, 2021. Petitioner went to Unity Point Clinic, (UPC), and saw Sommer Livengood, ARNP, who did an x-ray to the right upper extremity and referred Petitioner to Orthopedic & Rheumatology Associates, (ORA), to see Dr. Hussain, an orthopedic surgeon. On the intake sheet at UPC, a staff member recorded that Petitioner fell at home. Petitioner testified she did not say she fell at home. Petitioner's fiancée also testified that Petitioner did not fall at home as he knew she fell at work November 7, 2020, because she called him after it happened, and he picked her up that night from work and he saw her in pain.

Petitioner added that during this five, (5) month gap from the fall at work on November 7, 2021, and the medical appointment on April 18, 2021, at UPC, she felt very intimidated by her manager, Lanny. Petitioner testified that Lanny told her if she filed a work comp claim, she would not have a job.

Petitioner went on to undergo arthroscopic surgery by Dr. Hussain on December 6, 2021. She developed adhesive capsulitis during her recovery from her initial surgery and eventually underwent a manipulation under anesthesia on May 6, 2022. Petitioner progressed well following the second procedure until she reported pressure and experienced popping in her shoulder on her July 29, 2022, follow up appointment. A subsequent MRI revealed a partial thickness tear in her rotator cuff. Dr. Hussain offered Petitioner the option of permanent restrictions or undergoing revision surgery to her right shoulder.

Petitioner had an Independent Medical Evaluation with Dr. Michael Merkley on November 4, 2022. (RX #1, Ex. 2) Dr. Merkley was deposed on September 1, 2023. (RX #1) Dr. Merkley opined that Petitioner sustained a fall on an outstretched upper extremity but since there was no diagnostic testing or examination done immediately after the fall, he could not make a more specific diagnosis of the acute injuries related to the fall. (RX #1 p. 17) Dr. Merkley diagnosed Petitioner with recalcitrant right shoulder pain and persistent ulnar neuritis of the right upper extremity. (RX #1 pp. 17-18) Dr. Merkley opined that the only diagnosis which he could related to Petitioner's November 7, 2020, fall was persistent ulnar neuritis as she did not develop shoulder pain until well after the fall. (RX #1 p. 18)

Dr. Waqas Hussain offered his opinions via deposition. (PX #11) Based on his review of the history, the mechanism of injury, the physical exam and imaging, Dr. Hussain opined that the diagnoses were work related and therefore the ongoing treatment was work related. (PX #11 p. 18) Dr. Hussain opined that the partial-thickness rotator cuff tear was a progression of the previous partial-thickness rotator cuff tear that she incurred due to her initial work-related injury. (PX #11 p. 30) He felt that, in the absence of another injury or accident, that it was attributable to her postsurgical care, and therefore work related. *Id.* Dr. Hussain offered permanent restrictions or surgical treatment, consisting of right shoulder arthroscopy with a rotator cuff repair, a bicep tenodesis versus tenotomy. (PX #11 p. 31) Petitioner has chosen to move forward with the surgical option. *Id.*

The Arbitrator finds Petitioner's treating physician, Dr. Waqas Hussain's opinions to be more persuasive than those of Respondent's Independent Medical Evaluator, Dr. Michael Merkley. Dr. Hussain had more opportunity to observe Petitioner and discuss her mechanism of injury. Moreover, Dr. Merkley's opinion disregards Petitioner's history of right shoulder and arm pain and numbness that began in November of 2020, when she fell. (PX #4 p. 4) Based upon the credible testimony of Petitioner, the medical records, and the persuasive opinions of Dr. Hussain, the Arbitrator finds Petitioner's right shoulder and upper extremity conditions to be causally related to her November 7, 2020, work injury.

In support of the Arbitrator's decision relating to (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 and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as set forth above. Based on the testimony of Petitioner, the medical records, and the medical opinions of Dr. Hussain, the Arbitrator finds and concludes that the medical bills set forth in Petitioner's Exhibit #1 are reasonable, necessary, and causally related to Petitioner's November 7, 2020, work accident. No evidence was offered to show that the treatment Petitioner received was not reasonable and necessary. The charges for the services were not challenged.

Therefore, Respondent shall be liable for the medical bills incurred for medical services listed on the Summary of Treatment and Medical Bills (PX #1) consistent with the Fee Schedule of the Act.

In support of the Arbitrator's decision relating to (K) Amount of compensation due for temporary total disability and temporary partial disability benefits, the Arbitrator finds and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. Per the stipulation of the parties, the period of temporary total disability claimed is June 7, 2023, through August 14, 2023, which represents a period of 9 6/7. Per Petitioner's testimony, she was paid Temporary Total Disability through June 5, 2023. Petitioner was still on restricted duty of "No overhead use" from June 7, 2023, through August 14, 2023, via the off-work slip signed by Dr. Hussain February 3, 2023, while awaiting surgery. This is the same restriction for which Respondent paid TTD benefits through June 5, 2023. Respondent did not return Petitioner to a position consistent with her restrictions until August 15, 2023. As the disability was the direct result of Petitioner's right rotator cuff injury sustained on November 7, 2020, while working for Respondent, Respondent is responsible for the TTD during this time frame.

Therefore, based upon the stipulation of the parties, the Arbitrator finds and concludes that Petitioner had an average weekly wage in the amount of $1,154.94. This results in a rate for temporary benefits of $769.96. Petitioner is entitled to $7,589.60 for 9 6/7 weeks of temporary total disability benefits.

When Petitioner returned to work for Respondent, she was paid $19.00 per hour. This amount is less than she would have made in the full performance of her job as a co-manager of the store. Under Section 8(a), Petitioner is owed two-thirds of the difference between what she is being paid and what she would have made in her former position. For the period of August 20, 2023, through September 2, 2023, Petitioner earned $1,351.85. Therefore, she earned $675.93 each week. $1,154.95 - $675.93 = $479.01. 2/3 x $479.01 = $319.34 per week. Her next pay period was September 3, 2023, through September 16, 2023. She earned $1,472.50 or $736.25. $1,154.94 – $736.25 = $418.69 per week. 2/3 x $418.69 = $279.13 per week for each week. For the pay period of September 17, 2023, through September 30, 2023, she made $1586.98 or $793.49 per week. $1,154.94 - $739.49 = $415.45 per week. 2/3 x $415.45 = $276.97 per week. For the pay period of October 1, 2023, through October 14, 2023, Petitioner earned $1,674.38 or $837.19 per week. $1,154.94 - $837.19 = $317.75 per week. 2/3 x $317.75 =$211.83 per week. Wherefore, Respondent owes Temporary Partial Disability in the amount of $2,174.54 through October 14, 2023.

In support of the Arbitrator's decision relating to (O) prospective medical, the Arbitrator finds and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as stated in the foregoing paragraphs. Dr. Hussain opined that the partial-thickness rotator cuff tear was a progression of the previous partial-thickness rotator cuff tear that she incurred due to her initial work-related injury. (PX #11 p. 30) He felt that, in the absence of another injury or accident, that it was attributable to her postsurgical care, and therefore work related. *Id.* Dr. Hussain offered permanent restrictions or surgical treatment, consisting of right shoulder arthroscopy with a rotator cuff repair, a bicep tenodesis versus tenotomy. (PX #11 p. 31) Petitioner chose to move forward with the surgical option. *Id.*

Wherefore, the Arbitrator having found Petitioner’s current condition of ill-being causally related to her November 7, 2020, work injury, the Arbitrator awards the right shoulder arthroscopy with a rotator cuff repair, a bicep tenodesis versus tenotomy recommended by Dr. Hussain to cure or alleviate Petitioner’s condition of ill-being.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028843
Case Name	William Cody Pitchford v. Haier Plumbing and Heating, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0449
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Tyler Dihle
Respondent Attorney	Jason Jording

DATE FILED: 9/18/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Cody Pitchford,

Petitioner,

vs. NO: 20 WC 28843

Haier Plumbing and Heating, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 17, 2023, is hereby affirmed and adopted.

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

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

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

Bond for 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.

September 18, 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	20WC028843
Case Name	[William] Cody Pitchford v. Haier Plumbing and Heating, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Crosby
Respondent Attorney	Jason Jording

DATE FILED: 1/17/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 10, 2023 4.71%

/s/William Gallagher, 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
19(b)

[William] Cody Pitchford
Employee/Petitioner

Case # 20 WC 28843

v.

Consolidated cases: n/a

Haier Plumbing and Heating, 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 William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on November 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. ☒ 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 Two Doctor Rule

FINDINGS

On the date of accident, August 30, 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.

The Arbitrator makes no determination if 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 $85,289.88; the average weekly wage was $1,640.19.

On the date of accident, Petitioner was 27 years of age, married with 0 dependent child(ren).

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

Respondent shall be given a credit of $69,981.44 for TTD, $0.00 for TPD, $0.00 for maintenance, and $38,327.94 for other benefits, for a total credit of $108,309.38.

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

ORDER

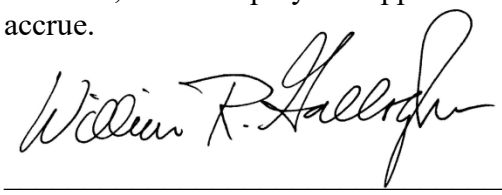
Based upon the Arbitrator's Conclusions of Law, Petitioner's petition for prospective medical treatment is denied.

Respondent shall pay Petitioner temporary total disability benefits of $1,093.46 per week for 65 weeks, commencing August 31, 2019, through November 22, 2020, 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.



JANUARY 17, 2023

William R. Gallagher, Arbitrator
ICArbDec19(b)

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on August 30, 2019. According to the Application, Petitioner sustained an injury to the "MAW and Right Upper Extremity" as a result of a "crushing accident" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 168 4/7 weeks, commencing August 31, 2019, through November 22, 2022 (date of trial). The prospective medical treatment sought by Petitioner was an MRI arthrogram of Petitioner's right shoulder, as recommended by Dr. Frank Thomas, an orthopedic surgeon. Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a welder/pipefitter. He testified the job was physically demanding and involved a significant amount of lifting which required the use of both of his arms/hands. On August 30, 2019, Petitioner and a crew of other employees were working under a bridge located on Highway 37. While Petitioner was in the process of welding, a sheet of steel fell on Petitioner landing on his right shoulder. Petitioner was pinned against a wall for several minutes and was in extreme pain.

Following the accident, Petitioner was seen in the ER of Franklin Hospital. Petitioner advised he had sustained a crush injury to his right arm and chest. On examination, it was noted Petitioner had right arm abrasions/contusions, pain, swelling and a decreased range of motion. CT scans of Petitioner's chest and right arm were obtained, both of which were negative for any traumatic injury or fractures. Petitioner was prescribed medication and discharged (Petitioner's Exhibit 5).

Petitioner subsequently sought medical treatment at Rural Health Clinic where he was evaluated by Mariah Charles, a Nurse Practitioner, on September 10, 2019. At that time, Petitioner informed NP Charles of the accident of August 30, 2019. She opined Petitioner had sustained a crush injury of the right upper extremity and had acute pain of the right shoulder. She ordered MRI scans of the right shoulder and right upper arm (Petitioner's Exhibit 2).

The MRI of Petitioner's right upper extremity, excluding the shoulder joint, was performed on September 10, 2019. According to the radiologist, it was negative for a fracture of the right humerus (Petitioner's Exhibit 2).

The MRI of Petitioner's right shoulder was performed on September 10, 2019. According to the radiologist, the MRI revealed supraspinatus tendinosis, thinning of the posterior supraspinatus insertion and partial bursal sided tearing, but no full thickness tear of the rotator cuff (Petitioner's Exhibit 2).

Petitioner was evaluated by NP Charles on September 11, 2019, and she reviewed the MRI scans. She opined the MRI of the right shoulder revealed a 50% tear of the rotator cuff, but no

full thickness tear. She referred Petitioner to Dr. Joon Ahn, an orthopedic surgeon (Petitioner's Exhibit 2).

Dr. Ahn saw Petitioner on September 27, 2019. At that time, Petitioner informed Dr. Ahn that he had right shoulder pain since August 30, 2019, when a piece of steel fell on him. Dr. Ahn reviewed the MRI of Petitioner's right shoulder and opined it revealed tendinopathy of the supraspinatus tendon and a possible small partial tear; but otherwise, no significant abnormality. Dr. Ahn imposed light duty restrictions and recommended Petitioner received conservative treatment including a subacromial injection and physical therapy. He administered a cortisone injection into the right subacromial space at that time (Petitioner's Exhibit 4).

Petitioner saw Dr. Ahn on October 28, 2019. At that time, Petitioner advised the physical therapy and injection did not alleviate his symptoms. Petitioner complained of significant right shoulder pain as well as ongoing numbness radiating into the right hand. Dr. Ahn administered another injection and ordered EMG/nerve conduction studies to determine if the symptoms were from brachial plexopathy or peripheral compression neuropathy. He continued to impose light duty work restrictions (Petitioner's Exhibit 4).

EMG/nerve conduction studies of Petitioner's right upper extremity were performed on November 19, 2019. The diagnostic studies were normal and revealed no evidence of medial or ulnar neuropathy, radiculopathy or brachial plexopathy (Petitioner's Exhibit 4).

When Dr. Ahn saw Petitioner on December 9, 2019, he reviewed the EMG/nerve conduction studies and noted they were normal. He opined Petitioner had a right shoulder supraspinatus partial tear and Petitioner had not improved with conservative treatment. Dr. Ahn recommended Petitioner undergo a diagnostic arthroscopy (Petitioner's Exhibit 4).

Dr. Ahn performed arthroscopic surgery on Petitioner's right shoulder on January 16, 2020. The procedure consisted of a subacromial decompression and an arthroscopic examination of the right shoulder. Dr. Ahn examined the various structures of the labrum and determined they were all intact, the biceps tendon was "healthy," the subscapularis tendon was intact and the rotator cuff was "healthy." Dr. Ahn noted there was "No significant scuffing or tear was noted" (Petitioner's Exhibit 4).

Dr. Ahn saw Petitioner on January 22, 2020. At that time, Dr. Ahn noted Petitioner was complaining of 8/10 pain, but sitting comfortably. He ordered physical therapy and continued to impose light duty work restrictions, including no overhead activity (Petitioner's Exhibit 4).

Dr. Ahn again saw Petitioner on March 2, 2020. At that time, Petitioner stated his pain was at 10, but Dr. Ahn again observed Petitioner was sitting comfortably in the office. On examination, Dr. Ahn noted there was a full range of motion, but discomfort at 90°. He continued physical therapy and Petitioner's work restrictions (Petitioner's Exhibit 4).

Dr. Ahn last saw Petitioner on April 3, 2020. At that time, Petitioner complained of pain at 6-7/10, which Dr. Ahn noted was "…bit unusual at this stage." Dr. Ahn opined Petitioner was doing well and indicated he would see the Petitioner back for a full reassessment, and anticipated

releasing Petitioner to return to work at regular duty at that time (Petitioner's Exhibit 4). When Petitioner was seen in physical therapy on April 22, 2020, he informed the therapist he was going to delay his follow up appointment with Dr. Ahn (Petitioner's Exhibit 2).

On May 11, 2020, Petitioner was evaluated by Dr. Frank Thomas, an orthopedic surgeon. Petitioner informed Dr. Thomas of the accident and the medical treatment he received afterward, but advised he still had significant right shoulder pain. Dr. Thomas reviewed the MRI of Petitioner's right shoulder and opined it revealed a partial thickness supraspinatus tear. He diagnosed Petitioner with adhesive capsulitis, ordered physical therapy, and imposed work restrictions (Petitioner's Exhibit 7).

Petitioner was evaluated in physical therapy on May 20, 2020. At that time, he advised the therapist he had been seen by Dr. Thomas and was diagnosed with a "frozen shoulder." Petitioner also stated he was informed that a "bone" was growing out of his humerus at the point of impact when he sustained the accident (Petitioner's Exhibit 2).

Dr. Thomas continued to treat Petitioner from June, 2020, through September, 2020. Dr. Thomas ordered ongoing physical therapy and continued Petitioner's work restrictions. When he saw Petitioner on September 24, 2020, he noted Petitioner's range of motion of the right shoulder had improved and opined the adhesive capsulitis had resolved (Petitioner's Exhibit 7).

Dr. Thomas again saw Petitioner on October 9, 2020. At that time, Petitioner described his right shoulder pain as being "unbearable" and it felt like a nail being driven into his shoulder. Dr. Thomas recommended Petitioner be evaluated by Dr. James Williams, a physical medicine and rehabilitation specialist (Petitioner's Exhibit 7).

Dr. Williams saw Petitioner on October 13, 2020. When seen by Dr. Williams, Petitioner informed him of the accident and complained of right shoulder pain as well as intermittent parasthesias in the right thumb and index finger. Dr. Williams' examination of Petitioner's right upper extremity revealed Petitioner had full strength and normal range of motion of the right shoulder (Petitioner's Exhibit 3).

Dr. Williams performed EMG/nerve conduction studies of Petitioner's right upper extremity. The diagnostic tests were normal and there was no evidence of cervical radiculopathy, brachial plexopathy or peripheral neuropathy of the right upper extremity (Petitioner's Exhibit 3).

Dr. Thomas evaluated Petitioner on November 12, 2020. At that time, Petitioner continued to complain of constant pain in his right shoulder. Dr. Thomas opined the severity of the pain was "…not characteristic of a shoulder issue." He noted Petitioner had good strength and a full range of motion of the right shoulder. He recommended Petitioner undergo an MRI with arthrogram to evaluate for a possible SLAP tear (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. Mitchell Rotman, an orthopedic surgeon, on November 12, 2020. In connection with his examination of Petitioner, Dr. Rotman reviewed medical records provided to him by Respondent. In his review of the medical records, Dr. Rotman noted Petitioner had been treated by Dr. Ahn, who, when he performed arthroscopic

surgery observed an intact rotator cuff. Dr. Rotman also reviewed the EMG/nerve conduction studies of November 19, 2019, and noted they were also normal (Respondent's Exhibit 1).

Dr. Rotman's findings on examination of Petitioner's right shoulder revealed no atrophy, but a slightly diminished range of motion of external rotation. Testing of the strength of the supraspinatus revealed weakness; however, Dr. Rotman noted Petitioner was not giving an adequate effort. Petitioner complained of pain symptoms during various maneuvers of the right shoulder during Dr. Rotman's examination of him. Dr. Rotman opined the shoulder arthroscopic findings were essentially normal, but indicated he wanted to review the color photographs of the procedure. He opined the findings of the MRI of a partial rotator cuff lesion was a false positive reading (Respondent's Exhibit 1).

Dr. Rotman noted Petitioner had regained most of the range of motion of the right shoulder and there was no atrophy. He observed no evidence of a shoulder injury and opined there was no objective correlation to Petitioner's numerous subjective complaints. Dr. Rotman also opined Petitioner was at MMI, no further treatment was indicated, and Petitioner could return to work at full duty (Respondent's Exhibit 1).

Petitioner last saw Dr. Thomas on April 5, 2021. Petitioner continued to complain of right shoulder pain. On examination, Petitioner had good strength, but resisted supraspinatus strength testing, and had pain on range of motion testing. Dr. Thomas renewed his recommendation Petitioner undergo an MRI with arthrogram and continued to impose work restrictions (Petitioner's Exhibit 7).

Dr. Rotman was subsequently provided with color photographs of the arthroscopic surgery which he reviewed. He prepared a supplemental report dated March 10, 2022. Dr. Rotman opined the procedure revealed no evidence of a labral tear or any injury to the shoulder joint or rotator cuff. He also opined there was no medical reason for Petitioner to undergo an MRI arthrogram (Respondent's Exhibit 2).

Dr. Williams was deposed by Respondent's counsel on January 7, 2022, and his deposition testimony was received into evidence at trial. Dr. Williams testified he evaluated Petitioner on October 13, 2020, on referral from Dr. Thomas. Dr. Williams testified he examined Petitioner's right upper extremity and all of the various tests he performed were normal. He observed no significant laxity or subluxation of the shoulder joint, strength testing was normal and there was no atrophy. Dr. Williams stated he performed EMG/nerve conduction studies on Petitioner's right upper extremity and they were also normal (Respondent's Exhibit 4; pp 9-19).

Dr. Williams testified his examination of Petitioner was normal and there was no evidence of any injury to Petitioner's right upper extremity. In regard to whether there was an injury to the labrum, Dr. Williams testified the "gold standard" for making that determination was arthroscopy (Respondent's Exhibit 4; pp 19-22).

Dr. Williams testified that a possible explanation for Petitioner's continued complaints was that there was the potential of symptom magnification on the part of Petitioner. Dr. Williams also

stated that, at the time he examined Petitioner, Petitioner did not exhibit any signs of adhesive capsulitis (Respondent's Exhibit 4; pp 34, 40).

Dr. Ahn was deposed by Respondent's counsel on February 28, 2022, and his deposition testimony was received into evidence at trial. Dr. Ahn's testimony regarding his diagnosis and treatment of Petitioner's right shoulder condition was consistent with his medical records and he reaffirmed the opinions contained therein.

Dr. Ahn explained the reasons for his performing diagnostic arthroscopic surgery on Petitioner's right shoulder. He testified this was so he could examine the structures in the shoulder in a step-by-step fashion. He described the procedure as involving looking at the labrum, the biceps tendon, the supraspinatus, the subacromial space and inspecting the acromial arch. He described the condition of the labrum as being "pristine," and did not observe anything abnormal. Based on the preceding, Dr. Ahn stated the arthroscopic procedure ruled out any rotator cuff tear (Respondent's Exhibit 5; pp 13-20).

In regard to Petitioner's complaints, Dr. Ahn agreed Petitioner's complaints of 8/10 pain were not consistent with what he diagnosed. Specifically, he testified he "…could not correlate it to the degree of pain he was feeling." At the last time he saw Petitioner, Dr. Ahn opined Petitioner was not in need of an MRI (Respondent's Exhibit 5; pp 20-24, 27).

When Dr. Ahn was cross-examined, he was interrogated about Petitioner having been diagnosed with a frozen shoulder. Dr. Ahn testified that when he last saw Petitioner in April, 2020, approximately four months post surgery, Petitioner had a full range of motion of the right shoulder and there was no frozen shoulder (Respondent's Exhibit 5; pp 36-37).

Dr. Rotman was deposed on November 10, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Rotman's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, Dr. Rotman testified Petitioner had a normal shoulder, but had a heterotopic ossification as a result of the accident, but it was not causing a functional problem. He testified the MRI of Petitioner's right shoulder was normal and the arthroscopic procedure revealed no abnormalities (Respondent's Exhibit 3; pp 14-16).

Dr. Rotman also testified regarding his review of the photographs of the surgical procedure. He stated the photographs revealed there was no tear of the labrum or any shoulder or rotator cuff pathology. He testified there was no need for an MRI arthrogram and Petitioner could return to work as of the time of his evaluation. He further stated Petitioner's pain complaints did not fit with any objective correlation (Respondent's Exhibit 3; pp 25-28, 34).

Dr. Rotman was questioned about whether Petitioner had a frozen shoulder. He testified Petitioner had a slight loss of motion, but no frozen shoulder (Respondent's Exhibit 3; pp 40-41).

Petitioner testified regarding the circumstances of the accident of August 30, 2019, and that afterward, his arm blew up like a balloon. He testified the injections and surgery performed by Dr. Ahn did not help him and the mobility of his shoulder decreased following surgery.

Petitioner testified he is unable to lift anything significant with his right arm because of his shoulder pain and presently uses his left arm for everything.

Petitioner said he could not return to work to his job as a welder/pipefitter. Petitioner does volunteer to teach other union members welding, but this is not a paid position.

Petitioner agreed he complained of 10/10 pain to various medical providers. He testified that he was in 10/10 pain at the time the case was tried. In regard to the lack of the range of motion of his right shoulder, Petitioner testified this has been continuous since the time he sustained the accident. He denied having a full range of motion when he was examined by Dr. Williams.

Petitioner's wife, Kacey Pitchford, testified at trial. She said Petitioner had no right arm problems prior to the accident and has observed Petitioner experiencing difficulties with activities of daily living because of his right shoulder pain. She stated Petitioner did not get any relief at all from either the surgery or injections.

In regard to Dr. Ahn, she testified she did not believe he was trying to help Petitioner, did not use his best efforts during surgery and was just trying to "push injections."

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is not causally related to the accident of August 30, 2019.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related injury to his right shoulder on August 30, 2019; however, the current condition of ill-being which Petitioner is alleging to be related to the accident of August 30, 2019, is right shoulder adhesive capsulitis (frozen shoulder).

Petitioner's primary treating physician, Dr. Ahn, performed diagnostic arthroscopic surgery on Petitioner's right shoulder. Dr. Ahn was able to visualize the various structures of Petitioner's right shoulder during the procedure and opined the labrum was intact and "pristine" and there was no rotator cuff pathology. Further, Dr. Ahn never diagnosed Petitioner with adhesive capsulitis/frozen shoulder.

Dr. Ahn questioned the credibility of Petitioner's significant right shoulder complaints and noted Petitioner's complaints of 8/10 pain was not consistent with what he observed and he could not correlated it to the degree of pain Petitioner was describing.

When Dr. Ahn saw Petitioner on April 3, 2020, he noted Petitioner's range of motion of the right shoulder was full and Petitioner did not need an MRI.

When Dr. Williams evaluated Petitioner on October 13, 2020, he noted Petitioner had a full and normal range of motion of the right shoulder. He also opined Petitioner had no signs of adhesive capsulitis.

Respondent's Section 12 examiner, Dr. Rotman, reviewed the MRI and the color photographs of the arthroscopic surgery. He opined there was no labral tear or any injury to the shoulder joint or rotator cuff. He opined Petitioner had a slight loss of motion, but no frozen shoulder, Petitioner could return to work, and no further treatment, including an MRI arthrogram, was indicated.

Dr. Thomas was the only physician who diagnosed Petitioner with adhesive capsulitis; however, he noted Petitioner's range of motion had improved when he evaluated Petitioner on September 24, 2020, and the adhesive capsulitis had resolved.

The Arbitrator finds it significant that Dr. Ahn and Dr. Williams were treating physicians, and neither diagnosed Petitioner with adhesive capsulitis. Their opinions regarding that issue were consistent with that of Dr. Rotman, Respondent's Section 12 examiner.

Given the preceding, the Arbitrator is not persuaded by the opinion of Dr. Thomas, and finds the opinions of Dr. Ahn, Dr. Williams and Dr. Rotman to be persuasive in regard to the issue of causal relationship.

The Arbitrator also finds Petitioner's credibility to be questionable. Based upon the preceding medical opinions, there appears to be no medical basis for Petitioner experiencing 10/10 pain since the accident, including when the case was tried.

Petitioner's testimony that he has had virtually no range of motion of his right shoulder which has been continuous is contrary to the examination findings of Dr. Ahn, Dr. Williams, Dr. Rotman and even Dr. Thomas.

The testimony of Petitioner's wife, Kacey Pitchford, is also suspect. There was no basis for her testimony that Dr. Ahn was not trying to help Petitioner, did not use his best efforts during surgery and wanted to "push injections." Her testimony was not supported by the evidence contained in the medical records.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes Petitioner is not entitled to prospective medical treatment.

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

The Arbitrator concludes petition is entitled to temporary total disability benefits of 65 weeks, commencing August 31, 2019, through November 22, 2020.

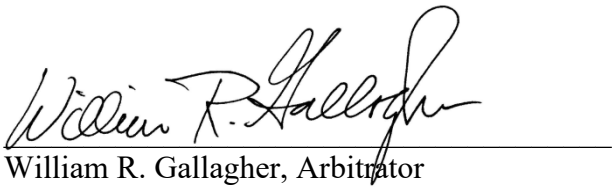
In support of this conclusion the Arbitrator notes the following:

Petitioner was receiving medical treatment and authorized to be off work during the aforestated period of time.

The Arbitrator find it interesting that when Dr. Ahn examined Petitioner on April 3, 2020, that he was contemplating releasing Petitioner to return to work at the time of the next examination. Petitioner subsequently advised the physical therapist on April 22, 2020, that he was not going to return to Dr. Ahn. Shortly afterward, Petitioner sought treatment from Dr. Thomas who authorized him to be off work. The Arbitrator notes that it is possible Petitioner did not return to Dr. Ahn because he anticipated Dr. Ahn was going to release him to return to work.

When Dr. Rotman evaluated Petitioner on November 12, 2020, he opined Petitioner could return to work without restrictions. Respondent paid Petitioner temporary total disability benefits through November 22, 2020.

In regard to disputed issue (O) the Arbitrator makes no conclusion of law as this issue is rendered moot because of the Arbitrator's conclusions of law in disputed issues (F) and (K).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012293
Case Name	Trenton Harrison v. Marion Police Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0450
Number of Pages of Decision	27
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 9/18/2024

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRENTON HARRISON,

Petitioner,

vs. NO: 22 WC 12293

MARION POLICE 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 causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, and prospective medical treatment, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed November 22, 2023, is hereby affirmed and adopted.

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

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

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

September 18, 2024

CAH/tdm
O: 9/12/24
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	22WC012293
Case Name	Trenton Harrison v. Marion Police Department
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 11/22/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 21, 2023 5.23%

/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)

Trenton Harrison Case # **22-WC-012293**
Employee/Petitioner
v.
Marion Police Department
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 **Collinsville, Illinois**, on **October 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **3/26/22**, 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 $**1,136.00**; the average weekly wage was $**59,072.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **3** dependent children.

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

Respondent shall be given a credit of $**14,845.55** for TTD, $**0** for TPD, $**0** for maintenance, $**51,875.25 in payments made pursuant to the Illinois Public Employee Disability Act (PEDA),** and $**12,813.95** in medical expenses previously paid, for a total credit of $**79,534.75, pursuant to the stipulation of the parties**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**757.33**/week for **81-1/7** weeks, commencing 3/27/22 through 7/29/22 and 8/11/22 through 10/27/23, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for temporary total disability benefits paid in the amount of $14,845.55 from 3/27/22 through 7/29/22 (RX5), and a credit of $51,875.25 in payments made pursuant to the Illinois Public Employee Disability Act (PEDA) paid from 4/8/22 through 4/7/23 (RX9). Respondent is entitled to a credit of $1,321.91 in overpayment of TTD benefits for the period 3/27/22 through 7/29/22 (17-6/7 weeks x $757.33 = $13,523.64 - $14,845.55).

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, pursuant to the medical fee schedule. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act, and a credit of $12,813.95 in medical expenses previously paid and itemized in RX6.

Respondent shall provide and pay for prospective medical treatment, including, but not limited to, a lumbar discogram at L2-3 and L3-4, a disc replacement at L4-5 and L5-S1, and a disc replacement at L3-4 if supported by discogram and the recommendation of Dr. Gornet, and all reasonable and necessary attendant care.

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

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment;

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

NOVEMBER 22, 2023

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TRENTON HARRISON,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-012293
	)	
MARION POLICE DEPARTMENT,	)	Consolidated Case No.: 22-WC-022480
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Collinsville on October 27, 2023. On 5/11/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back/body as a whole and right leg as a result of twisting and falling while apprehending a suspect on 3/26/22. (Case No. 22-WC-012293, RX2). On 7/29/22, Petitioner filed an Amended Application for Adjustment of Claim to include his neck as an affected body part. (AX2) On 8/26/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back/body as a whole as a result of aggravating a pre-existing injury on 8/1/22. (Case No. 22-WC-022480, AX2). The cases were consolidated by this Arbitrator on 10/27/23.

The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan and a credit of $51,875.25 in payments made pursuant to the Illinois Public Employee Disability Act (PEDA), under Section 8(j) of the Act. Respondent stipulated that Petitioner is entitled to and has been paid temporary total disability benefits from 3/27/22 through 7/29/22 but denies liability for TTD benefits for the period 8/10/22 through 10/27/23. The parties stipulated that Respondent is entitled to a credit of $14,845.55 in temporary total disability payments paid to Petitioner from 3/27/22 through 7/29/22. Respondent claims an overpayment of TTD benefits of $1,321.91 paid from 3/28/22 through 7/29/22.

The issues in dispute in Case No. 22-WC-012293 are causal connection, medical expenses, temporary total disability benefits, overpayment of temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued a separate Decision in Case No. 22-WC-022480.

TESTIMONY

Petitioner was 35 years old, single, with three dependent children at the time of accident. Petitioner has been a police officer for 15 years and was hired by Respondent in March 2020. On

3/26/22, Petitioner responded to a burglary in progress. He testified that he grabbed ahold of the suspect's arm who pulled away and a struggle ensued. Petitioner bearhugged the suspect from behind and tackling him to the ground with a leg sweep. Petitioner fell on top of the suspect and other officers jumped on their backs to restrain the suspect with handcuffs. Petitioner secured the suspect in his police car approximately 200 feet away and when he sat in his car, he noticed numbness in his foot.

Petitioner testified that he returned to the police department after booking the suspect in jail and he felt soreness and stiffness in his low back. He reported his symptoms to his supervisor. Petitioner declined medical treatment as he thought he just "pulled or tweaked something". He proceeded to work following the accident which involved driving around for 2 to 3 hours and responding to another call. Petitioner testified that when he responded to the call and exited his police car, he could hardly stand up due to stiffness in his low back. He went home a couple of hours prior to the end of his shift and his symptoms worsened. Petitioner stated his back was tight, he had sharp pain between his shoulder blades, and numbness in his left hand.

Petitioner presented to Heartland Regional Medical Center on 3/28/22 who placed him off work and referred him to a specialist. Petitioner presented to Dr. Matthew Gornet on 4/19/22 with pain in his low back and between his shoulder blades, and numbness in his right foot and left hand. Petitioner underwent physical therapy and lumbar spine injections that did not improve his symptoms. Dr. Gornet performed a two-level cervical disc replacement on 2/17/23 and continued Petitioner off work.

Petitioner testified that he attempted to return to light duty work around 7/30/22 pursuant to Respondent's Section 12 examiner's recommendation. He took one walk-in report over the course of three days. Petitioner testified that sitting for prolonged periods aggravated his condition and caused numbness into his left leg. He was placed back off work on 8/10/22 and has not worked since.

Petitioner testified that the cervical surgery completely resolved his mid-back and left arm symptoms. Dr. Gornet recommends a two-level lumbar disc replacement which Petitioner desires to undergo. Petitioner testified that prior to 3/26/22 he was working full duty. He admitted to undergoing chiropractic treatment prior to 3/26/22 for "routine maintenance". He testified that he had muscle soreness and sciatic pain throughout his life that flared-up once or twice a year. He disclosed his prior chiropractic treatment to Dr. Gornet and Dr. Bernardi. He stated that Dr. Bernardi wanted to obtain his chiropractic treatment records when he told him. Petitioner testified that he received treatment at Dynamic Chiropractic Care from 3/25/21 through 1/28/22. Petitioner stated he had problems with his shoulder in January 2022 and previously had a biceps tendon injury. He underwent heat therapy on his shoulder that was causing pain in his left arm prior to 3/26/22. He also received routine adjustments and heat therapy on his low back. He testified that his hips get out of alignment and one leg gets a half inch shorter causing him to be off balance. Petitioner testified that chiropractic care always improved his symptoms. He denied any treatment between 1/28/22 and 3/26/22. Petitioner testified that his low back and sciatic symptoms were different after his work accident. He stated that prior to the accident he did not have pain and numbness shooting down his leg into his foot or in his left hand, or sharp pain between his shoulder blades. His prior symptoms were limited

to muscle soreness. Petitioner was never referred for MRIs, injections, or an orthopedic surgeon prior to his work accident. Petitioner testified that his low back symptoms have worsened since his work accident.

On cross-examination, Petitioner agreed that Heartland Regional Medical Center referred him to Chesterfield for thoracic and cervical MRIs and placed him on light duty restrictions of no wearing a duty belt or bullet proof vest, but he was ultimately placed off work until he was examined by Dr. Gornet. Petitioner underwent two ACL surgeries while in high school. He went on to play sports through high school, baseball in the military, and performed the duties of a police officer for 15 years since undergoing his last knee surgery.

Petitioner agreed that on 4/7/22 he reported to his physical therapist he had increased pain from driving to St. Louis for an MRI. He testified that he owned a business and he drove to Texas in early April 2022 to help his employee move back to Marion, Illinois. Petitioner testified that he offered his truck to haul his employee's belongings. He agreed that his low back pain worsened during the long trip. He agreed that his main complaint following the accident was low back pain.

Petitioner testified that he filled out a patient intake form and pain diagram when he first treated with Dr. Gornet on 4/19/22. He agreed that he did not indicate a neck injury on the intake form or reference symptoms in his hand, arm, or neck on the pain diagram. (RX7) Petitioner testified that he told Dr. Gornet he had mid and low back pain, which he marked on the pain diagram. He testified that the intake report he filled out on 1/23/23 included his neck. (RX7) Petitioner did not know if his neck surgery was approved by workers' compensation.

Petitioner testified that his prior chiropractic treatment was for maintenance because as a police officer he wears at least 30 pounds of gear 12 to 14 hours per day, which strains his muscles, and his legs and hips get out of alignment every few weeks. He testified that he went to a chiropractor prior to treating at Dynamic Health in March 2021. He did not recall ever having chronic right shoulder pain. Petitioner testified that he had a biceps injury in 2019 and had shooting pain down his arm at that time. He went to physical therapy and his symptoms flared up around 2021 for which he sought chiropractic treatment. He would not dispute that he complained of headaches, right sciatic pain, lumbar pain, and acute left anterior shoulder pain in March 2021. He testified that he never treated for his low back prior to 3/26/22.

Petitioner identified a Form 45: Employer's First Report of Injury that was completed on 3/28/22. (RX4) He agreed that the report did not include his neck. When he returned to light duty work a second Form 45 was completed. (RX4) He agreed that the form did not include his neck. He testified that as of 8/2/22 Dr. Gornet recommended a lumbar discogram and surgery. He underwent the discogram within the last couple of months. Petitioner testified that Dr. Gornet has ordered another lumbar discogram and he does not know which levels of his lumbar spine will be replaced.

Petitioner testified that prior to working for Respondent he was a police officer in Carbondale, Illinois. He voluntarily terminated his employment in Carbondale because they were going to force COVID-19 vaccinations of all employees and Marion just started its 20-mile

residency with a take-home car which allowed him to be closer to where his children resided. In 2014, Petitioner worked for Lake of Egypt Water and Sewer Department and was a part-time police officer. He returned as a full-time police officer in 2017. In January 2017, Petitioner started a business called LE Dumpster Rentals, LLC. He delivered 15 to 20-yard dumpsters using a roll off truck that was operated by a wench and pulley system. He had no employees and sold the business in early 2023. In August 2022, Petitioner owned a business called LE Insulation, LLC. He opened the business while he was off work treating for his work-related injuries. The business was fully staffed when he purchased it from a friend. He handled all orders electronically and received a check after the employees completed the work. He had 5 to 8 employees who performed one job per week. He never performed any physical labor in the business. Petitioner sold the business in July 2023. Petitioner testified that he had to stop helping his brother-in-law build a pole barn since his injuries. He admitted he has driven a skid-steer in his driveway to spread rock since his work accident. Petitioner owned a lawn care business called Lawn Enforcement of Southern Illinois that he sold last winter. He testified that he has not performed mowing or landscaping for that business in the last couple of years and his employees perform the physical labor. Petitioner's police chief was one of his customers. He intends to reopen the business this Spring if he has recovered from surgery.

Petitioner testified that around 8/1/22 he reported to Respondent he was having increased pain performing light duty work and he contacted Dr. Gornet's office. He stated that Dr. Gornet did not perform a physical examination but placed him off work and he has not worked since. Petitioner testified that immediately after his second examination with Dr. Bernardi his chief called him and told him his workers' compensation leave ran out and he had to use his benefit time or go on non-pay status. He took non-pay leave. He called Respondent a couple of months ago and requested light duty work. He was told he needed a work note from Dr. Gornet to return. Petitioner returned to Dr. Gornet on 8/17/23 and was provided an off work slip through January 2024. His repeat discogram is scheduled the day before Thanksgiving and surgery is not scheduled at this time.

Petitioner testified that sitting for longer than one hour increases his low back symptoms. When he performed light duty work his low back symptoms increased and radiated down his leg. He did not have increased neck symptoms while working light duty and that is why he left his neck injury off the report completed in August 2022. Petitioner testified that when he treated on 3/28/22 he reported symptoms in his low back, right leg, right foot, mid-back between his shoulder blades, and numbness/tingling in his left arm and hand. When he saw Dr. Gornet on 4/19/22 he reported neck and back pain. He testified that the intake form he prepared for Dr. Gornet indicated pain in his low and mid-back. He marked a triangle indicating aching pain in his upper back between his shoulder blades. Petitioner testified that the aching pain between his shoulder blades resolved following neck surgery.

Petitioner testified that when he returned to light duty work it was based on the restrictions recommended by Dr. Bernardi. Dr. Gornet had him off work at that time. He testified that prior to 3/26/22 he never had any injuries to his neck or low back, but he had occasional muscle tightness. He agreed that he was allowed to walk and change positions while working light duty which reduced his symptoms for a couple of minutes. His symptoms immediately returned when he sat down.

MEDICAL HISTORY

Medical records that predate Petitioner's work accident were admitted into evidence. On 5/9/17, Petitioner presented to PA Janet White at Rural Health for chief complaints of sinus congestion, sore throat, chest congestion, and fever. (RX8) A review of symptoms included neuropathy, shoulder pain, lumbago with sciatica, low back pain, spasm of back muscles, and headaches. Examination of Petitioner's cervical spine was normal.

Petitioner received chiropractic treatment at Dynamic Health from 3/25/21 through 1/28/22. (RX3) Petitioner attended 10 of the 14 visits between March and May 2021. He presented on 3/25/21 with a sore back, shoulders, hips, and knees for more than 30 days. He complained of acute pain in his lumbar and right sacroiliac since 3/1/21. His symptoms occurred frequently and after sitting too long. His symptoms were aching, dull, and stiffness, and did not radiate. Petitioner also complained of acute left anterior shoulder pain since 3/1/21 without injury or trauma. He reported that he recently developed tingling down his arm; however, it was currently non-radiating. His symptoms were deep, diffuse, and aching. Diagnosis included low back pain, segmental and somatic dysfunction of the lumbar region, and bicipital tendinitis in the left shoulder. He was recommended for chiropractic manipulative treatment 2 times per week for 6 weeks to the lumbar, lumbosacral, and thoracic regions, and myofascial releases of the left anterior shoulder.

Petitioner attended 10 chiropractic visits through 5/6/21 at which time he had improved symptoms in his lumbar and right sacroiliac with a dull discomfort. His symptoms increased with sitting longer than 8 hours. His left shoulder improved with minimal discomfort. His shoulder symptoms increased with lifting objects more than 6 hours. Musculoskeletal examination revealed no pain, stiffness, or discomfort with flexion or extension of the thoracolumbar spine. He was noted to be 85% improved. The projected number of treatments was decreased to one visit per week for 8 weeks and was limited to the lumbosacral spinal region.

Petitioner did not return for chiropractic treatment again until 8/26/21 at which he reported a dull discomfort in his lumbar and right sacroiliac joint, with a pain rating of 2/10 at its worst. He received manipulations to the lumbar and thoracic spine and myofascial release and trigger point therapy on the right sacroiliac and right posterior pelvis/hip for pelvic deficiency/short right leg. He received the same treatment on 10/4/21 and 1/25/22. At his last visit on 1/28/22, Petitioner's chief complaint was dull and aching discomfort in his lumbar spine and sacroiliac joint with a pain level of 2/10 at worst. He received manipulations and trigger point therapy and ongoing treatment was recommended to meet his goals.

On 3/28/22, Petitioner was examined by Terri Hartman, FNP at Heartland Regional Medical Center/Work Care. (PX3) Petitioner reported he was involved in an altercation with a suspect wherein he and one other officer performed a takedown of the suspect, putting him on the ground. Petitioner reported that when he picked the suspect up he felt a radiating sensation down the back of his right leg and tightness in his back. He reported that the accident occurred around 8:00 p.m. and by 11:00 p.m. he had increased tightness and pain in his back with numbness and tingling in his right great and second toes. He left work early and went to bed. Petitioner noticed pain and stiffness in his thoracic spine the day after the accident. Petitioner

reported numbness in his posterior right lower leg, left hand numbness that increased when lying on his back, and pain between his shoulder blades.

NP Hartman noted that the duty belt Petitioner was required to wear weighed a considerable amount and rested over the spot on his right lower back along the paravertebral muscles where he felt a knot. On examination, NP Hartman noted a trigger point in that area and a positive straight leg lift. She diagnosed pain in the low back and thoracic spine. NP Hartman ordered x-rays, thoracic and lumbar MRIs, and physical therapy.

On 3/28/22, a Form 45: Employer's First Report of Injury was completed by Safety Director Brian Fisher. (RX4) It was recorded that on 3/26/22 Petitioner was placing a suspect under arrest when the suspect resisted, and Petitioner went to the ground. The report indicated that Petitioner's lower back popped, causing stiffness in his back and numbness in his right leg and foot. It was noted that Petitioner received treatment at Heartland Occupational Health.

On 4/4/22, Petitioner presented for a physical therapy evaluation at Work Care where a consistent history of injury was reported. Petitioner's symptoms included lumbar/thoracic pain, pain down his right leg, muscle spasms, and numbness in his left arm. (PX3)

A lumbar spine MRI was performed on 4/5/22 at MRI Partners of Chesterfield. (PX4) The radiologist interpreted an L4-5 central annular tear/fissure and protrusion resulting in dural displacement with mild bilateral foraminal stenosis, an L3-4 left foraminal protrusion with a cranially extruded disc fragment and an annular tear resulting in moderate left foraminal stenosis, and a left lateral recess foraminal protrusion at L5-S1 resulting in mild to moderate left foraminal stenosis. An MRI of the thoracic spine revealed a right lateral recess 2.5 mm protrusion at T8-9 resulting in dural displacement.

On 4/8/22, Petitioner returned to NP Hartman and reported that his right great and second toes remained numb. He had discomfort and numbness in the back of his right thigh and left hand. NP Hartman reviewed Petitioner's MRIs, referred him to an orthopedic or neurosurgeon specialist, and continued him on light duty restrictions.

On 4/8/22, Petitioner returned to physical therapy and reported tingling/numbness down his left L4 and L5 dermatomes and pain between his shoulder blades that he rated 4/10. Petitioner reported that prolonged sitting and activities increased his low back and thoracic pain to a 7-8/10. He reported that he awakened frequently during the night due to tingling and numbness down his left lower extremity. On 4/11/22, Petitioner reported that he drove to Texas the previous weekend and his symptoms increased. The therapist's goal was to return Petitioner to full duty work without restrictions by 5/2/22. Subsequent therapy records indicate Petitioner had increased back pain after driving to St. Louis to get an MRI and he had difficulty lifting weights, sitting, riding in a car, and childcare. He attended therapy through 4/28/22.

On 4/19/22, Petitioner presented to Dr. Matthew Gornet with symptoms of neck and low back pain. (PX5) Dr. Gornet noted that on 3/26/22 Petitioner attempted to subdue an assailant with several other officers when he fell to the ground and twisted. Petitioner thereafter noticed increasing numbness in his right foot and low back pain. Dr. Gornet noted that Petitioner's low

back was the bigger issue for him, and his pain was central to both sides, right greater than left. Petitioner reported pain into his right buttock down to his toes, with tingling in his right foot, particularly the big toe. Petitioner had pain in the base of his neck, bilateral trapezius, and between his shoulder blades, with intermittent tingling in his left arm. Petitioner's current symptoms were constant and worsened with prolonged bending and lifting.

Petitioner completed an intake form and reported a work-related back injury on 3/26/22. (RX7) Petitioner completed a pain diagram and noted aching in his mid-back, aching and burning in his lower back, and numbness in his right foot. No neck or upper extremity symptoms were noted.

Dr. Gornet noted that Petitioner received chiropractic care with Dr. Robinson once per month with his last visit one month ago. Physical examination revealed Petitioner's right EHL function was decreased at 4/5 and he had trace deep tendon reflexes and decreased sensation in the L5 dermatome on the right. Upper extremity exam showed 5/5 strength in all groups and DTRs were trace throughout. Sensation was normal. Lumbar x-rays showed a sacralized L5-S1 segment. Cervical spine x-rays showed well-preserved disc height, no fracture, and stable on flexion/extension. A thoracic spine MRI was performed that day at MRI Partners of Chesterfield that showed pathology at one level; however, Dr. Gornet did not believe this was significant. An MRI of Petitioner's lumbar spine was also performed that day and showed an obvious central disc annular tear with a possible extruded fragment at L5-S1, and a subtle tear centrally at L3-4.

Dr. Gornet diagnosed disc injuries at L4-5 and L5-S1. He recommended continued physical therapy and placed Petitioner off work until follow up. Dr. Gornet prescribed Meloxicam and Cyclobenzaprine and referred Petitioner to Dr. Helen Blake for epidural steroid injections at L4-5 and L5-S1 on the right. He opined that Petitioner's symptoms and need for treatment were causally related to his work accident. Work slips from Dr. Gornet indicate that Petitioner was off work from 4/19/22 through 11/1/22. (PX5, pp. 5-7)

On 4/28/22, Petitioner's therapist noted he had low and mid-back pain, occasional cervical pain, and numbness in the left upper extremity. He rated his pain 4/10.

Petitioner underwent a right-sided epidural steroid injection at L4-5 by Dr. Helen Blake on 5/31/22. On 6/23/22, Petitioner underwent a right-sided ESI at L5-S1. (PX6, pp. 2-5) On 6/30/22, Dr. Gornet continued Petitioner off work through 9/30/22 without examination.

On 7/14/22, Petitioner returned to Dr. Gornet's office and was examined by Allyson Joggerst, PA. Petitioner reported that the injections did not provide sustained relief and he continued to have symptoms in his low back that radiated to his buttocks, right hip, and right leg with tingling in his right foot. He also had headaches and neck pain between both trapezius, between his shoulder blades, and intermittently down his left arm. Petitioner felt that his low back was the bigger problem; however, his neck symptoms were also quite problematic, and they worsened with lying on his back or left side and with fixed head positions. Physical examination of the cervical spine revealed good range of motion, 5/5 motor exam in all groups, DTRs were trace, and sensation was intact.

A cervical spine MRI was performed at MRI Partners of Chesterfield on 7/14/22. (PX4) The radiologist interpreted a midline annual tear/fissure measuring 1.5 mm protrusion at C5-6 resulting in dural displacement. PA Joggerst reviewed the cervical MRI and noted central beaking of the disc at C3-4, an annular tear and high intensity zone at C5-6, and a left central disc bulge at C6-7. PA Joggerst noted that Petitioner's working diagnosis remained the same and that he had disc injury at L4-5 and L5-S1. She recommended a diagnostic lumbar discogram. PA Joggerst noted Petitioner's cervical spine was placed on hold pending treatment of his lumbar spine. Petitioner was continued off work and Ciprofloxacin, Meloxicam and Cyclobenzaprine were prescribed.

On 7/19/22, Petitioner was examined by Dr. Robert Bernardi pursuant to Section 12 of the Act. (RX1, Ex. 2) Dr. Bernardi noted he was asked to examine Petitioner with regard to his low back; however, Petitioner also complained of middle back pain and numbness in his left hand. Petitioner denied any prior history of significance or sustained low back discomfort; however, he did have a history of muscular and short-lived symptoms. Petitioner reported seeing a chiropractor once a month for two years prior to the work accident for "maintenance". He denied seeing a medical doctor for his low back prior to the accident. Dr. Bernardi noted that on 3/26/22 Petitioner was detaining a burglary suspect who weighed approximately 250 pounds. The suspect resisted and Petitioner took him to the ground. Several other officers subsequently piled on top of them. Petitioner believed he twisted his back during the altercation. He noticed numbness in his right great toe within 3 to 4 minutes following the incident. His symptoms spread to his second toe and up the medial aspect of his foot. Within two hours he had low back pain and went home early after his back "locked up" responding to another call. Petitioner complained of bilateral low back pain, greater and constant on the right, with occasional pain in the right buttock and persistent numbness in his right foot.

Dr. Bernardi reviewed Petitioner's medical records and performed a physical exam. He reviewed the 4/5/22 thoracic MRI and interpreted it as normal. He reviewed the cervical MRI dated 7/14/22 and identified very mild multilevel degenerative disc disease, with no central or foraminal stenosis or acute abnormalities. He reviewed the 4/5/22 lumbar MRI and identified a central, slightly right-sided disc extrusion at L3-4 and a small left-sided foraminal protrusion at L2-3. He described the findings as subtle and complicated as Petitioner shifted positions between imaging. Following exam, Dr. Bernardi diagnosed lumbosacral segmentation abnormality; L2-4 spondylosis, congenital stenosis, possible L3-4 disc extrusion; mixed etiology L3-4 lateral recess stenosis; low back pain; and right foot numbness. Dr. Bernardi opined it was possible the lateral recess stenosis at L3-4 could be attributed to the work incident. He was incapable of determining whether Petitioner's current reported symptoms were work-related as his prior chiropractic treatment had not been explored. He stated that Petitioner described an appropriate mechanism of injury and reasonably appropriate symptoms. Dr. Bernardi recommended a lumbar myelogram to identify the cause of the stenosis. He opined that Petitioner's testing and treatment with regard to his low back has been reasonable, necessary, and related to the work accident. He recommended temporary restrictions of being allowed to change positions every 45 minutes to an hour as needed; avoiding overhead work; and, no lifting, carrying, or wearing more than 20 pounds. Dr. Bernardi pointed out that if Petitioner was capable of performing sedentary work for his other businesses, he should be capable of sedentary work for the police department.

Dr. Bernardi stated that future treatment, if any, depended on the results of additional diagnostic testing. He noted that the lumbar discogram ordered by Dr. Gornet was entirely subjective. Dr. Bernardi stated that he was not asked to evaluate Petitioner's cervical or thoracic spine; however, he pointed out there was nothing of clinical significance to Petitioner's thoracic and cervical spine based on the MRIs.

On 8/2/22, a Form 45: Employer's First Report of Injury was completed by Assistant Chief Jody Wright. (RX4) It was recorded that Petitioner had low and mid back pain and numbness in both legs and feet from sitting for long periods of time throughout a 10-hour work shift. The date of accident was reported as 8/1/22.

On 8/11/22, Petitioner secured another off work slip from Dr. Gornet's office from 8/1/22 through 11/1/22 without examination. (PX5, p. 7) On 11/15/22, Petitioner underwent an epidural steroid injection at C6-7 by Dr. Helen Blake. (PX6, pp. 6-7)

On 1/23/23, Petitioner returned to Dr. Gornet who noted Petitioner's neck and low back symptoms had become more equal over time. Petitioner completed another intake form and reported a work-related neck and back injury on 3/22/22 with a first date of treatment of 3/25/22. (RX7) Dr. Gornet noted Petitioner's neck pain was to the base of his neck, with pain in the bilateral trapezius, between the shoulder blades, and in the upper back with intermittent tingling. Petitioner's low back pain was to both sides, but particularly to the right side, right buttock, and right hip. His exam still showed decreased right EHL at 4+/5 and 5/5 strength in all groups in the upper extremities.

Dr. Gornet reviewed the 7/14/22 cervical MRI and interpreted an obvious central disc annular tear at C5-6, a smaller lesion at C6-7, and a small central lesion at C3-4. Dr. Gornet noted Petitioner had an extruded disc annular tear at L4-5, a central lesion at L5-S1, and a left-sided lesion into the foramen at L3-4. He noted the lumbar injections provided only a few days of relief. Dr. Gornet noted that Dr. Bernardi's opinion that discograms were dangerous and could injure the disc itself has been debunked in trials. Dr. Gornet recommended treating both C5-6 and C6-7 based on his knowledge of those types of injuries. He indicated that he would not turn his attention to Petitioner's low back unless he did well with his neck procedure. He noted that Petitioner briefly returned to work per Dr. Bernardi's recommendation, but that lasted only a period of days because he was sitting in a chair for prolonged periods of time. Dr. Gornet opined that Petitioner remained temporarily totally disabled. A CT scan performed that day showed midline annular tears/fissures and protrusions from C3 through C7, each resulting in dural displacement; however, it did not show facet or bony abnormalities that would suggest a contraindication to surgery. (PX5, PX8) Dr. Gornet recommended a two-level disc replacement at C5-6 and C6-7.

On 2/17/23, Petitioner underwent a disc replacement at C5-6 and C6-7. (PX9) He returned to Dr. Gornet's office on 3/2/23 and was examined by PA Nathan Collins. (PX5) PA Collins noted Petitioner was doing extraordinarily well with regard to his neck and the pain between his shoulder blades and the numbness and tingling were essentially gone. Petitioner continued to have some achiness in his bilateral trapezius, bilateral low back pain, particularly to his right hip, buttock, and leg. He was transitioned to a soft collar and continued off work.

On 4/3/23, Petitioner was examined by PA Collins and reported doing very well with regard to his neck. He was instructed to discontinue wearing the neck collar. Petitioner's low back and right lower extremity symptoms persisted. Treatment for his lumbar spine remained on hold to allow more time for his neck to heal. Petitioner remained temporarily totally disabled.

On 4/11/23, Petitioner was examined a second time by Dr. Bernardi pursuant to Section 12 of the Act resulting in two written reports. (RX1, Ex. 2) Petitioner was off work recovering from the two-level cervical disc replacement. Dr. Bernardi noted that he was asked to evaluate Petitioner's neck; whereas his examination on 7/19/22 was limited to Petitioner's lumbar spine. Dr. Bernardi noted that when he examined Petitioner in July 2022 he reported pain in his middle back. He acknowledged that Petitioner's treatment record dated 3/28/22 reflected he first noticed mid back pain the day after the accident. Petitioner reported that his mid back pain was associated with left hand numbness. Dr. Bernardi noted that both of these symptoms were noted on the symptom diagram Petitioner completed, along with an aching across the low posterior cervical region. Petitioner reported that approximately one month after Dr. Bernardi examined him on 7/19/22, his interscapular symptoms had increased significantly for reasons he could not define. Petitioner reported that following surgery, the pain between his shoulder blades and hand numbness was gone.

Dr. Bernardi reviewed cervical x-rays dated 4/19/22 and interpreted them as normal. He reviewed the 7/14/22 cervical MRI again and reiterated there were no acute abnormalities. He reviewed a 1/23/23 cervical CT scan and opined it was normal. Dr. Bernardi reviewed operative videos from Petitioner's surgery and was not convinced any pathology was evident. Following exam, Dr. Bernardi diagnosed minimal multilevel cervical degenerative disc disease; neck/middle back pain, left hand numbness with uncertain cause; and, status post disc replacement surgery. Dr. Bernardi opined there was no causal relationship between the findings on Petitioner's cervical/thoracic imaging and his work accident. He explained that the thoracic MRI, cervical spine x-rays, and cervical CT scan were entirely normal. He stated the findings on the cervical MRI were so minor as to hardly warrant mentioning and would not represent an accurate or reliable marker for the presence of pain. He opined there were no acute findings on the cervical MRI.

Dr. Bernardi opined that Petitioner's mid back pain and left hand numbness were causally related to the work accident. He noted that Petitioner reported on 3/28/23 that he had symptoms the morning after the accident that persisted. Dr. Bernardi did not have any evidence that Petitioner experienced similar symptoms prior to his work accident. Dr. Bernardi noted that Petitioner's symptoms were not initially associated with his cervical spine, but to his thoracic spine and a thoracic MRI was ordered. He noted that Dr. Gornet was the first treater to document neck pain, but Petitioner did not note neck pain on his symptom diagram. Dr. Bernardi responded to Dr. Gornet's diagnosis of axial neck pain, stating: "when you hurt your leg, your leg hurts. When you hurt your arm, your arm hurts. And, when you hurt your neck, your neck hurts. If he injured his neck on March 26, 2022, why wasn't his pain situated there? Why did it seem to be isolated to the mid-thoracic spine in the days and weeks immediately after his accident? Why, even after it was initially reported, did it seem to take a back seat to his thoracic pain? There are

no good answers to these questions. This gentleman's presentation does not support the notion that he injured his cervical spine as a consequence of his work altercation."
Dr. Bernardi opined that Petitioner might have suffered from an interscapular sprain/strain due to the work accident but would have been reached MMI as of 7/14/22. He did not believe any of the treatment or testing for the cervical spine was reasonable or necessary after 7/14/22.

Dr. Bernardi explained that a great deal of caution must be exercised when drawing conclusions about the relationship between complaints/imaging findings and a person's response to treatment. He stated that people get well following surgical procedures for a variety of reasons that are not always intuitively obvious. Just because Petitioner feels better since the surgery does not mean the surgery was warranted or that his pre-operative complaints were work-related. From a cervical standpoint, Dr. Bernardi opined Petitioner was capable of working with restrictions, but he did not believe the restrictions were attributable to the work accident. Regarding the lumbar spine, Dr. Bernardi believed the possibility of Petitioner having an L5 radiculopathy was remote. He was no longer concerned about the possible disc protrusion at L3-4. He did not believe that Petitioner's ongoing complaints were supported by objective findings. He opined that a lumbar myelogram was no longer needed, but Petitioner might benefit from an updated lumbar MRI to identify a cause for Petitioner's present complaints. He opined it was unlikely Petitioner would require any additional treatment to his low back. Dr. Bernardi did not believe Petitioner required work restrictions with regard to his lumbar spine.

On 6/8/23, Dr. Gornet noted Petitioner continued to do extremely well with his neck, and that his preoperative symptoms of neck, trapezial, shoulder, and left arm symptoms were gone. A CT scan showed no evidence of lucency. Petitioner requested to move forward with treatment of his low back. Dr. Gornet recommended a CT discogram at L4-5 and L5-S1, and if L5-S1 was positive, he would consider a discogram at L3-4. Dr. Gornet commented on Dr. Bernardi's question of "if [Petitioner] injured his neck on 3/26/22, why wasn't his pain situated there?" Dr. Gornet explained that mid-back and scapular pain are often referred from the cervical spine and that Dr. Bernardi himself mentioned a record from 3/28/22 wherein mid-back pain was documented. Dr. Gornet noted Petitioner had clear objective MRI pathology showing disc injury and not mild degenerative disc disease as Dr. Bernardi opined. Dr. Gornet also noted clear objective intraoperative pathology, which was documented by video, and Petitioner's surgical result was extremely good and speaks for itself. He felt that it was unclear how these facts did not add up to a conclusive diagnosis; however, he stated it may simply be a difference in how physicians see and treat structural problems, as Dr. Bernardi had a predominant background in neurosurgery, which does not treat musculoskeletal injuries.

On 6/16/23, Petitioner underwent a lumbar discogram that showed provocative discs at L4-5 and L5-S1 with a posterior annular tear. (PX9) A lumbar CT post discogram showed a transitional sacralized L5 vertebral body segment and contrast in the lowest open motion segments, L3-4 and L4-5, with a central annular tear/fissure and broad-based herniation at L3-4, a central herniated and caudally extruded disc fragment with a left lateral recess and full thickness annular tear/fissure at L4-5, and bilateral foraminal stenoses at both levels.

On 8/17/23, Dr. Gornet noted Petitioner's neck was doing extremely well, but he continued to have low back pain with radiculopathy in his right lower extremity with tingling in

his big toe. Examination still showed weakness in the EHL at 4/5. Dr. Gornet found the discogram to be of diagnostic quality and revealed provocative discs at L4-5 and L5-S1 with posterior annular tears. He noted Petitioner had a sacralized lowest segment and that they had arbitrarily called the first movable segment L5-S1 to stay with convention. Dr. Gornet ordered an updated lumbar MRI to evaluate L3-4, as there was a left-sided herniation and tear; however, he felt that Petitioner's symptoms were primarily at L4-5 and L5-S1 and he recommended disc replacements at both levels. He continued Petitioner off work.

On 8/17/23, a lumbar MRI was performed that showed a circumferential disc bulge with a midline annual tear/fissure and a caudally extruded disc fragment at L4-5, resulting in moderate bilateral foraminal stenosis, a circumferential disc bulge with left foraminal annular tear/fissure and protrusion at L3-4, resulting in moderate left foraminal stenosis, and a midline protrusion at L5-S1, with mild to moderate left greater than right foraminal stenosis.

On 9/20/23, Dr. Bernardi authored a report after reviewing Petitioner's prior chiropractic treatment records, updated records from Dr. Gornet, and the lumbar MRI dated 8/17/23. (RX1, Ex. 2) He opined that the MRI did not reveal any findings that would warrant additional low back treatment. Dr. Bernardi found that Petitioner's chiropractic treatment was *more than maintenance*. He explained why the discogram performed by Dr. Gornet was invalid.

Dr. Matthew Gornet testified by way of deposition on 9/7/23. (PX11) Dr. Gornet is a board-certified orthopedic surgeon who specializes in spine surgery. He opined that Petitioner's lumbar and cervical spine injuries were causally related to Petitioner's work accident of 3/26/22. He testified that Petitioner's lumbar MRI revealed structural pathology at his first two movable segments at L5-S1 and L4-5, and more subtly at L3-4. He recommended lumbar steroid injections to calm down the inflammation which did not provide sustained relief.

Dr. Gornet testified that Petitioner's cervical MRI showed an obvious annular tear at C5-6, with a central and left-sided tear at C6-7, which he believed correlated with Petitioner's left upper extremity numbness. He performed a two-level disc replacement which dramatically improved Petitioner's neck pain and headaches and completely resolved his left arm/hand symptoms.

Dr. Gornet testified that Petitioner's discogram showed structural tears of the disc at L4-5 and L5-S1. He stated that Petitioner's new lumbar MRI showed potential pathology at L3-4. Based on this finding and the previous discogram, Dr. Gornet recommended a discogram at L2-3 and L3-4 to make sure the L3-4 disc was not part of Petitioner's back pain. He disagreed with Dr. Bernardi's opinion that discograms are inappropriate tests because they are subjective and can damage the disc. Dr. Gornet explained that Dr. Bernardi bases his opinion on an old study from 2008 that was authored by someone who has since been discredited. Dr. Gornet relies on a study from Mayo Clinic which shows that discography does not damage the disc as long as pressure is kept to 50 psi or less, and the FDA still considers discography to be an inclusion criteria to their clinical trials. He also pointed out that this was not Dr. Bernardi's area of expertise, and he does not treat patients with structural back pain. He opined that there is an objective component to discography which is similar to looking at an MRI.

Dr. Gornet testified that if Petitioner's discography at L3-4 was positive and L2-3 was negative, he would treat Petitioner at the L3-4, L4-5 and L5-S1 levels. However, if L3-4 and L2-3 were negative, he would perform disc replacements at L4-5 and L5-S1. He testified that Petitioner did not have any cervical or lumbar problems of significance prior to his work accident. He acknowledged that Petitioner had prior chiropractic care for maintenance and had no prior diagnostic studies performed on his neck or back.

On cross-examination, Dr. Gornet testified that he did not review a Form 45 with regard to Petitioner's accident, but he did review records from Heartland Regional. The only description he had of Petitioner's accident was what Petitioner told him. He reviewed the lumbar MRI performed on 4/5/22 that showed a left tear fissure at L3-4, a midline fissure at L4-5, and a left lateral recessed protrusion at L5-S1, with a cranial extruded disc on the left. He agreed that Petitioner did not undergo a cervical MRI prior to his examination on 4/19/22. Dr. Gornet agreed that Petitioner stated on the medical information form that he sustained a back injury, with no reference to a neck injury. He testified that Petitioner's pain diagram indicated marks on his low back and between his shoulder blades. Dr. Gornet testified that the triangle Petitioner marked between his shoulder blades would not be considered the cervical spine, but it is often a common area of referred pain from the cervical spine. He testified that given the negative thoracic MRI, he focused on the cervical spine as a source of Petitioner's pain. He testified that Petitioner's main complaint was initially his low back, but he had pain at the base of his neck, between his shoulder blades, trapezius, and intermittent tingling in his left arm. He agreed that Petitioner did not indicate on the pain diagram any symptoms in his shoulders or upper extremities.

Dr. Gornet did not review any prior chiropractic records at the time of his initial examination. Dr. Gornet testified that his examination of Petitioner's cervical spine on 4/19/22 showed 5/5 strength and normal sensation, and examination of his lumbar spine showed mild weakness in his big toe and L5 distribution, which correlated with some L5 nerve issues. He did not believe the right-sided disc protrusion at T8-9 was of significance as it would not cause symptoms in Petitioner's low back. He agreed there was no recommendation for treatment of Petitioner's cervical spine at his initial consultation. He agreed there was no mention of cervical issues when Petitioner called his office on 6/30/22 and reported no long-term relief from the lumbar steroid injections and obtained another off work slip. Dr. Gornet testified that it was not unusual for his physician assistants to provide off work slips by telephone around that time as he had just been diagnosed with pancreatic cancer and they were short-staffed.

Dr. Gornet testified that he did not agree with radiologist Dr. Ruyle's interpretation of the cervical MRI performed on 7/14/22. He noted obvious disc pathology on the left side at C6-7 that was missed by Dr. Ruyle and was found intraoperatively. He testified that a C5-6 fissure or tear could cause neck pain, headaches, pain between the shoulder blades, and tingling in the arms. He testified that his off work orders related to Petitioner's job duties as a police officer. If he was aware of other types of employment, he would have prescribed light duty work.

Dr. Gornet disagreed with Dr. Bernardi's statement that it would be difficult to attribute Petitioner's current symptoms to his work accident if he had been seen for similar symptoms. He testified that Petitioner was working full duty as a police officer without any problems prior to the accident and that treating for low back pain is very common. Dr. Gornet was not aware that

Petitioner completed a new Form 45 on 8/2/22 after returning to light duty work per Dr. Bernardi's recommendation.

Dr. Gornet testified that intraoperatively he noted a superficial, deep, double tear in the disc at C5-6 and a hole in the anulus at C6-7. He opined that the disc injuries were causally related to the work accident as Petitioner reported on 3/28/22 that he had tingling between his shoulder blades and numbness in his left hand, which were consistent with objective findings and acute trauma.

Dr. Robert Bernardi testified by way of deposition on 10/6/23. (RX1) Dr. Bernardi is a board-certified neurosurgeon who specializes in spinal neurosurgery. He examined Petitioner on 7/19/22 with regard to his low back which was slightly restricted in extension, and he had full flexion. He reviewed a cervical MRI that showed mild multilevel degenerative disc disease with no stenosis. Lumbar x-rays showed a congenital abnormality where Petitioner's fifth lumbar vertebra was partially fused to the sacrum. He reviewed a lumbar MRI performed on 4/5/22 that showed a small extrusion at L3-4 with borderline stenosis and degenerative disease. He diagnosed L2-3 and L3-4 degenerative disc disease, congenital stenosis, a possible L3-4 disc extrusion, and L5 radiculopathy with low back pain and right foot numbness. He testified that it was possible the L3-4 disc extrusion was caused by Petitioner's work accident, as well as his back pain and right foot symptoms, but he wanted to review Petitioner's prior medical history before providing a causation opinion. He testified that Petitioner was very forthright in disclosing his prior chiropractic treatment. He opined that the treatment and testing Petitioner received up to the date of his Section 12 examination on 7/19/22 was reasonable, necessary, and related to the work accident. He recommended a myelogram and a thoracic x-ray.

Dr. Bernardi examined Petitioner again on 4/11/23 to address his cervical/thoracic spine. He testified that Petitioner reported increased pain between his shoulder blades within weeks after seeing him on 7/19/22, which was atypical. He testified that the cervical x-rays performed on 4/19/22, the cervical MRI performed on 7/14/22, and the cervical CT scan performed on 1/23/23 were normal with no acute findings or stenosis that would explain Petitioner's left hand symptoms. He diagnosed minimal multilevel degenerative disc disease of Petitioner's cervical spine with neck and midback pain of uncertain etiology. Dr. Bernardi opined that after his examination on 4/11/23, it was reasonable to conclude that Petitioner's mid back and hand symptoms were related to the work accident as he reported them reasonably promptly. He testified that the cervical disc arthroplasties were not causally related because Petitioner did not have radiculopathy or myelopathy to warrant disc replacements. Dr. Bernardi opined that Petitioner's physical therapy and subsequent cervical MRI was reasonable and necessary; however, he reached MMI after the MRI was performed and he did not require a steroid injection because he did not have radicular pain or signs of nerve root compression on MRI.

Dr. Bernardi testified that the disc extrusion he initially observed on Petitioner's lumbar MRI was possibly a piece of fat up against the edge of the disc. He opined that Petitioner did not require further treatment for his lumbar spine, but he agreed an updated lumbar MRI was reasonable based on the duration of Petitioner's subjective complaints and his report that his symptoms were worsening. Dr. Bernardi authored an addendum on 9/20/23 after reviewing Petitioner's chiropractic records and the updated lumbar MRI dated 8/17/23. He opined that

Petitioner's 21 chiropractic visits from 3/25/21 through 1/25/22 were not considered "maintenance". He noted that Petitioner presented for acute back pain with an onset of three weeks ago, with some shoulder symptoms that one could interpret as neck issues based on the handwritten notes. He opined that since Petitioner had been treating for one year prior to his accident for low back pain and possibly neck complaints, with the latest visit being only two months before his work accident, and a normal examination and age-appropriate imaging studies, it would be difficult for him to causally relate his low back symptoms to the work accident.

Dr. Bernardi opined that the updated MRI revealed a disc protrusion at L2-3 in the foramen that was an incidental finding and asymptomatic. He testified that the L2-3 protrusion would cause pain in Petitioner's left leg, not numbness in his right foot. He did not recommend lumbar spine surgery based on a discogram that was invalid and the MRI showed a normal disc and the other disc had mild degeneration.

Dr. Bernardi agreed that a patient can get pain between the shoulder blades with neck problems and patients with herniated cervical discs or pinched nerves oftentimes complain primarily of pain around or in between their shoulder blades, which is typical of that condition. However, the testified that Petitioner did not have a pinched nerve or neurological cervical findings to cause pain between his shoulder blades.

On cross-examination, Dr. Bernardi testified that he does not perform disc replacement surgeries. He agreed that detaining a resisting 250-pound suspect and taking him to the ground with other officers piling on top could cause a cervical and lumbar spine injury, or aggravate an underlying condition. He was not aware of any prior treatment or diagnostic testing performed for Petitioner's neck or back other than chiropractic treatment. He thought the very small disc extrusion at L3-4 was caused by Petitioner's work accident and that the accident could have caused his pre-existing stenosis to become symptomatic. He agreed that Petitioner's mid back pain and left hand numbness was casually related to the work accident, but that the accident caused an interscapular sprain/strain. He testified that he would not recommend a discogram to any of his patients, and he has not followed any patients who have had a discogram. He agreed that Petitioner's chiropractor did not recommend any MRIs or refer him to an orthopedic specialist.

CONCLUSIONS OF LAW

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

The parties stipulated that Petitioner sustained accidental injuries on 3/26/22 that arose out of and in the course of his employment with Respondent. It is undisputed that prior to Petitioner's work accident he underwent chiropractic treatment from 3/25/21 through 1/28/22. (RX3) Petitioner attended 10 of the 14 visits between March and May 2021 and was treated for pain in his lumbar spine, right sacroiliac, and left shoulder. On 5/6/21, Petitioner's symptoms improved by 85% and his ongoing treatment was decreased. Petitioner received four additional treatments over the next eight months. He last treated on 1/28/22 at which time he reported dull and aching discomfort in his lumbar spine and sacroiliac joint with a pain level of 2/10 at worst. There is no evidence that Petitioner was placed off work or on work restrictions, underwent diagnostic testing, or was referred to a specialist with regard to his cervical or lumbar spine prior

to the work accident. Petitioner was working full duty without restrictions as a police officer prior to 3/26/22. The Arbitrator does not find that Petitioner was actively treating or significantly symptomatic at the time of his accident and the evidence supports his testimony that he improved following chiropractic treatment. Petitioner credibly testified that his symptoms prior to the work accident were different and much less severe than those he experienced following his accident. He credibly testified that the symptoms he had in his left arm prior to 3/26/22 was due to a biceps injury he sustained in 2019.

The mechanism of injury on 3/26/22 was undisputed and Petitioner immediately reported the incident to Respondent. Petitioner presented to Work Care two days later and reported he felt a radiating sensation down the back of his right leg and tightness in his back shortly after the accident. He complained of low back pain with numbness and tingling in his right great and second toes, thoracic spine pain, left hand numbness, and pain between his shoulder blades. Thoracic and lumbar MRIs were ordered.

On 3/28/22, a Form 45: Employer's First Report of Injury was completed by Safety Director Brian Fisher. (RX4) The report indicated that Petitioner's lower back popped, causing stiffness in his back and numbness in his right leg and foot. Petitioner did not sign the form. There was no accident report entered into evidence that was completed by Petitioner. There was no mention of a neck injury on the form; however, Petitioner complained of pain between the shoulder blades and numbness in his left arm that day at Work Care.

On 4/4/22, Petitioner presented for a physical therapy evaluation and reported his symptoms included lumbar/thoracic pain, pain down his right leg, muscle spasms, and numbness in his left arm. The thoracic and lumbar spine MRIs were performed on 4/5/22 and Petitioner was referred to an orthopedic specialist on 4/8/22. Petitioner attended physical therapy through 4/28/22 with little improvement. His primary complaints during therapy were low back and thoracic pain that increased to 7-8/10 with prolonged sitting.

Dr. Gornet examined Petitioner on 4/19/22 and noted his symptoms of neck and low back pain. Although Petitioner indicated on the intake form that he sustained a work-related back injury and did not indicate a neck injury, he indicated on a pain diagram that he had aching in his mid-back. Dr. Gornet further noted that Petitioner presented with pain in the base of his neck, bilateral trapezius, and between his shoulder blades, with intermittent tingling in his left arm. Dr. Gornet stated that Petitioner's low back was the bigger issue for him, and his pain was central to both sides, right greater than left, with right buttock and tingling in his toes. Dr. Gornet ordered cervical spine x-rays that day that were normal. He did not believe the thoracic MRI showed any significant pathology and he proceeded to treat Petitioner's lumbar spine. He interpreted the MRI as showing obvious pathology at L4-5 and L5-S1 and opined it was consistent with Petitioner's symptoms. Petitioner treated with medications, activity restrictions, and epidural steroid injections that did not improve his symptoms. Petitioner returned to Dr. Gornet's office on 7/14/22 and reported headaches and persistent neck pain between both trapezius and shoulder blades, and intermittently down his left arm. PA Joggerst noted that although Petitioner's low back was the bigger problem; his neck symptoms were also quite problematic, and they worsened with lying on his back or left side and with fixed head positions. A cervical MRI was ultimately ordered.

Dr. Gornet and Dr. Bernardi agreed that Petitioner's mechanism of injury could cause injuries to both his cervical and lumbar spine. Petitioner described restraining a 250-pound suspect in a bearhug, tackling him to the ground with a leg sweep, and other officers piling on top of them. Dr. Bernardi agreed that Petitioner had documented low and mid-back pain, with symptoms into his right leg and left arm, within two days of the accident.

The Arbitrator finds the opinions of Dr. Gornet more persuasive than those of Dr. Bernardi. Dr. Bernardi examined Petitioner on 7/19/22 and noted Petitioner had mid back pain with numbness into his left hand; although his Section 12 examination was limited to Petitioner's lumbar spine at that time. Dr. Bernardi did not examine Petitioner for his cervical condition until after Petitioner underwent a two-level disc replacement on 2/17/23. On 4/11/23, Dr. Bernardi acknowledged that Petitioner reported on 3/28/22 that he first noticed mid back pain and left hand numbness the day after the accident. He opined that all of Petitioner's cervical spine studies were normal, and he was not convinced any pathology was evident when reviewing the operative video. Nevertheless, he opined that Petitioner's mid back pain and left hand numbness were causally related to the work accident, despite his diagnosis of left hand numbness with uncertain cause. The Arbitrator notes that Dr. Bernardi does not perform disc replacement surgeries. Dr. Bernardi agreed that Petitioner's symptoms resolved following surgery. He did not have any evidence that Petitioner experienced similar symptoms prior to his work accident.

Dr. Bernardi testified that Petitioner's symptoms were not initially associated with his cervical spine, but to his thoracic spine, and a thoracic MRI was ordered. He opined that Petitioner should have complained of neck pain much sooner if he injured his neck in the work accident, and not pain in his thoracic spine area. He diagnosed an interscapular sprain/strain due to the work accident and opined that Petitioner reached MMI as of 7/14/22.

Dr. Gornet identified a double tear at C5-6 and a central left-sided tear at C6-7 on the preoperative cervical MRI. Intraoperatively, Dr. Gornet visualized the tears in the exact locations that were identified preoperatively. Petitioner testified that he had dramatic improvement in his symptoms immediately following surgery. Dr. Gornet testified that a C5-6 fissure or tear could cause neck pain, headaches, pain between the shoulder blades, and tingling in the arms, all of which Petitioner experienced. He testified that Petitioner's pain diagram indicated pain between his shoulder blades and Petitioner complained of left arm symptoms immediately after the accident. Dr. Gornet explained that pain between the shoulder blades is often a common area of referred pain from the cervical spine. Dr. Bernardi admitted that cervical pathology could cause pain between the shoulder blades. The Arbitrator notes that Petitioner was initially treated for a suspected thoracic spine injury resulting in a thoracic spine MRI. It was not until he underwent a cervical spine MRI on 7/14/22 that he filed an Amended Application for Adjustment of Claim on 7/29/22 to include his neck injury.

With regard to Petitioner's lumbar spine, Petitioner immediately and consistently reported low back pain with numbness in his right toes after the accident. Dr. Bernardi reviewed the lumbar spine MRI and identified a central, slightly right-sided disc extrusion at L3-4 and a small left-sided foraminal protrusion at L2-3. He performed an examination and diagnosed lumbosacral segmentation abnormality; L2-4 spondylosis, congenital stenosis, possible L3-4 disc extrusion; mixed etiology L3-4 lateral recess stenosis; low back pain; and right foot numbness.

Dr. Bernardi opined it was possible the lateral recess stenosis at L3-4 could be attributed to the work incident. He stated that Petitioner described an appropriate mechanism of injury and reasonably appropriate symptoms. Dr. Bernardi recommended a lumbar myelogram to identify the cause of the stenosis and that additional treatment was dependent on further testing. He opined that Petitioner's testing and treatment with regard to his low back has been reasonable, necessary, and related to the work accident, and he recommended temporary work restrictions.

Despite the fact no diagnostic studies of Petitioner's lumbar spine were performed between Dr. Bernardi's first Section 12 examination on 7/19/22 and his second examination on 4/11/23, Dr. Bernardi opined that the possibility of Petitioner having an L5 radiculopathy was remote, and he was no longer concerned about the possible disc protrusion at L3-4. He did not review any new testing prior to concluding Petitioner's purported ongoing complaints were not supported by objective findings, despite his previous causation opinion that the stenosis at L3-4 could have been contributed to the work accident, that Petitioner sustained an appropriate mechanism of injury, and that Petitioner exhibited reasonably appropriate symptoms. He opined it was unlikely Petitioner would require any additional treatment to his low back with no reasonable basis or explanation.

The Arbitrator does not find Dr. Bernardi's opinion credible that almost 100% of people, even those with massive herniations and neurologic defects, get better on their own over about a year and that the natural history of virtually every type of back problem is good. (RX1, pp. 22, 33, 34, 59, 63; RX1, Ex. 2) At the time Dr. Bernardi provided this opinion Petitioner's low back symptoms had been ongoing for approximately a year and a half and Dr. Bernardi admitted that Petitioner's condition had not subsided since the accident but was worsening.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current conditions of ill-being in his cervical and lumbar spine are causally connected to the work accident that occurred on 3/26/22.

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

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

Based on the finding as to causal connection, the Arbitrator finds that Petitioner is entitled to medical benefits related to his undisputed work injury. Dr. Bernardi opined on 7/19/22 that Petitioner's testing and treatment with regard to his low back has been reasonable, necessary, and related to the work accident. He recommended work restrictions and a lumbar myelogram. On 4/11/23, Dr. Bernardi opined that Petitioner required no further treatment with regard to his lumbar spine. He diagnosed an interscapular sprain/strain due to Petitioner's work accident and opined he reached MMI on 7/14/22. He did not believe any of the treatment or testing for the cervical spine was reasonable or necessary after 7/14/22. The Arbitrator is more persuaded by Dr. Gornet's opinions that Petitioner's treatment was reasonable, necessary, and related to the work accident.

Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, pursuant to the medical fee schedule. Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act, and a credit of $12,813.95 in medical expenses previously paid and itemized in RX6.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Gornet. On 8/17/23, Dr. Gornet recommended disc replacements at L4-5 and L5-S1. He noted that Petitioner's recent lumbar MRI showed potential pathology at L3-4. Based on this finding and the previous discogram, Dr. Gornet recommended a discogram at L2-3 and L3-4 to make sure the L3-4 disc was not part of Petitioner's back pain. He testified that if Petitioner's discography at L3-4 was positive and L2-3 was negative, he would treat Petitioner at the L3-4, L4-5, and L5-S1 levels. However, if L3-4 and L2-3 were negative, he would perform disc replacements at L4-5 and L5-S1.

Therefore, Respondent shall provide and pay for prospective medical treatment, including, but not limited to, a lumbar discogram at L2-3 and L3-4, a disc replacement at L4-5 and L5-S1, and a disc replacement at L3-4 if supported by discogram, and all reasonable and necessary attendant care.

Issue (L): What temporary benefits are in dispute? (TTD)
Issue (N): Is Respondent due any credit? (TTD overpayment)

Petitioner claims to be entitled to temporary total disability benefits from 3/27/22 through 7/29/22 and 8/10/22 through 10/27/23. Respondent stipulated that Petitioner is entitled to and has been paid temporary total disability benefits from 3/27/22 through 7/29/22 but denies liability for TTD benefits for the period 8/10/22 through 10/27/23.

Petitioner testified that around 7/30/22 he returned to light duty work pursuant to Dr. Bernardi's recommendation, despite having been ordered off work by Dr. Gornet. He returned to work and performed a desk job where he took walk-in reports. He testified that he took one walk-in report in a three-day period. Petitioner testified that sitting for long periods of time while performing light duty work increased his low back and right leg symptoms. He agreed he was allowed to walk and change positions while working light duty which reduced his symptoms for a couple of minutes, but his symptoms immediately returned when he sat down.

Petitioner testified that on 8/1/22 he reported to Respondent he was having increased pain performing light duty work and he contacted Dr. Gornet's office. On 8/2/22, a Form 45: Employer's First Report of Injury was completed by Assistant Chief Jody Wright. (RX4) It was recorded that Petitioner had low and mid back pain and numbness in both legs and feet from sitting for long periods of time throughout a 10-hour work shift. The date of accident was reported as 8/1/22. On 8/11/22, Dr. Gornet's office placed Petitioner off work and has continued Petitioner off work through the date of arbitration.

The Arbitrator finds that Petitioner is entitled to temporary total disability benefits from 3/27/22 through 7/29/22 and 8/11/22 through 10/27/23, representing 81-1/7 weeks, at the temporary total disability rate of $757.33, pursuant to Section 8(b) of the Act.

Pursuant to the stipulation of the parties, Respondent shall receive a credit for temporary total disability benefits paid in the amount of $14,845.55 from 3/27/22 through 7/29/22 (RX5), and a credit of $51,875.25 in payments made pursuant to the Illinois Public Employee Disability Act (PEDA) paid from 4/8/22 through 4/7/23 (RX9).

The Arbitrator finds that Respondent is entitled to a credit of $1,321.91 in overpayment of TTD benefits for the period 3/27/22 through 7/29/22 (17-6/7 weeks x $757.33 = $13,523.64 - $14,845.55).

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

Arbitrator Linda J. Cantrell _____ DATE _____

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC029594
Case Name	Mark Weiss v. State of Illinois - Lawrence Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0451
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 9/18/2024

/s/Marc Parker, 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 Weiss,

Petitioner,

vs. NO: 22 WC 29594

State of Illinois/Lawrence
Correctional Center,

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 causal connection, medical expenses, and nature and extent of the 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 October 16, 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.

September 18, 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	22WC029594
Case Name	Mark Weiss v. State of Illinois/Lawrence Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 10/16/2023

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

/s/ Linda Cantrell, Arbitrator
Signature

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

October 16, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mark Weiss
Employee/Petitioner

v.

State of Illinois/Lawrence Correctional Center
Employer/Respondent

Case # **22** WC **029594**

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 **Mt. Vernon, Illinois**, on **8/17/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/27/22**, 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 $**73,506.00**; the average weekly wage was $**1,413.58**.

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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**Any and all medical expenses previously paid**, for a total credit of $**Any and all medical expenses previously paid**, pursuant to the stipulation of the parties.

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 1, directly to the medical providers and pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less, as stipulated by the parties. Respondent shall receive a credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act, and any and all medical expenses previously paid, pursuant to the stipulation of the parties.

Respondent shall pay Petitioner permanent partial disability benefits of $**848.15**/week for **86** weeks, because the injuries sustained caused **40**% loss of use of Petitioner's left knee/leg, as provided in Section 8(e)12 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 8/16/23 through 8/17/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

OCTOBER 16, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK WEISS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-029594
	)	
STATE OF ILLINOIS/LAWRENCE CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on August 17, 2023 on all issues. The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 6/27/22. Respondent stipulated to liability for medical expenses incurred through 11/3/22, and disputed liability for any and all medical expenses thereafter. The parties stipulated that if any medical expenses are awarded, Respondent shall pay such expenses directly to the medical providers per the Illinois medical fee schedule or PPO agreement, whichever is less. The parties stipulated that Respondent is entitled to a credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act, and any and all medical expenses previously paid.

The issues in dispute are causal connection, medical expenses incurred after 11/3/22, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 57 years old, married, with no dependent children at the time of accident. Petitioner was employed by Respondent for over 21 years as a steam fitter and welder. He is currently self-employed. Petitioner testified that on 6/27/22 he stepped between a trailer and a golf cart when his toe got hooked on the trailer tongue and he fell directly onto his left kneecap, striking the concrete. Petitioner testified that he had a torn meniscus in his left knee in 2010 and underwent a meniscus repair. He stated that after he was discharged, he had not had any treatment or took any medications for his left knee. Petitioner testified that he did not take any time off work for his left knee following his 2010 meniscus repair until his work accident in June 2022.

Petitioner testified that following his accident on 6/27/22 he went to Respondent's on-site health care clinic. He was sent to the emergency room at Lawrence County Memorial Hospital

where he underwent x-rays and a pain injection. Petitioner was referred to Wabash Orthopedics and attended five visits with their facility. He underwent a cortisone injection that provided no relief.

Petitioner treated with Dr. Bradley who performed a left knee replacement. He stated that prior to surgery he could hardly walk and had severe swelling and pain. He could not sit, stand, or sleep comfortably. Petitioner underwent three weeks of physical therapy. He testified that despite improvement from surgery he still has stiffness and swelling with sitting and walking for prolonged periods. He still has occasional pain, but it is nothing he cannot deal with. He does not take medications for his symptoms. Petitioner testified that he had secondary employment while working for Respondent, which is currently his primary employment, that involves repairing and performing maintenance on various equipment. He has to crawl on and under equipment which he finds difficult since his work injury. Petitioner also performs handyman work, including plumbing and construction, which is more difficult since his work accident because he has to crawl underneath houses and climb ladders and scaffolding. He performs these duties on a daily basis.

Petitioner testified that prior to his work accident he was performing his full job duties without difficulty. He testified that he was the "go-to guy" to fix things as he was a welder. His job duties involved a lot of heavy lifting and crawling on his knees on and under boilers.

On cross-examination, Petitioner testified that when he stepped over the trailer hitch he was in a hurry to catch the gate from hitting the car. He stated he was in forward motion and his left foot did not clear the hitch. He testified that his right foot folded underneath him when he fell. He denied making a twisting-type motion when he fell. Petitioner stated he was able to get up after he fell, and he felt more embarrassed than anything. He held onto the gate and pulled himself up and got in the golf cart. He testified that his accident occurred toward the end of his shift, and he did not perform any other work before he went to the medical clinic. Petitioner worked the day after his accident and received an off work slip when he treated on 6/29/22.

Petitioner testified that he retired on 9/1/22 and submitted his retirement paperwork in June 2022. He could not recall if he submitted the paperwork before his accident, but the paperwork was already prepared. The last in-person visit he had with Dr. Bradley was in February 2023. He agreed that he called Dr. Bradley's office yesterday, 8/16/23, to obtain a final release to end his treatment.

MEDICAL HISTORY

On 6/27/22, an Employer's First Report of Injury was prepared. (RX1) It was noted that Petitioner was opening the gate and stepped over the trailer he was pulling when he tripped and fell onto his left knee, landing on the concrete. He complained of left knee pain with swelling.

An IDOC Incident Report was completed by Petitioner on 6/27/22. (RX1) Petitioner reported he stepped over the hitch of the trailer and tripped. He fell on his left knee on the concrete. He reported that he tried to keep working but could not handle the pain and went to

health care. Petitioner's supervisor Jeff Hawkins was notified. His accident was witnessed by Bill Byford and Jacob Milam.

On 6/27/22, Petitioner presented to Respondent's on-site health clinic and was examined by RN Brown. (PX8) RN Brown noted Petitioner's left knee was swollen and very painful. Petitioner was directed to follow up with his primary care physician.

On 6/27/22, Petitioner presented to Lawrence County Memorial Hospital with symptoms of left knee pain that he rated 8/10. (PX3, p. 7) Petitioner reported that he was at work when he tripped over the hitch of a trailer and landed directly on his left knee on concrete. He complained of pain, swelling, and decreased range of motion. He was able to bear weight, but with a limp. Petitioner reported his history of a prior meniscal tear that was treated by Dr. Fullop. Physical examination showed moderate palpable effusion, decreased range of motion, moderate soft tissue swelling, tenderness to palpation at the patella, and swelling and tenderness at the superior patella bursa. X-rays showed lucency within the patella, osteoarthritis, and joint effusion. Petitioner was given an orphenadrine citrate injection and Toradol. He was given work restrictions and referred to his prior surgeon Dr. Fullop. Petitioner was instructed to use an ace wrap until seen by orthopedics.

On 6/28/22, Petitioner completed a Workers' Compensation Employee's Notice of Injury wherein he described the fall which occurred while walking around the cart to open a gate. (RX1) Petitioner reported he tripped, fell, and landed on his left knee on concrete.

On 6/28/22, a Supervisor's Report of Injury or Illness was completed by Jeffrey Hawkins (RX1) Mr. Hawkins indicated Petitioner tripped over a trailer hitch while stepping over, resulting in a swollen and painful knee.

On 6/29/22, Petitioner presented to Wabash General Hospital and was examined by Julia Corwin, PA-C. (PX4) A consistent history of injury was noted. Petitioner rated his left knee pain at 3/10 and sharp pain with bending his knee. Petitioner had superior patella pain and pain on the side of his knee with flexion and swelling. His left knee surgery of 2010 was noted. Examination showed tenderness in the distal quadriceps, mild to moderate swelling, and decreased range of motion. He was unable to perform other testing due to limited range of motion. PA Corwin reviewed the x-rays performed on 6/27/22 and noted moderate to advanced medial compartment osteoarthritis, with bony density at the tibial tubercle from old trauma, and lucency was noted through the superior aspect of the patella and on x-rays from 2010. X-rays were performed that day that showed moderate to advanced tricompartmental osteophytic changes, with a 1.6 cm intra-articular calcified loose body and a moderate reactive joint effusion. PA Corwin noted the x-rays showed less visualization of lucency at the superior patella, with no definitive fracture. On exam, Petitioner was non-tender directly on the patella. He was positive for left knee pain, patellar contusion, and osteoarthritis. She recommended a home exercise program versus formal physical therapy to reduce swelling and regain range of motion. Petitioner was given light duty work restrictions of limited prolonged walking and standing, no kneeling, no deep squatting, and limited stairs. PA Corwin stated Petitioner could wear a knee brace if he preferred.

On 7/13/22, Petitioner returned to PA Corwin and reported his symptoms had improved and he was able to bend his knee more. He had been performing his home exercise program but had difficulty squatting. Petitioner reported that Respondent wanted him to return to work without restrictions and he had returned to work. Petitioner stated he was tolerating work and received assistance when needed. Examination showed tenderness at the superior patella, swelling, and decreased range of motion. PA Corwin discussed a continued home exercise program and a possible left knee injection or surgical consultation if his symptoms persisted. PA Corwin returned Petitioner to work without restrictions as tolerated per his request. He was instructed to follow up in three or four weeks.

On 8/9/22, Petitioner returned to PA Corwin and reported that his symptoms were worsening. He had swelling and difficulty sleeping and getting up and down on his knee. Exam showed edema, tenderness to palpation, and decreased flexion. PA Corwin discussed Petitioner's treatment options due to the severity of his arthritis and persistent pain after his fall. She referred him to an orthopedic surgeon and instructed him to limit aggravating activities.

On 8/16/22, Petitioner was examined by Dr. Justin Miller. Dr. Miller noted that Petitioner presented "for initial evaluation of left knee pain present for many years getting worse after a fall at work 6/27/22". He noted that Petitioner's knee improved some after three weeks, but the pain and swelling returned. Petitioner reported that the pain kept him up at night and kept him from doing things he wanted to do. Dr. Miller reviewed the x-rays and agreed Petitioner had severe tricompartmental arthritis which he believed correlated with examination findings and were consistent with arthritis. Exam showed varus alignment, mild crepitus, and instability. Treatment options included living with the condition, injections, and/or a knee replacement. Petitioner underwent an injection.

On 9/20/22, Petitioner returned to Dr. Miller and reported a few days of relief from the injection and his pain returned. Petitioner wished to proceed with a knee replacement.

On 11/3/22, Petitioner presented to Dr. Matthew Bradley where he gave a history of injury of catching his left toe on the tongue of a trailer, falling with his toe still stuck on the trailer tongue, and landing directly on the anterior aspect of his left knee and patella. (PX5) Dr. Bradley noted Petitioner's prior treatment of anti-inflammatories, Tylenol, modified activity, a home exercise program, ice/heat, and a cortisone injection, all of which failed to provide sustained relief. Petitioner indicated that he was told he needed a knee replacement and wished to have a second opinion. Petitioner informed Dr. Bradley of his prior meniscus tear and arthroscopic debridement in 2010. Petitioner reported that he returned to full duty, had no significant left knee issues, and had not sought medical treatment or missed any work due to pain with regard to his left knee since 2010.

Dr. Bradley's examination showed pain to palpation, positive McMurray's, and mild pain or crepitus with patellar compression testing. X-rays showed bone-on-bone deformity of the medial joint line, lateral osteophytes, and significant patellofemoral disease. Dr. Bradley noted that Petitioner's x-rays showed similar findings on both knees; however, Petitioner's right knee was asymptomatic and his left knee symptoms started when he fell in June 2022. Dr. Bradley noted Petitioner walked with a limp and was unable to live a healthy and active lifestyle without

severe pain. Dr. Bradley advised that a left total knee arthroplasty was the best option for sustained relief and improved function. He opined that the fall on 6/27/22 was at least a participating factor in Petitioner's ongoing left knee pain and need for surgery.

On 12/13/22, Petitioner underwent a left total knee arthroplasty and was placed off work. The indications for the procedure were noted to be severe pain following an injury, failed nonoperative treatment, and pain that was inhibiting Petitioner's ability to stand from a seated position and ambulate greater than 100 feet without severe pain and limitation.

Petitioner attended 14 physical therapy sessions at Carle Richland Memorial Hospital from 12/16/22 through 1/26/23. (PX7) By 12/21/22, Petitioner reported being able to work on his backhoe and did not need a walker. (PX7, p. 11). On 12/23/22, Petitioner reported pain at 10/10 and felt as if he was going backwards. (PX7, p. 13). His incision had also begun bleeding. He was advised to use his walker and not apply too much pressure to his surgical leg. On 12/27/22, Petitioner reported 7/10 pain and popping in his knee when exiting his truck on 12/24/22. The therapist noted Petitioner's knee was very tender on both sides and he had more swelling.

On 12/29/22, Petitioner reported to Dr. Bradley that he had some pain, particularly with therapy, but he was otherwise doing well. Dr. Bradley noted Petitioner continued to have significant weakness of his quadriceps secondary to the surgery. He was given restrictions of desk work only and instructed to continue physical therapy.

On 2/27/23, Petitioner reported to Dr. Bradley that he made significant improvement with range of motion and pain, and he was walking without assistive devices. Dr. Bradley noted Petitioner had excellent range of motion and strength. He recommended that Petitioner finish physical therapy, continue his home exercise program, and return to work with restrictions of no repetitive kneeling. He instructed Petitioner to follow up in three months and indicated that if he continued to progress as expected, consideration would be given for a full duty release. On 8/16/23, Dr. Bradley released Petitioner at MMI without restrictions via a telemedicine visit.

On 4/25/23, Petitioner was examined by Dr. Timothy Farley pursuant to Section 12 of the Act. (RX2) Dr. Farley noted that Petitioner's mechanism of injury was that he caught his toe on a trailer tongue and fell forward, hitting his patella "hard", followed by immediate swelling. Dr. Farley noted Petitioner's total knee arthroplasty. Petitioner reported that his knee is a lot better, but swelling is his biggest concern which increases with activity. Dr. Farley noted that in 2010, while working as a corrections officer for Respondent, Petitioner suffered a left knee medial meniscus tear, underwent an arthroscopy, and was subsequently released to full duty without restrictions. Petitioner reported that he was in his normal state of health following his release in 2010 until his work accident on 6/27/22.

Dr. Farley noted that Petitioner's pre-operative x-rays showed long-term osteoarthritis to the point he had medial subluxation of the femur off the tibia, which takes multiple years to develop. He opined that Petitioner had advanced osteoarthritis that was likely accelerated by his 2010 meniscus surgery and his condition was not causally related to the work accident.

Dr. Matthew Bradley testified by way of deposition on 8/16/23. (PX9) Dr. Bradley is a board-certified orthopedic surgeon and performs hundreds of total knee replacement surgeries each year. He testified that x-rays taken in his office on 11/3/22 showed bone-on-bone deformity of the medial joint line. He testified that Petitioner had pre-existing degeneration in his left knee that was asymptomatic prior to his work accident. Dr. Bradley opined that Petitioner's accident aggravated his pre-existing condition to the point it required surgery. He testified that Petitioner's mechanism of injury of twisting while he caught his toe on the trailer tongue and landing directly on the knee would cause an aggravation of a degenerative condition. He testified that the indication for a knee replacement is pain, which Petitioner did not have prior to his accident, and he was working full duty.

On cross-examination, Dr. Bradley testified that he did not review the emergency room records or prior x-rays. He testified that Petitioner reported immediate pain after his fall which he continued to have when he examined him. His physical examination was positive for pain on the inside of Petitioner's knee which was consistent with x-rays that showed the arthritis was all on the inside aspect of the knee. Dr. Bradley testified that it is absolutely likely Petitioner did not have any symptoms in his left knee prior to the accident, as evidenced by his right knee that was equally arthritic but asymptomatic. He testified that after Petitioner's 2010 meniscus surgery, he recovered without complication, returned to work full duty, and had not sought any kind of treatment to his left knee until the 6/27/22 work accident. He agreed that osteoarthritis can be accelerated by a meniscus surgery. Dr. Bradley recommended that Petitioner undergo x-rays every couple of years to monitor the knee replacement. Dr. Bradley testified that Petitioner had an appointment scheduled in June 2023; however, he was unable to attend, and he ultimately released him at MMI without restrictions by telephone on 8/16/23.

Dr. Timothy Farley testified by way of deposition on 7/11/23. (RX3) Dr. Farley is a board-certified orthopedic surgeon. He testified that Petitioner reported to him he tripped over a trailer hitch when his toe caught which caused him to fall hard, directly on his knee cap. Dr. Farley noted Petitioner had a bowlegged deformity which was consistent with arthritis on the inside of the knee. Dr. Farley testified that knee replacements are typically used to manage osteoarthritis, which can be accelerated by a history of meniscus surgery. He agreed that Petitioner had osteoarthritis in both knees which predated the work accident. He noted that Petitioner had severe bone-on-bone arthritis. He stated there were numerous conservative measures Petitioner could have undergone prior to surgery, but he only pursued a cortisone injection. He testified that a knee replacement was not appropriate only three to four months after symptoms began. Dr. Farley explained that bone-on-bone arthritis is generally painful and he found it odd that someone with a severe bilateral condition would not feel it. Dr. Farley testified that knee replacements were likely inevitable in both of Petitioner's knees due to his severe osteoarthrosis.

Dr. Farley conceded that Petitioner was likely in pain after his fall, but that did not mean that something inside his knee had changed. He did not see evidence of any acute change and testified that Fairbanks changes are known to occur after meniscal surgeries and are a classic finding of arthritis. Dr. Farley agreed that Petitioner's knee replacement was reasonable and necessary to ultimately treat the severe osteoarthritis, but disagreed that the need for surgery was brought about by the work accident.

On cross-examination, Dr. Farley testified that he did not have medical records for Petitioner which predated the work accident, but he did see reference to Petitioner's knee pain that had been present for many years in Dr. Miller's note of August 2022. Dr. Farley agreed that Petitioner's fall could potentially aggravate an underlying arthritic condition. He agreed that Petitioner reported he was asymptomatic in both knees prior to his work accident. He testified that x-rays revealed severe osteoarthritis in both knees, greater on the right. He testified that Petitioner might have had pain from falling on his knee, but it does not mean he aggravated his degenerative condition. Dr. Farley agreed that objective evidence of injury should be coupled with a person's subjective complaints in deciding to pursue surgery. Dr. Farley testified that Petitioner would have inevitably needed a left knee replacement despite the work accident and he would likely require a right knee replacement in the future.

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).

The parties stipulated that Petitioner sustained accidental injuries on 6/27/22 that arose out of and in the course of his employment. It is undisputed that Petitioner suffered from a pre-existing left knee condition and underwent an arthroscopic debridement and meniscus repair in 2010. Petitioner reported that he returned to full duty work, had no significant left knee issues, and had not sought medical treatment or missed any work due to his left knee since 2010. He continued to work full duty for Respondent as a steam fitter and welder for twelve years without difficulty.

The evidence supports that Petitioner's left knee remained symptomatic following his 6/27/22 work accident that did not return to baseline. The Arbitrator finds that Petitioner's return to work following his 7/13/22 visit with PA Corwin did not constitute a return to baseline. Petitioner reported that Respondent wanted him to return to work without restrictions and PA Corwin allowed him to return to work per his request. Petitioner reported that he was tolerating his work duties and received assistance when needed. PA Corwin noted that Petitioner had some improvement with home exercises and activity modification, but he still had difficulty squatting. Examination continued to show tenderness at the superior patella, swelling, and decreased range of motion. After returning to full duty work Petitioner's symptoms increased. He presented to PA Corwin on 8/9/22 and reported his symptoms were worsening.

The Arbitrator is more persuaded by the opinions of Dr. Bradley than those of Dr. Farley. Dr. Farley admitted that Petitioner was working full duty and had not received treatment to his left knee after his surgery in 2010 until his work accident in June 2022. Dr. Farley's opinion that Petitioner's underlying advanced degenerative arthritis was not aggravated or exacerbated by falling directly on his knee on concrete is not supported by the evidence. Dr. Farley agreed that Petitioner's mechanism of injury could cause a potential injury and could aggravate underlying osteoarthritis; however, he testified that he did not know if Petitioner's work accident did in fact aggravate his arthritic condition. He speculated that Petitioner would have experienced symptoms in his left knee prior to his work accident due to his severe degenerative condition. He agreed that objective evidence of injury should be coupled with a person's subjective complaints in deciding to pursue surgery.

Dr. Bradley testified that while Petitioner's fall did not cause his advanced arthritis, it did cause his left knee condition to become aggravated to the point his symptoms did not improve with conservative treatment. His causation opinion is supported by the fact that Petitioner's right knee, which Dr. Farley opined was more degenerative than the left, was asymptomatic, and it was not until the direct blow to the left knee that his symptoms presented. Dr. Bradley found Petitioner credible that he did not have any symptoms in his left knee prior to the accident, as his right knee was equally arthritic but asymptomatic. Dr. Bradley testified that the indication for a knee replacement is pain, which Petitioner did not have prior to his accident, and he was working full duty. There was no recommendation for surgery prior to Petitioner's work accident.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident that occurred on 6/27/22.

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

Dr. Miller and Dr. Bradley recommended a left total knee arthroplasty, and despite causation, Dr. Farley opined that the surgery was reasonable. Petitioner testified that the surgery greatly improved his condition. Respondent stipulated to liability for all medical expense incurred through 11/3/22.

Based on the finding as to causal connection, the Arbitrator finds that Petitioner is entitled to medical expenses. Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 1, directly to the medical providers and pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less, as stipulated by the parties. Respondent shall receive a credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act, and any and all medical expenses previously paid, pursuant to the stipulation of the parties.

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

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

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

(ii) **Occupation**: Petitioner was released without restrictions on 8/16/23. He voluntarily retired from employment with Respondent on 9/1/22 and is currently self-employed. His job duties include repairing and maintaining equipment and handyman work that involves plumbing and general construction. He performs these duties on a daily basis, which requires him to crawl on and under equipment, crawl under houses, and use ladders and scaffolding. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 57 years of age at the time of accident. He has limited earning capacity and voluntarily retired from employment with Respondent. Petitioner is currently self-employed. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: Petitioner voluntarily retired from employment with Respondent on 9/1/22. He is currently self-employed. There is no evidence that Petitioner suffered a loss of earning capacity due to his work-related injuries. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed work accident, Petitioner sustained an aggravation of his pre-existing degenerative condition that resulted in a left total knee arthroplasty. Petitioner voluntarily retired from employment with Respondent on 9/1/22. He is currently self-employed repairing equipment and performing handyman work, including plumbing and construction. He testified that his knee injury makes it difficult to perform some of his job duties because he has to crawl on and under equipment, crawl under houses, and use ladders and scaffolding. Petitioner testified that his knee still swells and becomes stiff when he sits and walks for prolonged periods and with increased activities. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of his left knee/leg, as provided in Section 8(e)12 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 8/16/23 through 8/17/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023262
Case Name	John Haynes v. Metro East Industries
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0452
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Daniel Katzman
Respondent Attorney	James Keefe Jr

DATE FILED: 9/19/2024

/s/Marc Parker, 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

John Haynes,

Petitioner,

vs. NO: 18 WC 23262

Metro East Industries,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, 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 September 27, 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 $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.

September 19, 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	18WC023262
Case Name	John Haynes v. Metro East Industries
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Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Daniel Katzman
Respondent Attorney	James Keefe Jr

DATE FILED: 9/27/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/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

John Haynes
Employee/Petitioner

v.

Metro East Industries
Employer/Respondent

Case # **18** WC **023262**

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 **07/26/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 24, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**58,457.88**; the average weekly wage was $**1,124.19**.

On the date of accident, Petitioner was **37** 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 $**38,222.46** for TTD paid prior to 10/9/19, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**38,222.46,** for temporary total disability benefits paid prior to 10/9/19.

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

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Exhibits 8 and 9, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any and all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act, pursuant to the stipulation of the parties.

Respondent shall pay Petitioner temporary total disability benefits of $**749.46**/week for **3-2/7** weeks, commencing **10/9/19** through **10/31/19**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**674.51**/week for **200** weeks because the injury sustained caused **40%** loss of use of his body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/31/19 through 7/26/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

SEPTEMBER 27, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOHN HAYNES,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 18-WC-023262
	)	
METRO EAST INDUSTRIES,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on July 26, 2023 on all issues. On 8/2/18, Petitioner filed an Application for Adjustment of Claim alleging injuries to his low back as a result of swinging a sledgehammer on 5/24/18. (PX15)

Respondent stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. The parties further stipulated that Respondent shall receive credit of $38,222.46 in temporary total disability benefits paid prior to 10/9/19. Respondent disputes liability for any and all TTD benefits after 10/8/19. Respondent stipulated that Petitioner's injuries and treatment related to his lumbar disc L5-S1 was causally connected to the work accident, but disputes liability for any injuries to level L4-5.

The issues in dispute are causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 42 years old at the time of arbitration. He testified that he resides in Granite City, Illinois with his wife and three children, ages 12, 17, and 18. Petitioner was hired by Respondent in 2012 and was a welder carman at the time of accident. He welded railcars and performed maintenance that required the use of torches and hammers. He worked 50 hours per week at $24.00 per hour. He worked overtime on Fridays. Petitioner testified that in the five years prior to his accident he did not have any injuries or treatment involving his back.

Petitioner testified that on 5/24/18 he was swinging a sledgehammer while straightening the roof of a hopper car when he felt a pop and pain in his low back. He reported his accident, went to the emergency room, and followed up with his primary care physician. Petitioner underwent chiropractic treatment and physical therapy at Multicare Specialist and was referred to

Dr. Gornet. He saw Dr. Gornet on 6/22/18 and complained of low back pain to both sides, buttocks, and hips, with radiating pain/tingling/numbness down his left leg to his foot. Dr. Gornet placed Petitioner on work restrictions and ordered an injection that provided no relief.

Petitioner underwent a disc replacement at L5-S1 on 10/24/18 that alleviated his symptoms for 1 to 2 months. His back pain returned and Dr. Gornet referred him to infectious disease specialist Dr. Gotti. Petitioner stated that an infection was ruled out and he underwent physical therapy and conditioning. Dr. Gornet released him to light duty work on 8/29/19 which was not accommodated by Respondent.

Petitioner testified that his examination with Dr. Kitchens lasted no longer than five minutes. He told Dr. Kitchens that his low back pain was worsening and increased with lifting greater than 25 pounds, bending, and doing housework. He told Dr. Kitchens he had to alternate between sitting and standing and take pain medication to alleviate his symptoms. Dr. Kitchens released him to return to work without restrictions. Petitioner testified he was not aware that Dr. Kitchens released him to full duty work two weeks prior to his examination on 10/7/19. Dr. Kitchens never discussed a diagnosis with Petitioner. Petitioner told Dr. Gornet on 10/31/19 that he was doing reasonably well if he stayed within his restrictions. Petitioner testified that Dr. Gornet told him he could not return to heavy labor, and he placed him on permanent restrictions, which he opined may have to be increased over time.

Petitioner testified that Dr. Gornet told him that his disc injury at L4-5 was due to complications from the discogram. He stated that Dr. Gornet was upset and concerned and took immediate action. Petitioner continued to have pain after Dr. Gornet released him at MMI and he returned to his office in March and May 2021 for radiating back pain from L4-5. Petitioner was referred to Refresher Physical Therapy. Petitioner returned to Dr. Gornet in October 2021 with ongoing back pain.

Petitioner testified that he was examined again by Dr. Kitchens on 8/29/22 at which time he reported 60% improvement since surgery. Petitioner testified that Dr. Kitchens spent no longer than 10 minutes with him. Petitioner told him he had daily pain and soreness.

Petitioner testified that he was very active prior to the work accident. He played basketball and baseball, worked on cars, raced remote control cars, and travelled. He has not returned to work for Respondent since his surgery and has not worked full duty since the work accident. Petitioner testified that Respondent termination him on 5/13/22 for “not showing up” and he was still under permanent restrictions from Dr. Gornet. Petitioner last received TTD benefits on 10/8/19. Petitioner has not sustained any injuries to his back since his work accident.

Petitioner testified that he is a barber and chose to pursue that employment because he already had a license. He uses a stool when cutting hair and can only schedule three appointments at a time due to his symptoms. He works 10 to 15 hours per week. He testified that his wife cleans after he cuts hair. He is earning less money than he did working for Respondent. He has increased pain with prolonged sitting and standing, and constant throbbing pain in his mid to low back. He has flare-ups after activities and takes Meloxicam and a muscle relaxer. His baseline pain is 7/10 and increases to 10/10 with flare-ups. He testified that he can no longer play

sports due to pain and his pain increases with everyday activities. His injuries have affected his relationship with his son because he cannot practice sports with him or teach him how to repair things. His sexual relationship with his wife has been negatively affected. Dr. Gornet told him he might need another surgery in the future if his symptoms worsen and Petitioner believes that his symptoms are worsening.

On cross-examination, Petitioner agreed he does not know if he can actually play sports as he has not attempted to do so since his work injury. He has not attempted to return to a labor job since his accident. He testified that he took an antibiotic for ten days after the discogram on 8/17/18. He agreed that the cultures that Dr. Gotti took at level L4-5 were negative and he took antibiotics, but he did not require a PICC line or IV antibiotics.

Petitioner agreed that he received TTD benefits from the date of his surgery until Dr. Kitchens' examination in October 2019. He started working as a barber in August 2021. Petitioner testified that he was conducting a job search and working for DoorDash from October 2019 through August 2021, but he did not have any job search logs to produce other than his records from DoorDash. He stated he was working within his restrictions while working for DoorDash. He applied for social security disability benefits and was denied.

Petitioner denied having been charged with a felony. He agreed he and his wife were charged with animal cruelty in 2019 for a malnourished deceased dog found at their residence in Granite City. He pled guilty to the charge, but stated the charge was a misdemeanor and not a felony. He denied having been charged with retail theft in September 2019 in Madison County. He was shown a court docket entry that showed a guilty plea to retail theft on 12/2/19. (RX7) Petitioner testified that he does not know any other John T. Haynes, Jr.'s that lived in Madison County, but he had no independent recollection of such a charge or conviction.

MEDICAL HISTORY

Petitioner presented to Dr. Bradley Breeden on 5/24/18 and reported a low back injury while swinging a sledgehammer overhead. (PX13) He returned to Dr. Breeden on 5/30/18 with no improvement and a lumbar MRI was ordered. The MRI was performed on 5/31/18 and revealed a herniation with annular tear at L5-S1.

On 6/22/18, Petitioner was examined by Dr. Gornet for complaints of low back pain to both sides, buttocks, hips, and pain/numbness/tingling down his left leg to his foot. (PX2) Petitioner provided a consistent history of injury and reported no history of back issues prior to 5/24/18. Dr. Gornet reviewed the MRI and diagnosed a disc herniation and annular tear at L5-S1. He referred Petitioner to Dr. Boutwell for an injection and placed him on light duty restrictions of no lifting greater than 10 pounds, alternating between sitting and standing, no repetitive bending, and no repetitive lifting.

On 7/12/18, Petitioner underwent an L5-S1 epidural steroid injection by Dr. Boutwell. Dr. Gornet recommended an MRI spectroscopy from L3 to S1 and a CT discogram at L4-5 and L5-S1.

Dr. Gornet performed the discogram on 8/17/18 that revealed a non-provocative disc at L4-5 and a provocative disc at L5-S1 with posterior annual tear. Dr. Gornet recommended an anterior decompression and disc replacement at L5-S1 which was performed on 10/24/18.

On 12/6/18, Dr. Gornet's examination showed 5/5 strength in all groups and he instructed Petitioner to begin walking and abdominal strengthening. Petitioner was continued off work.

On 2/25/19, Dr. Gornet noted Petitioner had left-sided low back pain. No clinical evidence of infection was noted and examination was normal. A CT scan revealed loss of disc height at L4-5 when compared to Petitioner's pre-operative CT scan and a Schmorl's node-type protrusion. The CT scan revealed a central resorption with sclerotic edges, almost consistent with either an aseptic process or a low-level bacterial process, which the radiologist hypothesized could be from an autoimmune or other septic reaction to the contrast form the discogram. Dr. Gornet opined that this may be the source of Petitioner's continued pain. He discussed with infectious disease a needle aspiration and potential culture of L4-5 and a referral to infectious disease specialist Dr. Gotti. Dr. Gornet prescribed Meloxicam and Cyclobenzaprine and continued Petitioner off work.

On 2/27/19, Dr. Gornet performed an aspiration of the disc space at L4-5 which was negative.

On 3/1/19, Petitioner was examined by Dr. Gotti who ordered two short courses of prophylactic antibiotics pending a culture. (RX3) Dr. Gotti opined that it was difficult to confirm infection with negative cultures. He recommended additional imaging in 2 to 4 weeks based on Petitioner's symptoms. Labs performed on 3/4/19 were negative. On 3/13/19, Dr. Gotti noted the most recent CT scan showed a discitis type reaction without bone destruction. He did not see any obvious signs of infection and ordered Petitioner to continue oral antibiotics for one more week.

On 4/8/19, Petitioner returned to Dr. Gornet with ongoing low back pain. Dr. Gornet noted that all of the cultures were negative, and Petitioner did not exhibit any signs of infection, including fever or chills. He suspected Petitioner suffered from a chemical discitis almost like chymopapain. He recommended physical therapy at Multicare Specialists and continued Petitioner off work.

On 6/10/19, Dr. Gornet noted Petitioner's continued complaints of low back pain, with intermittent pain in his left leg. A lumbar MRI performed that day revealed modic II endplate changes adjacent to the L4-5 interspace with concavity of both L4 and L5 endplates adjacent to the disc. The radiologist felt the findings were consistent with a chronic Schmorl's node protrusion. A CT scan was performed that was unchanged from the 2/25/19 study. Dr. Gornet recommended increased physical therapy and conditioning and continued Petitioner off work. Petitioner underwent therapy at Multicare Specialists. (PX12)

On 6/13/19, Dr. Gotti noted no signs of infection or abscess on imaging. He ordered Petitioner to return as needed and advised no further antibiotics were necessary.

On 8/29/19, Petitioner returned to Dr. Gornet with pain radiating down both legs. Dr. Gornet suspected Petitioner's symptoms were coming from the L4-5 level. He released Petitioner to light duty work with no lifting greater than 25 pounds.

On 9/24/19, Dr. Daniel Kitchens performed a records review at Respondent's request. (RX1, Ex. 2) He opined that Petitioner suffered from Schmorl's node at L4-5 that was not causally connected to the work accident or discogram. He explained that a Schmorl's node is a type of disc herniation that herniates through the cartilaginous endplates of the adjacent vertebrae. He noted that the MRI in May 2018 did not show a Schmorl's node at L4-5 and Petitioner had an onset of pain associated with the Schmorl's node in February 2019, almost one year after the work accident. Dr. Kitchens opined that the discogram and the surgery did not contribute to the Schmorl's node. Dr. Kitchens opined that Petitioner did not suffer from discitis, that he had reached MMI, and could return to work without restrictions.

On 10/7/19, Dr. Kitchens examined Petitioner pursuant to Section 12 of the Act. (RX1, Ex. 3) Petitioner reported that his lower extremity symptoms resolved following surgery, but his low back pain returned within 2 to 3 months after surgery. He had intermittent low back pain that increased with almost any activity. He was taking Meloxicam and Flexeril as needed for pain. He had not returned to his pre-accident physical activities. Dr. Kitchens reviewed additional records and performed a physical examination. He diagnosed a Schmorl's node at L4-5 that was not causally related to the work accident, discogram, or disc replacement surgery. He opined that if the discogram would have caused the node, it would have been where the needle was inserted into the disc and the discogram was not performed through the endplate at L4-5. Dr. Kitchens noted Petitioner had no accidents or trauma to his back that would serve as a traumatic force for the Schmorl's node. He opined that Petitioner could return to full duty work as it related to the disc replacement at L5-S1 and the Schmorl's node as there was no evidence of nerve impingement and Petitioner was not at increased risk for permanent neurologic deficit.

On 10/31/19, Dr. Gornet noted Petitioner continued to do reasonably well as long as he stayed within his restrictions. A repeat CT scan was performed that was unchanged from the study performed in February 2019. Dr. Gornet opined that Petitioner's disc at L4-5 was related to discitis from the discogram. He opined that Petitioner would be best suited for office or sedentary work and he did not believe Petitioner could return to heavy labor work. Dr. Gornet noted that Petitioner's disc at L4-5 showed significant structural change after his post-discography discitis. He placed Petitioner at MMI with permanent lifting restrictions of 25 pounds and the ability to sit and stand as needed. Dr. Gornet opined that Petitioner's restrictions may have to be increased over time. He recommended vocational rehabilitation and potentially going back to school.

On 11/20/19, Dr. Kitchens reviewed additional records and opined that the clinical records did not support Dr. Gornet's opinion that Petitioner suffers from post-discogram discitis. He stated the discogram was performed on 8/17/18 and the abnormalities noted at L4-5 were not diagnosed until 2/25/19. He explained that discitis is a condition that causes severe pain in the lower back and severe pain from inflammation of the disc itself. He explained that a chemical discitis would still have to meet the requirements of severe, intractable back pain, and there was no medical evidence that Petitioner experienced extreme, severe, disabling back pain. He stated

the imaging shows a Schmorl's node at L4-5 with no evidence consistent with discitis of any sort. (RX1, Ex. 4)

On 3/18/21, Petitioner returned to Dr. Gornet and reported he was working as a barber. He had increased back pain radiating upwards to both sides by the end of the day with no lower extremity radiculopathy. Dr. Gornet suspected Petitioner had a mild flare-up from his structural back pain emanating from L4-5. He recommended a brief course of physical therapy and repeat imaging studies. He opined that Petitioner could continue to work as a barber within his permanent restrictions for now. Dr. Gornet noted that imaging showed a stable L5-S1 and a central defect at L4-5 consistent with his previous disc space injection.

On 10/25/21, Petitioner returned to Dr. Gornet for a three-year follow up. Dr. Gornet noted Petitioner continued to have pain on his left side. He continued Petitioner's permanent restrictions and prescribed Meloxicam and Cyclobenzaprine. He ordered Petitioner to return on a yearly basis.

Dr. Matthew Gornet testified by way of deposition on 6/4/22 and 6/27/22. (PX10, 11). Dr. Gornet opined that the MRI dated 5/31/18 showed an obvious central herniation at L5-S1 with a subtle focal lesion at L4-5. There was no evidence that Petitioner had any previous problems of significance with his back. Dr. Gornet performed a discogram on 8/17/18 that showed a non-provocative disc at L4-5 and concordant pain and an annular tear at L5-S1. The MRI spectroscopy revealed 10/10 painful chemicals at L5-S1 so there was a positive correlation between the discogram and the MRI spectroscopy. He performed an L5-S1 disc replacement on 10/24/18 and although Petitioner's symptoms initially improved, he reported low back and buttock pain on 2/25/19. A post-operative CT scan showed either a discitis or resolving aseptic disc process at L4-5. Dr. Gornet opined that the discogram irritated Petitioner's disc at L4-5 and caused a structural problem at that level. He testified that it is very rare for patients to have irritation of the disc itself after placing the dye, but Petitioner unfortunately had structural changes in his disc and disc mechanism that were independent of any infectious process. Dr. Gornet opined that Petitioner requires permanent restrictions due to the structural problem at L4-5. He testified that the objective studies show a large hole in the L4-5 disc that was not present preoperatively and there was no other plausible explanation than to associate the changes with the discogram.

Dr. Gornet opined that, with the chemical process at L4-5, Petitioner could not return to heavy labor work. He found Petitioner to be credible and exhibited no symptom magnification. He opined that although Petitioner requires permanent restrictions, he is not disabled, and he recommended vocational rehabilitation.

Dr. Gornet testified that Dr. Kitchens' opinions were far off medical base, and he could not find any other reputable physician to support them. He testified that it was unfortunate that Petitioner had a complication, but the studies clearly show an irrefutable change in the disc at L4-5. Dr. Gornet opined that since the only thing that involved the L4-5 disc was the discogram, you have to associate the dramatic changes to the discogram itself. He testified that the L4-5 disc could be easily on the edge of becoming more symptomatic, with the only treatment option being

a fusion which would increase Petitioner's disability. He stated that the hole in the disc at L4-5 is so impressive and the disc collapse is so impressive compared to what it was.

Dr. Gornet testified that if you look at the pre-CT discogram and subsequent studies, as well as the MRI, there is no way it is a Schmorl's node as Dr. Kitchens diagnosed. He testified that subsequent to the discogram, Petitioner developed an erosion in his end plates at both sides, which is classic of discitis. He testified it is incomprehensible to diagnose otherwise and may be a deviation of the standard of care. Dr. Gornet opined that all of Petitioner's treatment, including the need for future treatment related to the L4-5 and permanent restrictions, was reasonable, necessary, and causally related to the work incident.

Dr. Daniel Kitchens testified by way of deposition on 7/1/20 and 1/18/23. (RX1, 2) Dr. Kitchens opined that the L4-5 Schmorl's node was not causally connected to the work accident because it was not on the original MRI performed prior to the disc replacement surgery but presented on the post-operative CT scan and MRI. He opined that the discogram did not contribute to the L4-5 Schmorl's node because Petitioner did not suffer from discitis as a result of the discogram. He explained that the needle from the discogram went into a different area of the disc than where the Schmorl's node herniation occurred, there was no Schmorl's node or injury at L5-S1, and there was no medical evidence such as abnormal lab results, biopsy results, or severe intractable back pain consistent with discitis. Dr. Kitchens opined that Petitioner could return to work without restrictions because Petitioner had a normal physical and neurological exam and no pain to palpation in the lumbar spine.

On cross-examination, Dr. Kitchens explained that Petitioner could not suffer from chemical discitis because the same chemical was placed in both discs, and it would be impossible to get discitis at only one level. He testified that he had no evidence of a subsequent traumatic event or injury that could have been a causative factor for the disc herniation at L4-5. He testified that Petitioner did not have any disc herniations at L4-5 prior to Dr. Gornet's treatment. He agreed that a discogram could cause discitis. He opined that it was impossible for a Schmorl's node to cause discomfort into the thigh and down the leg or cause the leg to give way.

Dr. Kitchens testified that following his 8/29/22 exam Petitioner did not require any treatment for the L4-5 Schmorl's node, and that Petitioner could return to work without restrictions. He explained there was no evidence of neurologic disfunction or severe incapacitating pain. He agreed that Petitioner's disc at L4-5 is not healthy, but Petitioner could work as a heavy laborer and lift up to 100 pounds. He agreed that the treatment provided by Dr. Gornet was reasonable and necessary to cure and relieve the effects of Petitioner's work injury.

CONCLUSIONS OF LAW

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

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

In addition, the employee is entitled to benefits where a second injury occurs due to treatment for the first. *See Shell Oil Co. v. Indus. Comm'n*, 2 Ill. 2d 590, 119 N.E.2d 224 (1954); *International Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 263 N.E.2d 49 (1970); *Lincoln Park Coal & Brick v. Indus. Comm'n*, 317 Ill. 302, 148 N.E. 79 (1925); *Harper v. Indus. Comm'n*, 24 Ill.2d 103, 180 N.E.2d 480 (1962), *Brookes v. Indus. Comm'n*, 78 Ill.2d 150, 399 N.E.2d 603 (1979); *Tee Pak, Inc. v. Indus. Comm'n*, 141 Ill.App.3d 520, 490 N.E.2d 170 (1986).

Respondent stipulated that Petitioner's injury at L5-S1 and the need for a disc replacement at that level was causally connected to the work accident, but disputes causal connection with respect to Petitioner's L4-5 condition based on Dr. Kitchens' opinion that Petitioner did not suffer discitis at that level.

Petitioner worked a heavy labor job as a welder for six years prior to his work accident. He worked 50 hours per week with no history of any significant injuries or treatment involving his back prior to 5/24/18. There is no dispute that the work accident caused a disc herniation and annular tear at L5-S1, which resulted in a disc replacement on 10/24/18. Petitioner followed up with Dr. Gornet on 12/6/18 and reported he was doing well. At his second post-operative visit on 2/25/19, Petitioner complained of left-sided low back pain. Dr. Gornet ordered a CT scan that showed loss of disc height at L4-5 when compared to the pre-operative CT scan and a Schmorl's node-type protrusion. The CT scan revealed a central resorption with sclerotic edges, almost consistent with either an aseptic process or a low-level bacterial process, which the radiologist hypothesized could be from an autoimmune or other septic reaction to the contrast form the discogram. Dr. Gornet performed an aspiration of the disc space at L4-5 which was negative. Petitioner treated with infectious disease specialist Dr. Gotti who ultimately ruled out an infection at L4-5. Dr. Gotti noted that the most recent CT scan showed a discitis-type reaction without bone destruction.

Dr. Gornet suspected Petitioner suffered from a chemical discitis. He opined that the discogram irritated the L4-5 disc and caused a structural problem at that level. He testified that it is very rare for patients to have irritation of the disc itself after placing the dye, but Petitioner unfortunately had structural changes in his disc that were independent of any infectious process. He opined that the objective studies showed a large hole in the L4-5 disc that was not present preoperatively and there was no other plausible explanation than to associate the changes with the discogram. He testified that subsequent to the discogram, Petitioner developed an erosion in his end plates at both sides, which is classic of discitis and irrefutable.

Neither Dr. Gornet nor Dr. Kitchens found any evidence that Petitioner suffered a subsequent traumatic event that would cause injury to the L4-5 disc. Dr. Kitchens agreed that a discogram could cause discitis; however, he opined that Petitioner could not suffer from chemical discitis because the same chemical was placed in both discs, and it would be impossible to get discitis at only one level. He agreed that Petitioner did not have any disc herniations at L4-5 prior to Dr. Gornet's treatment. He agreed that Petitioner's disc at L4-5 was not healthy, but there were no signs of neurologic disfunction or severe incapacitating pain that would prevent him from returning to heavy labor work and lift up to 100 pounds. He acknowledged that

Petitioner continued to have constant low back pain despite the disc replacement surgery that increased with activities of daily living, and he found Petitioner to be credible.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being in his lumbar spine at L4-5 is causally connected to the work accident that occurred on 5/24/18.

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

Respondent stipulated that Petitioner's injuries and treatment related to L5-S1 was causally connected to the work accident. Drs. Gornet and Kitchens opined that all of Petitioner's treatment was reasonable, necessary, and related to the work accident of 5/24/18.

Based on the findings as to causal connection, Respondent shall pay the medical expenses contained in Petitioner's Exhibits 8 and 9, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any and all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act, pursuant to the stipulation of the parties.

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

Petitioner claims entitlement to temporary total disability benefits from 10/9/19 through 5/13/22. Respondent stipulated that Petitioner is entitled to TTD benefits following his surgery through 10/8/19, but disputes liability for TTD benefits after 10/8/19 based on Dr. Kitchens' opinion that Petitioner's condition was not causally connected to the work accident, and he could return to work without restrictions. The parties stipulated that Respondent is entitled to a credit for TTD benefits paid prior to 10/9/19 in the amount of $38,222.46.

Petitioner testified that he last received TTD benefits on 10/8/19, which is consistent with Respondent's notice of termination of TTD benefits dated the same day. (RX6) On 10/31/19, Dr. Gornet released Petitioner at MMI with a permanent 25-pound lifting restriction and the ability to sit and stand as needed. Dr. Gornet recommended vocational rehabilitation.

It is undisputed that Petitioner did not return to work for Respondent. He testified that in August 2021 he became self-employed as a barber, and he currently works 10 to 15 hours per week. The Arbitrator does not find Petitioner's testimony credible as to when he began employment as a barber. On 3/18/21, Petitioner reported to Dr. Gornet that he was working as a barber within his restrictions. Dr. Gornet recommended physical therapy and advised that Petitioner could continue working as a barber within his permanent restrictions.

Petitioner testified that he performed a job search from October 2019 through August 2021, but he did not have any job search logs to produce. He testified that he worked for DoorDash while he searched for employment, but no records of such employment were entered

into evidence. There is no evidence that Petitioner engaged in a formal vocational rehabilitation program.

The Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 10/9/19 through 10/31/19, the date Dr. Gornet released him at MMI, representing 3-2/7th weeks, at the rate of $749.46/week, pursuant to Section 8(b) of the Act.

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

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

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

(ii) **Occupation**: Petitioner was released with a permanent 25-pound lifting restriction and the ability to sit and stand as needed. Dr. Gornet opined that Petitioner could not return to heavy labor work. Petitioner is currently self-employed as a barber, working significantly less hours and earning less pay than he did working as a welder for Respondent. The Arbitrator places significant weight on this factor.

(iii) **Age**: Petitioner was 37 years of age at the time of accident. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity**: Petitioner was not able to return to his pre-accident employment as a welder or perform heavy labor work due to his permanent restrictions. He did not engage in a formal vocational rehabilitation program. He is currently self-employed as a barber, working significantly less hours and earning less pay than he did working as a welder for Respondent. The Arbitrator places significant weight on this factor.

(v) **Disability**: As a result of the accident, Petitioner sustained a disc herniation and annular tear at L5-S1 resulting in an anterior decompression and disc replacement. He developed complications and structural injuries at L4-5 due to the discogram that resulted in permanent restrictions of no lifting greater than 25 pounds and the ability to sit and stand as needed. Dr. Gornet opined that Petitioner's restriction may increase over time. Petitioner is not able to return to heavy labor work, including his pre-

accident position as a welder for Respondent, where he worked 50 hours per week at $24.00 per hour. Petitioner did not engage in a formal vocational rehabilitation program, and he is currently self-employed as a barber, working significantly less hours and earning less pay than he did working as a welder for Respondent.

Petitioner testified that he was very active prior to the work accident. He played basketball and baseball, worked on cars, and engaged in physical activities with his children which he feels he can no longer do because of back pain. His job duties as a barber increase his symptoms and he has to sit on a stool while cutting hair and limit his daily appointments. He has increased pain with prolonged sitting and standing and a constant throbbing pain in his mid to low back. He takes Meloxicam and a muscle relaxer and believes his symptoms are worsening. Petitioner's injuries have negatively affected his relationship with his wife and children. The Arbitrator places significant weight on this factor.

The Arbitrator finds that the appropriate award is loss of an occupation/trade as provided in Section 8(d)2 of the Act. The Arbitrator finds that Petitioner is not able to return to his usual and customary duties as a welder or heavy laborer. The Arbitrator is guided by the Commission's decision in *O'Leary v. City of Chicago*, 98-WC-8840, 07 IWCC 743 (2007), wherein the Commission affirmed the decision of the Arbitrator who awarded 40% loss to the person as a whole based upon Petitioner's loss of occupation as a result of a right ankle injury. The Commission Decision, which adopted the Arbitrator's award, discussed in detail a number of cases wherein an award under Section 8(d)2 was made for loss of occupation rather than Section 8(e). The *O'Leary* decision cited with approval *Barfell v. U.E. and C. Catalytic Inc*., 96 IIC 1299, wherein a 37 year old pipefitter who suffered a left torn meniscus that required surgery was placed on permanent work restrictions. The employer in *Barfell* provided Petitioner with fulltime work as a welder and earned union scale wages as a pipefitter. Nonetheless, the Commission concluded that a 40% loss of use under Section 8(d)2 rather than loss of use of a leg under Section 8(e) was appropriate. The commission cited *O'Leary, supra* with approval in *Ridgeway v. TLC*, 02 IWCC 65692, 11 IWCC 0920, 2011 WL 5014274.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of his body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/31/19 through 7/26/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011217
Case Name	Rebecca Hawkins v. Peoria School District 150
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0453
Number of Pages of Decision	26
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Todd Strong
Respondent Attorney	Michael Brandow

DATE FILED: 9/23/2024

/s/ Raychel Wesley, 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 accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REBECCA HAWKINS,

Petitioner,

vs. NO: 22 WC 11217

PEORIA SCHOOL DISTRICT 150,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability, §19(k) penalties, §19(l) penalties, §16 attorney fees, vocational rehabilitation, and credit, and being advised of the facts and law, reverses the Decision of the Arbitrator. 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).

PROLOGUE

Although proofs were closed on April 4, 2023, they were re-opened on April 6, 2023 in order to include Respondent's 4A as an exhibit, as the OSF Healthcare medical staff had inadvertently left this medical record out of the records contained in Respondent's initial Exhibit #4. The arbitrator allowed Respondent's 4A to be included in the record, with no objection from Petitioner.

FINDINGS OF FACT

At the time of trial, Petitioner was 57 years old. She earned a Bachelor of Arts from Bradley University in December 1987. She also completed 21 hours of graduate work in education. She has been a schoolteacher since 1988. She was hired by Respondent as a substitute teacher on February 23, 2021. In July of 2021, she was hired full time by Respondent for the 2021-22 school year.

On April 1, 2022, Petitioner was a sixth-grade math and science teacher at Sterling Middle School. Her duties included arranging desks and books in order to meet the needs of students and abide by any protocols for things such as COVID-19. She would have one minute in between classes, during which she would walk around making sure all pencils were sharpened and the materials to be handed out to students were in order. During classes, she walked around monitoring students to make sure they were on task. If something such as a fight broke out, she would escort the other students to the hallway to keep them out of harm's way. She also has to protect herself from students pushing or touching her.

In the event of an active shooter, it would be her job to lock the classroom door, pull window shades down, and make sure that all students were in their predetermined location in the room so that they could not be seen from the window or door. This required her to be able to ambulate quickly. She also had to move quickly to secure the students in the event of a tornado or fire.

Pre-accident Medical Treatment

On December 10, 2021, Petitioner presented to Dr. Mallory J. Kelly for treatment unrelated to the instant claim. The record also notes that she was working at Sterling Middle School, and that at the end of the day after being on her feet all day, her left mid-foot started to hurt. Petitioner added that she also has occasional swelling, and that many years ago she had a vein stripping performed. She had no left foot tenderness, abnormality, or deformity upon examination. No left foot diagnosis was rendered. *RX 4, p.111-112, 116*.

On March 1, 2022, Petitioner presented for right knee pain. She indicated she does a lot of hiking and backpacking. *RX 4, p.123-124*.

Accident

On April 1, 2022, Petitioner had just escorted students back to her classroom and was teaching math. She was wearing sandals. There were 17 students in a room that was three or four times the size of the IWCC arbitration hearing room. The flooring was old school tile. While walking normally back from either talking with a student or passing items out, there was a student's desk that was up against Petitioner's desk. As Petitioner stepped, she felt a sharp, stabbing pain in her left foot. She immediately went down and caught herself on the back of a student's chair. She was not holding anything in her hand at the time.

Due to COVID-19 restrictions, the student desks were further apart, resulting in a more narrow walkway. Petitioner testified that she did not know if she slipped on paper, hit the edge of the desk, or stepped awkwardly. However, she acknowledged that the closeness of the student's desk to her own desk made it more difficult to walk between the two. She testified that she had to maneuver through the aisles in a smaller proximity. *Transcript, p.24-25*.

Petitioner then hobbled to her desk, as she could not put pressure on her foot. A student reported the incident to the office, and the Vice Principal responded. The Supervisor's Report of Injury indicates Petitioner tripped on the leg of a table. *PX 2*. However, Petitioner added that this was only the Vice Principal's summation of what Petitioner told her. Petitioner reiterated at trial that she either mis-stepped, slipped on some paper, or hit a table leg and twisted her foot. On the Supervisor's Report of Injury, Petitioner wrote "Stepped either on something or side of shoe on leg of desk twisted." *PX 2*. Petitioner admitted there could be a number of different causes as to why she slipped or twisted. She testified on cross examination that she was not aware of what caused her to fall. *Transcript, p.51-52*.

Petitioner emailed her principal about the incident. The principal at Sterling Middle effectuated medical care for Petitioner at the Illinois Work Injury Resource Center the same day.

On April 1, 2022, Petitioner presented for left ankle and foot pain. She indicated she was walking back to her desk when she noticed sharp pain in her left ankle. She stated the ankle "rolled/gave out." She did not fall down, and braced herself with a desk and table. She limped to her desk and sent a student for help. She was uncertain if she tripped on something or if there was something on the ground causing her injury. She could not stand on it or apply any pressure, observed swelling and stated it was painful. X-rays revealed a non-displaced fracture of the fifth metatarsal. She had moderate-severe edema with tenderness and decreased ankle range of motion with pain. She was diagnosed with a left ankle strain and a fractured fifth metatarsal. She was placed on sedentary restrictions with use of crutches or boot, prescribed pain medication, and referred to Midwest Orthopaedic. *PX 4*.

On April 19, 2022, Petitioner presented to Dr. Nirain A. D'Souza at Midwest Orthopaedic, indicating she injured her left foot when she stepped on something and inverted her foot. X-rays revealed a widely displaced fracture of the fifth metatarsal, and left foot surgery was recommended. *PX 6, p.61-63*. Surgery was performed May 9, 2022, with a screw implanted in Petitioner's foot. *PX 6, p.49-50*. Petitioner was told to avoid weight bearing, but she was using crutches as she did not have a scooter, and she "might have put my foot down as I stood getting my toast…" *Transcript, p.56*.

On May 17, 2022, Petitioner was seen in the clinic walking full weightbearing in her splint, which had evidence of wear. It was reiterated that any load on her foot could affect her outcome. She was kept off work. *PX 6, p.43-45*.

On May 26, 2022, Petitioner admitted to walking on her extremity within the first week after surgery. Petitioner indicated it was difficult for her to be non-weightbearing, as she lives alone in a second floor apartment. She denied foot pain, numbness, and tingling, however the

premature weightbearing had basically distracted her fracture. She was placed in a cast and told to continue non-weightbearing. She was kept off work. *PX 6, p.37-39*.

On June 2, 2022, it was noted Petitioner had been weightbearing excessively. Her prognosis was concerning, and she admitted that she did this to herself. Dr. D'Souza agreed to return her to work, but with the restriction that she remained non-weightbearing. *PX 6, p.35-36*. On June 21, 2022, Petitioner was placed in a cast, as her old one had significant wear on the bottom. Fortunately, she was not having too much pain. *PX 6, p.31*.

On July 28, 2022, Petitioner's foot was doing very well. She had no pain complaints and was walking comfortably in a boot. She was able to stand and walk without her boot with no symptoms or limping. Physical therapy was recommended for two weeks. *PX 6, p.25-28*. On August 24, 2022, Petitioner still had foot pain when wearing stiff boots, with intermittent throbbing and swelling. She had progressed to a home exercise program and was continued on therapy. *PX 6, p.10-11*.

On September 8, 2022, Petitioner followed up. Dr. D'Souza did not believe there would be any long-term structural issues with her foot. Dr. D'Souza also opined Petitioner's residual foot pain may or may not resolve over time, but will not be a restriction from working. She was released to full duty, but was recommended to continue with physical therapy for another six weeks. *PX 6, p.3-4, 6, PX 7*.

On September 14, 2022, Petitioner sought a second opinion with Dr. Blair Rhode at Orland Park Orthopedics. Petitioner reiterated she was injured when she awkwardly stepped and inverted her foot. Upon examination she was diagnosed with left foot pain and a fracture of the metatarsal. Dr. Rhode took Petitioner off work pending a Functional Capacity Evaluation ("FCE"). *PX 10*.

A valid FCE was performed October 14, 2022. Petitioner gave full effort, but was only able to complete generalized activities due to pain. She was deemed able to perform light duty for overhead lifts, and light medium for other activities. *PX 11*. On October 26, 2022, Dr. Rhode opined Petitioner had plateaued and discharged Petitioner at maximum medical improvement ("MMI") with permanent restrictions of light medium duty. *PX 10, PX 12*.

Petitioner has requested work accommodations within her permanent restrictions from Respondent, but has been unsuccessful. She was not brought back to work by Respondent for the 2022-23 school year. She was placed on administrative leave May 3, 2022. See *PX 3*. At the end of the 2022 school year, Petitioner had accrued earnings that were due and owing for work performed. Instead of receiving these payments in a lump sum, Petitioner elected to receive payments throughout the summer, from May 3, 2022 through approximately August 12, 2022. She would have received this money regardless of her April 1, 2022 injury. Petitioner has never received temporary total disability ("TTD") or Maintenance benefits for this injury, despite a demand for both being made. *Transcript, p.36-37*.

Petitioner also made a demand for vocational rehabilitation assistance in the form of job placement. *PX 14*. Respondent has never offered such. A January 12, 2023 blind labor market survey report from Tracy Peterlin identified approximately 31 jobs that Petitioner could apply for.

RX 2. These jobs included performing roofing services, plumbing, and work with Citizens Equity First Credit Union, despite the fact that Petitioner has no background in roofing or plumbing, nor does she have any banking experience. However, Petitioner still applied for these jobs. The labor market survey noted Petitioner was operating at a light to medium physical demand level, and that the occupation of teacher is a light physical demand position. Thus, Petitioner met the physical requirements to be a teacher. Ms. Peterlin opined Petitioner was employable, but acknowledged that salaries for potential occupations targeted in the labor market survey may not be commensurate with Petitioner's earnings at the time of injury.

Petitioner executed a self-directed job search. She applied to approximately 400 jobs between October 27, 2022 and the April 4, 2023 hearing date, including the jobs she was able to find out of the 31 recommended by Ms. Peterlin. *PX 16-18*. However, Petitioner has been unable to secure her own employment. She also applied for 40 positions in Respondent's school district.

Petitioner received unemployment benefits from September 2022 through March 12, 2023, but is aware that if she receives TTD and/or Maintenance benefits, she will be obligated to reimburse the Illinois Department of Employment Security.

Currently, upon waking up, Petitioner has left foot stiffness. She has to be careful stepping into her tub and traversing stairs. She can no longer enjoy her hobbies of kayaking, backpacking, and hiking. She cannot walk or stand more than two hours without pain. She also cannot make abrupt stop and pivot maneuvers with her left foot. Lastly she has to walk slower on rocky or uneven surfaces.

CONCLUSIONS OF LAW

I. Accident

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment, and (2) that the injury arose out of the claimant's employment. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 203 (2003), as cited in *McAllister v. Illinois Workers' Compensation Commission*, 2020 IL 124848, ¶ 32. The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister* at ¶ 34. A compensable injury occurs "in the course of" employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment. *Id*.

The Commission affirms the arbitrator's finding that Petitioner's fall[1] occurred in the course of her employment, as at the time, she was walking in her classroom after having helped a student. Given the circumstances of Petitioner's work accident, it is undisputed that she was in a place that she would be expected to be, at a time that she would be expected to be there, and that the circumstances surrounding her work accident were reasonably foreseeable.

[1] We recognize that Petitioner herein did not "fall" per se, but that the only reason she did not fall is due to her catching herself on a desk.

However, regarding the "arising out of" component of an accident under the Act, the Commission views the evidence differently than the arbitrator, and finds Petitioner did prove by a preponderance of evidence that her injury arose out of her employment with Respondent. 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. *McAllister* 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 pure unexplained fall is not compensable in Illinois, as it does not satisfy the "arising out of" requirement. *Builder's Square, Inc. v. Illinois Workers' Compensation Commission*, 339 Ill. App. 3d 1006, 1010 (2003). However, an employee may still satisfy this requirement even in an unexplained fall case by putting forth evidence which supports a reasonable inference that the fall stemmed from a risk related to the employment. *Baldwin v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 472, 478 (4th Dist. 2011). It is claimant's burden to present evidence that would permit a reasonable inference that the fall was related to her employment. *Id*. at 478. Employment related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed, such as the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling. See *Illinois Consolidated Telephone Co. v. Industrial Commission*, 314 Ill. App. 3d 347, 352 (5th Dist. 2000).

Based on the totality of evidence provided, the Commission finds Petitioner has put forth sufficient evidence supporting a reasonable inference that her fall stemmed from an employment-related risk. Accordingly, based on the totality of evidence, the Commission finds that the "arising out of" component of accident under the Act has been met.

The record reflects Petitioner's "fall" occurred in her classroom, an area only open to students and school employees. Petitioner also testified that, due to work-related COVID-19 protocols, the student desks in the room were more spread out, thus narrowing the area between the desks in the front of the class and the Petitioner's own desk. Petitioner testified that this made it more difficult for her to walk, as it caused her to maneuver down this narrow walkway. Respondent did not rebut this specific set-up in Petitioner's classroom. Petitioner also testified that she did not know if she slipped on paper, hit the edge of the desk, or stepped awkwardly. However, we find that this confined space increases the likelihood that Petitioner's leg did hit the edge of a desk, causing her to then step awkwardly. Based on these facts, a reasonable inference can be drawn that Petitioner either tripped on the student's desk or stepped awkwardly due to the narrowness of the aisle, causing her foot to invert as she stepped.

Based on the foregoing, the Commission finds sufficient evidence permitting a reasonable inference that Petitioner "fell" due to the performance of a work-related task in a narrow area which contributed to her "fall." This is an employment-related risk, and satisfies the exception to

the rule of unexplained falls, which also satisfies the "arising out of" component of accident. Petitioner has proven an accident under the Act.

II. Causal Connection

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 Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder, at P26*.

In the instant case, there is evidence that Petitioner had preexisting left foot pain that she experienced while working. However, upon examination, she had no left foot tenderness, abnormality, or deformity. Further, no left foot diagnosis was rendered.

After the instant April 1, 2022 accident, Petitioner was immediately diagnosed with a fractured fifth metatarsal and placed on sedentary restrictions. Subsequently, after presenting to Dr. Nirain A. D'Souza, an orthopedist, she was recommended for an open reduction and internal fixation of the fifth metatarsal, and autogenous calcaneal bone graft, which was performed May 9, 2022. Although she underwent physical therapy, Petitioner' residual pain continued. An FCE on October 14, 2022 revealed she was capable of light medium demand work, and on October 26, 2022, after seeking a second opinion with Dr. Blair Rhode, Petitioner was released at MMI with permanent light medium duty restrictions.

At trial, Petitioner testified she still has left foot stiffness upon waking up in the morning. She has to be careful stepping into her tub and traversing stairs. She no longer enjoys her hobbies of kayaking, backpacking, and hiking. She cannot walk or stand more than two hours without pain, and cannot make abrupt stop and pivot maneuvers with her left foot. Lastly she has to walk slower on rocky or uneven surfaces.

Based on the above, we find that while Petitioner may have had a preexisting left foot condition, she was still able to work full duty in the months leading up to the accident date in question. There is no evidence of any pre-accident left foot treatment or diagnosis, much less any metatarsal fractures. After the accident, she was recommended for surgery, which was

accompanied by physical therapy. Currently, Petitioner still suffers from residual effects of her injuries which were not present prior to the accident.

Accordingly, the Commission finds that the instant accident aggravated and accelerated Petitioner's pre-existing left foot condition, which deteriorated to the point where a left fifth metatarsal surgery became necessary. We reverse the arbitrator's ruling, and find that Petitioner's current left foot condition is causally related to the instant accident.

III. Medical Expenses

§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 Commission*, 201 Ill. App. 3d 880, 888 (2nd Dist. 1990). Consistent with the causal connection ruling above, the Commission finds that all expenses related to Petitioner's left foot condition were reasonable, necessary, and causally related to the instant work accident. Other than arguing against the issue of accident, Respondent offers no argument in rebuttal for medical expenses. As such, the Commission finds Respondent liable for all incurred medical expenses within Petitioner's Exhibit #13 which are related to Petitioner's left foot condition. Respondent shall receive credit for all medical expenses previously paid.

IV. Temporary Total Disability

Petitioner requests TTD benefits from May 3, 2022 (date of administrative leave) through October 26, 2022 (date of MMI). Petitioner also argues Respondent should not be entitled to TTD credit based on the payments it made to Petitioner from May 3, 2022 through August 12, 2022. Petitioner argues that these payments were made for earnings Petitioner had already accrued and would have been due regardless of the accident. Petitioner cites *City of Joliet v. IWCC*, 2023 IL App. 3d 220175WC, where the appellate court found that a payment may only form the basis of an §8(j) credit if it is payable solely as a result of the work-related injury. Petitioner goes on to argue that payment for work already performed should not constitute an §8(j) credit, as this would result in an undue benefit for Respondent, who was already liable for wages, and who would now receive a windfall for not having to pay TTD benefits.

Having analyzed the record as a whole, we disagree with Petitioner's argument. We find that the ruling in *City of Joliet* is inapplicable here, as any credit Respondent receives from payment of wages would not fall under §8(j), as the payment of wages was not made from any group plan. Additionally, we find that the payments made by Respondent were not for work already performed, as Petitioner was placed on administrative leave prior to completing the school year. In actuality, not awarding Respondent TTD credit through August 12, 2022 would result in a windfall for *Petitioner*, as she would then be receiving her full salary plus TTD benefits, making it more financially advantageous for her to be injured rather than employed. The purpose of the

Act is to compensate, or 'make whole,' an injured employee, not to provide a windfall. Cook v. Industrial Commission, 231 Ill. App. 3d 729, 732 (3d Dist. 1992). Accordingly, we find that Respondent is entitled to a credit for TTD paid, and that this credit does not fall under §8(j) of the Act.

In order to prove entitlement to TTD benefits, the employee must demonstrate not only that he did not work, but also that he was unable to work. *Rambert v. Industrial Commission*, 133 Ill. App. 3d 895, 903 (2nd Dist. 1985). However, determining the TTD period is a question of fact for the Commission, and its decision should not be disturbed unless it is against the manifest weight of the evidence. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Commission*, 387 Ill. App 3d 244, 256-57 (2008).

Between May 3, 2022 and October 26, 2022, there appears to be only one instance in which Petitioner was returned to full duty work, that being September 8, 2022 by Dr. D'Souza. However, only six days later, Petitioner sought a second opinion from Dr. Rhode, who immediately took Petitioner off work-a status she maintained until being released at MMI on October 26, 2022. There is no evidence in the record of any drastic deterioration in Petitioner's condition between September 8th and 14th of 2022. Further, Dr. D'Souza's September 8th 2022 decision to return Petitioner to full duty despite her ongoing complaints of pain was accompanied by an order of six additional weeks of physical therapy, indicating that Petitioner's symptoms remained ongoing. Dr. Rhode's opinion is even more persuasive, considering Petitioner's inability to even *perform* (let alone complete) all of the requested tasks during a subsequent FCE due to her pain. The totality of evidence indicates Petitioner was unable to work through October 26, 2022.

Accordingly, based on the totality of evidence, the Commission finds that Petitioner was unable to work between May 3, 2022 and October 26, 2022, thus she is entitled to TTD benefits. However, while Petitioner is entitled to said benefits at a rate of $674.20/week for a period of 25 & 2/7ths weeks, Respondent shall be entitled to a credit for the wages it paid through August 12, 2022.

V. Maintenance

The Commission also finds Petitioner is entitled to Maintenance benefits. To be entitled to such benefits, a claimant must be engaged in a rehabilitation program, which can be a formal job training or a self-directed job search. See *W.B. Olson, Inc. v. Illinois Workers' Compensation Commission*, 2012 IL App (1st) 113129WC, ¶ 41. Here, Petitioner was placed on permanent restrictions by Dr. Rhode on October 26, 2022, after a valid FCE. Subsequently, she applied for jobs within her restrictions.

Job search efforts were submitted into evidence in Petitioner Exhibits #16-18 and corroborate Petitioner's testimony. The exhibits indicate Petitioner was actively involved in a job search, and is thus entitled to Maintenance benefits under the Act. Accordingly, the Commission awards Petitioner Maintenance benefits of $674.20/week for a period of 22 & 6/7ths weeks (October 27, 2022 through April 4, 2023-the date of trial). Respondent shall receive credit for any benefits previously paid.

VI. Vocational Rehabilitation

A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity. *Greaney v. Industrial Commission*, 358 Ill. App. 3d 1002, 1019 (1st. Dist. 2005). It is widely accepted that the primary goal of rehabilitation is to return the injured employee to work. *Schoon v. Industrial Commission*, 259 Ill. App. 3d 587, 594 (3rd Dist. 1994). If the injured employee has sufficient skills to obtain employment without further training or education, that factor weighs against an award of vocational rehabilitation. *National Tea Co. v. Industrial Commission*, 97 Ill. 2d 424, 432 (1983).

The Commission finds that Petitioner has sufficient skills to obtain employment, but even Respondent's own Vocational Expert Ms. Peterlin acknowledged that the earnings in her labor market survey may not be commensurate with Petitioner's earnings at the time of injury. It may be true that the injuries she sustained during the instant accident did not preclude her from returning to her usual and customary occupation as a teacher, per the FCE results and the physical demands of a teacher. Nevertheless, we find that there is an increased likelihood Petitioner will be able to obtain employment upon completion of vocational training, making vocational rehabilitation a reasonable option. See *Id*. Rehabilitation may include resume sharpening, interviewing skills, and other tactics designed to help Petitioner stand out as an applicant. Despite her diligent self-directed job search, Petitioner has been unable to secure her own employment. The Commission finds that rehabilitation may be helpful, and due to Petitioner's educational background and transferable skills, employment could be secured rather swiftly. Accordingly, we award vocational rehabilitation to Petitioner.

VII. Penalties and Fees

In her brief, Petitioner admits that there was a good faith basis for dispute, thus no penalties and fees should be awarded. *Petitioner's Statement of Exceptions, p.16*. The Commission agrees, as there is a genuine dispute regarding the issue of accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 2, 2023, is hereby reversed for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner proved by a preponderance of evidence she sustained an accidental injury arising out of and in the course of her employment with Respondent on the date in question.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current left foot condition of ill-being is causally related to the instant work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $674.20 per week for a period of 25 & 2/7ths weeks, representing May 3, 2022 through October 26, 2022, 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. Respondent shall have TTD credit for wages paid to Petitioner from May 3, 2022 through August 12, 2022, as well as credit for any other TTD benefits previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner maintenance benefits in the amount of $674.20 per week for a period of 22 & 6/7ths weeks, representing October 27, 2022 through April 4, 2023, as provided in §8(a) of the Act. Respondent shall have credit for any maintenance benefits previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all medical expenses incurred in the care and treatment of Petitioner's left foot condition as detailed in Petitioner's Exhibit 13, pursuant to §8(a) and subject to §8.2 of the Act. Respondent shall be given a credit for all medical expenses previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for vocational rehabilitation and job placement services for Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for Penalties and fees under §19(k), §19(l) and §16 are hereby denied.

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.

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

Under §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.

September 23, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 7/24/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011217
Case Name	Rebecca Hawkins v. Peoria School District 150
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Todd Strong
Respondent Attorney	Michael Brandow

DATE FILED: 6/2/2023

THE INTEREST RATE FOR THE WEEK OF MAY 31, 2023 5.29%

/s/Bradley Gillespie, 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
19(b)

Rebecca Hawkins
Employee/Petitioner

v.

Peoria School District 150
Employer/Respondent

Case # **22** WC **011217**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **April 4th and April 6th 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, **April 1st 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**56,000.00**; the average weekly wage was $**1,011.29**.

On the date of accident, Petitioner was **56** 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 $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**N/A**.

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

ORDER

Petitioner failed to establish that she sustained an accident arising out of her employment with Respondent. Therefore, all other issues are moot. Benefits 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.

Bradley D. Gillespie **JUNE 2, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REBECCA HAWKINS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 22WC011217**
	)	
PEORIA PUBLIC SHCOOLS, DISTRICT 150,	)	
	)	
	)	
Employer/Respondent.	)	

19(b) DECISION OF ABRITRATOR

On or about April 28, 2022, Rebecca Hawkins [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to her left foot and person-as-a-whole when she slipped in a classroom while teaching for Peoria Public Schools District 150 [hereinafter "Respondent"]. (PX #1) This matter proceeded to hearing on April 4, 2023, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Accident;
- Causation;
- Medical Expenses;
- Temporary Total Disability Benefits;
- Penalties and Attorney Fees; and
- Vocational Rehabilitation.

STATEMENT OF FACTS

DIRECT EXAMINATION

At the time of trial, Petitioner testified to being 57 years old. She stated that her highest level of education was a Bachelor of Arts degree received at Bradley University. This allowed her to work in different school districts and have various contracts throughout her career as a teacher. (Tr. p. 14)

Petitioner testified that she was initially hired as a substitute teacher on February 23, 2021, and then hired full time in July of 2021. At the time of the alleged accident to her left foot on April 1, 2022, Petitioner testified that she was working as a 6th grade teacher at Sterling Middle School in Peoria. (Tr. p. 15)

Petitioner testified that her job duties would require the full use and function of her left foot or ankle. She testified that as a teacher she would have to arrange the classroom to meet the needs of students and if there were any protocols such as Covid-19. (Tr. p. 16) Petitioner testified that teachers had to physically move around desks and books. *Id.* She testified that she had to

walk back and forth in the classroom to monitor the students and make sure they were staying on task. (Tr. p. 17) She testified that she had to have the physical ability to move, ambulate, walk in a quick and abrupt manner when there was a physical altercation involving the students, during active shooter, fire, and tornado drills. (Tr. pp. 16-21)

Petitioner testified about the alleged accident of April 1st, 2022. She stated that at the time of the accident; she didn't see anything on the floor, wasn't holding anything. but as she stepped, she felt a sharp pain in her left foot that she described as if someone stabbed her with a knife. Petitioner testified that she immediately went down but caught herself on the back of a student's chair and desk. (Tr. p. 22) She testified that the placement of the desks was such that there were narrow aisles making it more difficult to walk and maneuver through. (Tr. p. 23) She stated that, as she was walking through these narrow aisles, she was walking normally, she doesn't know if she slipped or she hit the edge of the desk, or even stepped awkwardly, she can only testify to feeling pain in her left foot and ankle. (Tr. p. 24)

Petitioner testified that prior April 1, 2022, she did not have any medical issues, problems, or physical problems with her left foot or ankle. (Tr. p. 25) She recalled wearing sandals on the day in question. *Id*. Petitioner stated that there were approximately 17 students present in the classroom. (Tr. p. 26)

Petitioner described the floor she walked on as old tile. She testified that Lindsay Dietrich, the Vice Principal, responded after a student was sent to the office for assistance. (Tr. p. 27) Petitioner testified about the supervisor's report regarding tripping on a leg of a table. She stated that she was walking and didn't know if she mis-stepped, if there was a piece of paper, or if she hit a table, or a table leg that twisted her foot. (Tr. p. 28) Petitioner confirmed that an Employer's First Report of Injury completed by her stated that "stepped either on something or side of shoe or leg of desk twisted." (Tr. pp. 28-29; *see also* PX #2)

Petitioner testified that Principal Lynn Lane helped her get an appointment at IWIRC on the date of the alleged accident. (Tr. p. 30) She stated that, when she arrived at IWIRC, her foot was swollen, she could not put any pressure on it and that it hurt a lot. *Id.* Petitioner testified that IWIRC diagnosed her with a left ankle strain and a fractured fifth metatarsal. *Id.* She was placed on sedentary restrictions and given a referral to see Dr. D'Souza at Midwest Orthopedic Center. (Tr. pp. 30-31) Petitioner testified that, after seeing Dr. D'Souza on April 19, 2022, he recommended surgery. (Tr. p. 31) The surgery was performed at Proctor Hospital on May 9, 2022. *Id.* She testified that her primary care physician at OSF Medical Group in Chillicothe, gave her surgical clearance. (Tr. p. 32) Petitioner confirmed that she was prescribed anti-inflammatory and pain medication. *Id.* She testified that a screw was implanted in her left foot to hold together the metatarsal plate. *Id.* After the surgery, Petitioner followed up with Dr. D'Souza, who released her to continue physical therapy and to return to work full duty without any restrictions on September 8, 2022. (Tr. pp. 32-33)

Petitioner confirmed that she continued to have pain in her left foot and ankle. (Tr. p. 33) She sought a second opinion with Dr. Rhode at Orland Park Orthopedics on September 14 , 2022. *Id.* Petitioner then agreed that Dr. Rhode placed her on light duty restrictions and prescribed an

FCE. *Id.* The Functional Capacity Evaluation was performed on October 14, 2022. *Id.* Petitioner testified that she saw Dr. Rhode on October 26, 2022, to review the FCE. (Tr. p. 34) Petitioner confirmed that Dr. Rhode released her at MMI, gave her permanent restrictions, and prescribed ongoing oral medication and anti-inflammatories. *Id.*

Petitioner testified that she requested an accommodation from Respondent, but they did not offer her a job to accommodate her restrictions. (Tr. p. 35) Respondent elected to not bring Petitioner back to work for the 2022/2023 school year. *Id.* Petitioner confirmed that she chose to receive payment for the 2021/2022 school year in payments thru the summer which ended August 12, 2022. (Tr. p. 36) She could have elected receiving her pay in a lump sum on May 3, 2022. *Id.*

Petitioner testified that she had requested temporary total disability for the time she has been off work. (Tr. pp. 37-38) After receiving permanent restrictions from Dr. Rhode, Petitioner demanded vocational rehabilitation and job placement assistance. (Tr. p. 38) She stated that Respondent did not provide job placement assistance, have her meet with a vocational counselor or job coach. (Tr. pp. 38-39) Petitioner testified that she received a blind vocational evaluation labor market survey. (Tr. p. 39; *see also* RX #2) She testified to attempting 400 different job searches from October 27, 2022, through to the time of trial. (Tr. p. 41) Petitioner testified to applying within her restrictions of only sedentary work, past level of education, age, and experience. (Tr. p. 42) Petitioner testified that she was not able to find employment even after her attempting to apply for jobs listed by Respondent's vocational expert. *Id.* She claimed that she applied to the ones found to be viable and that some of those jobs did not exist. *Id.* Petitioner testified to applying to the viable jobs identified by Tracey Peterlin, 40 positions with Respondent, and various other fields of work. (Tr. pp. 42-48)

Petitioner described her physical complaints and problems. She testified that when she wakes up her left foot is stiff from sleeping so she has to be careful when getting out of bed, stepping into the shower, turning around, walking up stairs and down stairs. (Tr. pp. 48-49) She stated that she avoids stairs and isn't able to perform her hobbies, including kayaking, backpacking and hiking, due to her restrictions. (Tr. p. 49) Petitioner testified that she cannot stand or walk for more than 2 hours without pain. (Tr. pp. 49-50) She testified that she mitigates any sudden movements and has to watch her step on uneven surfaces. *Id.*

CROSS EXAMINATION

Petitioner confirmed she went to IWIRC on the day of the alleged accident. (Tr. p. 51) While at IWIRC, Petitioner testified that she stated what happened on the day of the accident. *Id.* Petitioner testified that she told IWIRC that she didn't recall how she fell and that there could have been different possible ways her injury could have occurred. (Tr. p. 52) Petitioner continued to restate and testify that she is not aware of what caused her to fall. *Id.*

Petitioner testified that she had never had problems with her left foot prior to the accident and prior to being examined at IWIRC. (Tr. p. 52) After that, she was asked about a medical record from December 10, 2021, indicating that she went to the doctor stating her left

foot hurt when she was on it all day at work, and Petitioner again confirmed that she did not recall having any issues with her foot. (Tr. pp. 54-55)

Petitioner testified that, when she saw Dr. D'Souza, she provided a history of stepping on something and inverted her foot. (Tr. p. 55) She confirmed that she had surgery on May 9, 2022 and received restrictions from Dr. D'Souza of non-weight bearing. (Tr. pp. 55-56) Despite that restriction, Petitioner admitted that she had been weight bearing, and that the doctor noticed her cast was dirty from putting her foot down for balance. (Tr. p. 56) She confirmed Dr. D'Souza's record of her visit with him on June 23, 2022, where he indicated her treatment was being compromised by her being weight bearing too early. *Id.*

Petitioner testified that she was honest with Dr. D'Souza at every visit she had with him regarding any issues or problems she was having. (Tr. p. 58) Petitioner testified that she did tell the doctor she was doing very well and didn't have any complaints of pain when she is being very careful and doesn't use it. *Id.* Petitioner stated she didn't know if she went back to see Dr. D'Souza on September 8, 2022, to get some answers to some legal issues and to clarify her return to work.(Tr. p. 59)

Petitioner testified that she requested a second opinion. (Tr. p. 60) She confirmed getting set up for an appointment with Dr. Rhode less than a week after being released without restrictions by Dr. D'Souza. *Id.* Petitioner testified that when she saw Dr. Rhode; she was set up for a FCE, taken off work with restrictions of ambulatory above the waist and provided Dr. Rhode the history of the accident.(Tr. p. 61)

Petitioner confirmed she was informed that she would not be rehired by Respondent in March of 2022. (Tr. pp. 61-62) She testified that she applied with Respondent again, despite not being rehired, because her HR representative told her she could go back if she applied to other schools within the district. (Tr. p. 62) She stated that she would apply to one position a day at least. *Id.* Petitioner testified that she submitted a resume if the position required a resume. (Tr. p. 63) When asked why a resume was not provided after a subpoena was issued for it, Petitioner testified that her resume is online, in her personnel file, and finally stated she did her job because she turned everything she needed to turn in, to her attorney. (Tr. pp. 63-64).

Petitioner testified that she applied to companies that are located outside the state because she was applying for jobs that were remote. (Tr. p. 66) When asked about specific jobs she had applied for, Petitioner testified that she needed to look at her notes as a reference due to applying to so many. (Tr. p. 67) Petitioner testified that out of all the applications she filled out she only had one interview which chose not to move forward with hiring her. (Tr. p. 68)

Petitioner agreed she sent an email to the principal Lynn Lane about getting injured on the alleged accident date. (Tr. p. 69) She testified that she did not mention to the principal anything about injuring herself while stepping on a leg of a table, desk, or anything else. *Id.*

Petitioner testified that she saw Dr. Rhode because she was still experiencing pain after Dr. D'Souza released her. (Tr. p. 70) Petitioner testified she wanted a second opinion to know if anything could happen or if he would prescribe anything else for her. *Id.*

RE-DIRECT EXAMINATION

Petitioner agreed that she documented her job searches to the best of her abilities. (Tr. p. 71) She confirmed that she is open to an offer of employment with Respondent, if offered. Petitioner confirmed that the school district had not responded to her request for job placement assistance or vocational counseling. *Id.* Petitioner testified that she is still seeking gainful employment within her restrictions, and open to any and all prospective job placement opportunities even broadening her search to out of state. (Tr. p.72)

Petitioner further agreed that she has no memory of any accidents, injuries, any medical treatment, with respect to her left ankle.(Tr. pp. 72-73)

RE-CROSS EXAMINATION

Petitioner testified that she has looked for part time work but has not applied or looked for any work in person. (Tr. p. 74) She testified that she did collect unemployment from October 13th through March 12th, 2023. (Tr. p. 75)

PETITIONER'S EXHIBITS

Exhibit 1: Application for Adjustment of Claim: Petitioner alleges the accident involved slipping in a classroom while teaching on 4/1/22.

Exhibit 2: Form 45: Accident occurred when petitioner stepped either on something or side of shoe or leg of desk twisted on. The accident was reported on 4/1/22. Question or substance, if any, directly harmed the employee was answered "leg of desk, object on the floor". Hired 8/16/21.

Investigation Report: Description of accident listed was "Ms. Hawkins tripped over the leg of a table and twisted her ankle". There was no video of the accident scene. The employee's statement was that she tripped over the leg of the table.

Exhibit 3: Personnel File (relevant parts)

(5/3/22) Letter to Petitioner informing her she was being placed on paid administrative leave.

(3/7/22) Letter to Petitioner informing her that a Board Meeting would be held on March 14, 2022, with action being taken on not re-employing her for the 2022-2023 school year for reasons other than reduction in force.

(3/15/22) Letter to Petitioner informing her that she would not be re-employed for reasons other than reduction in force.

(2/11/22) Employee Communication Report: Described an incident occurring on 2/11/22 t which time a administrator was needed to deal with a situation involving the Petitioner and students where the Petitioner use of the n --- word despite that word use was not acceptable in the school.

The use of that word by the Petitioner was deemed to be vulgar and inappropriate, creating a disruption to the learning environment. It was noted that she was not building a positive, compassionate relationship within her classroom by using that language in front of her students. This communication was to be placed in her personnel file.

(7/15/19) Generic letter to whom it may concern stating the Petitioner has resigned her position as of 6/21/19 She had been employed from 4/25/17-6/21/19.

Exhibit 4: Records of IWIRC

(4/1/22) The employee was seen at 1243 that day. She presented for initial evaluation of left foot and ankle pain. She was walking back to her desk when she noticed a sharp pain I her left ankle. She stated the ankle "rolled/gave out". She did not fall to the ground. She braced herself with a desk and a table. She limped back to her desk and sent a student for help. She stated she is uncertain if she tripped on something or if there was something on the ground causing her injury. Assessment was a sprain and fracture foot fifth metatarsal left non-displaced.

(4/19/22) She reported she went to MWO today and was scheduled for surgery on 5/9/22.

Exhibit 5: OSFMG Records:

(4/25/22) Preoperative physical examination

(4/29/22) Present for follow up for depression. She reports it has been a bad six months. She has had several issues at the middle school where she works. One of the volunteers at school claimed that she was physically aggressive and filed a police report. There have been a couple of problematic students as well one of which claimed she pushed her to the ground. DCFS has been involved. On top of that she fractured her foot. She is currently in a walking boot with surgery set for May 9th.

Exhibit 6: Midwest Orthopedic Center

(4/19/22) She is two weeks out from an injury she sustained to her left while walking in the classroom. She stepped on something and inverted her foot. She denied any previous injuries to that extremity.

(5/9/22) Surgery consisting of ORIF, left fifth metatarsal fracture.

(5/17/22) She was 1 week out from surgery. She was witnessed literally walking full weightbearing through the clinic on her splint. She stated she only did it that day. However, her splint does have evidence of wear on the plantar aspect of this. I told her specifically that she needs to be non-weightbearing when she is walking. I told her any load on her foot can affect the outcome.

(5/26/22) She admitted to walking on her extremity within the first week and she was actually seen last week and had wear on her splint. Denied any foot pain, numbness and tingling. She was told he premature weightbearing has basically distracted her fracture. Luckily her symptoms are better. She will be placed in a cast to keep her non-weight bearing.

(6/2/22) Two week postop visit. She has been weightbearing excessively. We brought her in today so the doctor could talk with her to let her know the concerning prognosis and options moving forward. She admitted that she did something wrong saying " Did this to herself with the weightbearing in the early stages".

(6/21/22) She 6 weeks from her ORIF and bone grafting of her 5th metatarsal fracture. By her own admission, this was definitely compromised by weightbearing way too early, so we placed her in a cast. At her last visit, she did get a scooter. Her cast was not in the best condition with definitely wear on the bottom of the device. Finally, she is not having too much pain.

(7/28/22) Here for her final checkup on her left foot. She is actually doing very well. She demonstrates no complaints of pain today. She is walking comfortably in her cast boot. On exam, she is able to stand and walk without her cast boot without any symptoms, limp or complaints. PT recommended to help wean her out of her boot. She can return to work without restrictions in 2 weeks (8/11/22) when she has completed therapy and will follow up prn.

(8/24/22) PT note indicates some soreness on the top of the foot only when she wears stiff boots. No problem in other shoes. Feels a little itchy over the incision. Has mild tenderness diffused midfoot. Progress to HEP.

(9/8/22) She came in today for a follow up on her left foot. At the last visit, she was doing well and she had been placed on an as-needed basis follow up. However, there are some legal issues which are pending that need to be clarified both for her attorney and I think at least part of the today was to get clarification as to what her long term issues may or may not be. Also, we need to clarify her return to work which will be today and finally get some more physical therapy for her foot. She was informed that he did not think there are any structural issues with her foot. In regards to some mild pain that she has in the central dorsum part of her foot, the doctor thought it was outside the injury. Typically, that will resolve with time. It is not something that would be a restriction. Finally, she will require for legal reasons a medical narrative of her treatment and I told her that Midwest has a standard process. Petitioner was returned to work without restriction. Outpatient PT 2x week for 6 weeks recommended.

Exhibit 7: Work Status Note returning her to work without restrictions

Exhibit 8: UPH Records

(5/9/22) Surgery records from the hospital

Exhibit 9: Surgical Report

(5/9/22) ORIF, left fifth metatarsal fracture.

Exhibit 10: OPO Records

(10/26/22) Follow up for foot pain. Here post FCE. Exam show palpation causes pain in the proximal fifth phalanx. FCE was valid. Light duty 10 pounds frequent 20 pounds maximum. Follow up as needed.

(10/26/22) Work status: Can work light medium (max 35 lbs or less lift/carry; frequent 20 lbs)

(10/14/22) Present self for FCE

(9/14/22) Here for consultation of left foot pain. She stated she awkwardly stepped and inverted her foot at work. She stated that she presented to her employer who took a statement and then left her to complete her shift. Following an examination, the assessment was pain in the left foot, fracture of metatarsal bones. Under Plan it is stated that she continues to be moderately symptomatic. She is able to walk approximately 2 hours a day. Her pain is approximately 2-3 out of 10. We will proceed with a FCE. She will be placed off duty pending the FCE.

Exhibit 11: FCE

(10/14/22) Evaluation considered valid. Patient did not fully participate in the evaluation. She was capable of performing the generalized job activities and the weights listed within the grid report. Physical Demand Level is light for overhead lifts and light medium for other activities. These projections are for 8 hours a day, 5 days a week, at all level indicated on the FCE grid.

Exhibit 12: Work status: Can work light medium (max 35 lbs or less lift/carry; frequent 20 lbs) per Dr. Rhode

Exhibit 13: Bills

Exhibit 14: Demand for Vocational Rehabilitation

Exhibit 15: Penalty Petition

Exhibits 16-18 Job Search

RESPONDENT'S EXHIBITS

Exhibit 1: Wage Statement

Parties stipulated to an AWW of $1,011.29.

Exhibit 2: Blind Labor Survey

(1/12/23) Based on the FCE Report the petitioner is functioning at the light to medium physical demand level. It should be noted that her occupation of teacher is considered to be a light physical demand level occupation. Therefore, the petitioner appears to meet the physical demands level required for the occupation of a teacher.

It was the opinion of the vocational case manager, based on a reasonable degree of vocational certainty, based on the available information and local labor market conditions that Ms. Hawkins is employable.

Exhibit 3: Midwest Orthopedic Records (Same as Petitioner's Exhibit 6)

Exhibit 4: OSF Orthopedics

(1/2/10/21) Presented herself to establish care for medical management for her ADHD. She stated that she works at Sterling idle School. At the end of the day after being on her feet all day she says that her left foot starts hurting. Usually around the mid foot. She has a small amount of

swelling. She had vein stripping done many years ago. Examination showed no tenderness to palpation of the left foot. No palpable abnormalities. No deformities.

(2/29/22) Patient is here today for a referral to behavioral health. Stressor were reviewed. Mood is worsening somewhat. She states she has a "shorter fuse" in some situations. Had to give up being a volleyball coach because she feels like she has too many things going on.

(3/1/22) Seen for osteoarthritis of the right knee. She indicated that the knee gives out slips on her.

(4/4/22) Present for an injection into the knee. She reported that she used to be very active and enjoys hiking and outdoor activities but had to decrease ese due to her right knee pain.

Exhibit 5: IWIRC Records (Same as Petitioner's 4)

CONCLUSIONS OF LAW

(C) DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

The Arbitrator incorporates by reference the Findings of Fact set forth in the foregoing paragraphs. In her Application for Adjustment of Claim, Petitioner alleged that she sustained an accident by slipping in a classroom while teaching on April 1, 2022. However, her testimony and the medical records clearly show that she was unable to discern what caused her to fall.

The Arbitrator finds that this matter should be analyzed as an unexplained fall. While it is clear that Petitioner did not fall to the ground, there seems to be no clear explanation for Petitioner's left foot injury. An injury is compensable under the Act if it arises out of and in the course of employment. Both elements are required for an award of compensation. The phase "in the course of" refers to time, place, and circumstances under with the accident occurred. *Orsini v. Industrial Commission* (1987), 117 Il.2d 38. Petitioner has satisfied the in the course of employment element because the time, place, and circumstances under which the incident occurred demonstrate that Petitioner was in the course of her employment. Petitioner was present in a place where she could have reasonably been expected to be at the time of the accident. However, the accident must "arise out of" the employment as well. "Arising out of" refers to the causal connection between the employment and the injury, that is, the injury must have had its origins in some risk incidental to the employment. *County of Cook v. Industrial Commission,* 165 Ill. App.3d 1005, 1009 (1988).

Petitioner cites *Chicago Tribune v. Industrial Commission*, (1985) 136 Ill. App. 3d 260, for the proposition that unexplained falls are compensable. But a more nuanced reading of *Chicago Tribune* reveals that in an unexplained fall, it is the province of the Commission to draw reasonable inferences from the facts. On direct examination, Petitioner stated she was walking back from either talking with a student or passing things out. She stated that she was not holding anything in her hands and didn't see anything on the floor. As she stepped, she felt a sharp pain in her left foot as if somebody stabbed it with a knife; she immediately went down and she caught herself on the back of a student's chair and on the desk. (Tr. p. 22) She indicated that

because of Covid restrictions the aisle was narrow. (Tr. p. 23) However, it should be noted that she did not testify that the narrow aisle necessarily affected her ability to traverse the aisle.

When asked to describe exactly what happened by her attorney, she said, “as I was walking, normally. I don’t know if I slipped on paper or if it hit an edge of a desk or I awkwardly stepped; but I know it felt like somebody put a knife in my foot.” (Tr. p. 24) Petitioner testified that she did not have any problems, medical issues, nor physical problems with her left foot or ankle prior to April 1, 2022. She stated that she was wearing sandals at the time of her fall. (Tr. p. 25) When asked if the tile was slippery or slick, she said: “I did notice the tile was old. It had preschool pictures on it for seating which would be cleaned up after at school.”(Tr. pp. 26-27) Petitioner did not state that the floor was slick or describe any other defect.

When asked about the supervisor’s report of injury indicating she tripped on a leg of table and that caused her to trip said: “Well, that was her summation of what I said to—here is that I ---either when I was walking, I don’t know if it was -- I misstepped, there was a piece of paper, or it was a table that I hit, a table leg and my foot twisted.” (Tr. pp. 27-28) Petitioner stated that multiple things could have caused her injury.

On cross-examination, the Arbitrator observed that Petitioner was evasive, did not respond to direct questions and provided vague responses. When asked specifically if she knew what caused her to fall, stated: “No sir, I am not aware of what caused me – caused me to fall." (Tr. p. 52) When Respondent’s counsel asked about a December 10, 2021, doctor’s note indicating that Petitioner reported her left foot hurt when she was on it all day at work, Petitioner indicated she would have to see the medical record. (Tr. p. 53) Petitioner testified that she did not recall having an issue with her foot four months prior to the incident. (Tr. p. 55)

The medical record from IWIRC indicates that she told them she was walking back to her desk when she noticed a sharp pain in her left ankle. Again, this is a similar description of accident to what she provided in her direct examination. Petitioner testified that she told Dr. D’Souza that she stepped on something and inverted her foot. (Tr. p. 55) The April 19, 2022, record from Midwest Orthopedics stated that she stepped on something an inverted her ankle. (PX #6 p. 61) This description is inconsistent with her description of accident on direct examination where Petitioner provided multiple possible causes of her injury and it contradicts her testimony on cross-examination that she did not know the cause of her fall. The September 20, 2022, office note from Dr. Blair Rhode reports a history of awkwardly stepping and inverting her foot. (PX #10 p. 4) If these histories are accurate, awkwardly stepping and inverting one’s foot at work, without something more, does not convert this mishap into a work accident. An "unexplained fall" would be considered a neutral risk and would be compensable where a reasonable inference can be drawn that the employee's performance of his or her job duties could have caused the fall. *Chicago Tribune Co. v. Industrial Comm'n*, 136 Ill. App. 3d 260, 264 (1985). In the instant case, Petitioner failed to provide evidence from which a logical and reasonable inference can be made that the injury originated in a risk of employment.

Based upon the totality of the record, the Arbitrator finds and concludes that Petitioner failed to prove her accident arose out of her employment. All other issues are moot. Benefits denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013567
Case Name	Cletus Waters v. Domino Transportation, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0454
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Peter Sink

DATE FILED: 9/25/2024

/s/Christopher Harris, Commissioner

Signature

DISSENT: /s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☐ 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

CLETUS WATERS,

Petitioner,

vs. NO: 21 WC 13567

DOMINO TRANSPORT, 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, causal connection, medical benefits, temporary total disability (TTD) benefits and the nature and extent of Petitioner's disability, and being advised of the facts and applicable law, reverses the Decision of the Arbitrator.

FINDINGS OF FACT

Job Duties/Accident

Petitioner was working as a tractor trailer driver for Respondent on April 19, 2021, the alleged accident date. (T.11; RX10). He testified that he worked full-time, without restrictions and had no difficulty driving a truck until his work injury. (T.12; T.29; T.34; T.46; T.71-72). Petitioner confirmed that he drove a truck with an automatic transmission and he did not have to use his left foot to drive. (T.51-52).

On April 19, 2021, Petitioner was in Mount Sterling, Illinois picking up a load for delivery. As he closed the doors to the back of his trailer, the wind caught one of the doors, "and to keep it from slamming into the side of the trailer, I did an awkward grab and wrenched my back." (T.13-14). Petitioner reported the accident to Isaac in dispatch. (T.18; T.51; T.53-54). Petitioner's Exhibit 2 is the National Interstate Insurance Workers Compensation Questionnaire dated May 14, 2021. The questionnaire documented that Petitioner was injured on April 19, 2021 while shutting the trailer doors after loading, that he had tried to grab the door, "it was windy it caught a door," and he wrenched his lower back. The questionnaire also indicated that Petitioner had notified Isaac in

dispatch about the accident and that he never had a previous injury or treatment for a similar condition or injury. (PX2).

Immediately after the accident, Petitioner felt pain and tightness in his left lower back. He was not aware of any witnesses to his injury. Petitioner proceeded on his route to Idaho, a two-day drive. He testified that during this time, his pain began to travel down his left leg and his leg felt weak. Petitioner denied seeking treatment for his back during his route but he bought a cane. (T.15-17; T.50-51; RX10). Petitioner was dispatched to make another pick-up before returning to Illinois on April 23, 2021. He testified that he called the office "and told them the load was sitting out there, that I was going to the doctor." (T.17-18).

Medical Treatment

Petitioner sought treatment with Dr. Kabir, a chiropractor at Kabir Center for Health & Rehabilitation, on April 23, 2021. (T.18-19; PX5; RX9). He testified to informing Dr. Kabir about the work accident but the medical records only stated that Petitioner's condition was job-related and that he had symptoms in his left low back to his knee with constant burning, numbness and tingling. Dr. Kabir's notes also stated that Petitioner's symptoms had started four to five days prior, they were worsening and this had been an intermittent problem for several years. (T.52-53; PX5; RX9). Petitioner admitted to receiving chiropractor treatment prior to the alleged accident but only for his upper back. (T.29; T.33-34; T.67). He denied sustaining an accident where he had hurt his low back prior to April 19, 2021. (T.38; T.40).

Petitioner also treated at McLean County Orthopedics (now Carle McLean County Orthopedics) and saw Dr. Jason Michaels on April 26, 2021. (T.19; PX6; RX3). He reported complaints of left-sided low back pain that radiated into the left leg. Petitioner also had numbness and tingling in the left lower extremity. The visit note documented that Petitioner had been "having pain for about 2-3 weeks after getting into his truck." (PX6; RX3). Petitioner testified that he had informed Dr. Michaels about the work accident. (T.53).

Petitioner's April 26, 2021 examination did not reveal a positive straight leg raise test, but he had diminished strength in the left lower extremity and lumbar extension reproduced radiating low back pain. The visit note further stated that Petitioner had previously seen a Dr. Nardone for a similar issue and a surgical evaluation had been recommended but Petitioner declined to proceed with surgery. (PX6; RX3). Petitioner testified that he had seen Dr. Nardone in 2012 for shoulder and lower neck issues. (T.37; T.40-41; T.61-62). Dr. Michaels additionally reviewed a prior MRI of the lumbar spine, dated April 28, 2007, and noted a congenitally narrowed spinal canal with superimposed degenerative changes contributing to severe central canal stenosis at L2-3. The 2007 MRI report further stated that Petitioner had a history of low back pain with radiation to both legs and leg weakness. There were also findings of significant foraminal and lateral recess stenosis at L3-4 and L4-5. Dr. Michaels stated that Petitioner's radiating low back pain was consistent with lumbar radiculopathy. He recommended a new MRI of the lumbar spine, pain management, home exercises and medication. (T.19-21; T.60-61; PX6; RX3).

Petitioner completed the MRI on April 30, 2021 and Dr. Michaels reviewed it that same day. He found multi-level facet arthrosis, degenerative disc disease, multi-factorial severe spinal

stenosis from L2-3 through L4-5 and multi-level moderate to severe foraminal stenosis. He referred Petitioner to Dr. Jason Seibly at Carle Central Illinois Neuro Health for a neurosurgical consultation. (T.21; PX6; RX3).

On May 3, 2021, Petitioner reported to Dr. Seibly that he had low back pain that radiated down the left leg to his knee. He described his work injury on April 19, 2021 "when he was closing trailer doors the wind caught the door and he was jerked and twisted." (T.21; PX7). Dr. Seibly examined Petitioner and noted that the MRI of the lumbar spine showed very severe spinal stenosis with nearly complete myelographic block at L2-3, L3-4 and L4-5. Petitioner also had severe foraminal stenosis at L3-4 and L4-5 on the left side. Dr. Seibly did not see any extruded disc herniations. He recommended a left L3-4, L4-5 TFESI and physical therapy. (T.21; PX7). The visit note further stated that Petitioner had been doing well, had been asymptomatic and walking with no difficulty prior to his work accident. (PX7). Petitioner acknowledged at arbitration that he had had back pain for 20 years but it was not throbbing, constant pain. He also never experienced any loss of feeling or instability in his leg before. Petitioner testified that the pain was different after his work injury. (T.67; T.71-73).

Petitioner underwent physical therapy, a left TFESI at L3-4 and L4-5 on May 4, 2021, and a left IESI at L5-S1 on May 18, 2021. (T.21-22; PX6; RX3). On May 24, 2021, Dr. Seibly noted that Petitioner had no improvement despite physical therapy and injections and recommended a lumbar laminectomy from L2 through L5 with left-sided foraminotomies. (PX7). Petitioner proceeded with surgery on June 8, 2021 at OSF St. Joseph Medical Center. The history taken on that date stated that Petitioner started having back pain that radiated down the left lateral thigh in April and it had progressively worsened. Petitioner's post-operative diagnosis was lumbar stenosis with radiculopathy from L2 through L5. (PX7; PX11).

On July 19, 2021, Dr. Seibly reported that Petitioner's symptoms began after a work accident on April 19, 2021. "The patient is a truck driver. He was attempting to close the heavy metal trailer doors, when a [gust] of wind pulled the door from him and caused him to be jerked and twisted in an unusual posture." (T.36; PX7). Dr. Seibly indicated that Petitioner had immediate back and left buttock pain that turned into radicular pain within two hours and radiated into the anterior left thigh. The rest of the history regarding the week of the accident was consistent with Petitioner's testimony including giving notice to his dispatcher. Dr. Seibly opined: "[T]he patient had degenerative spinal stenosis, but this was totally asymptomatic prior to this episode. I feel that indeed his injury is work related. The injury on 04/19/2021 caused the onset of symptoms; left lumbar radiculopathy and significant left lower extremity weakness. This subsequently required surgical intervention." (PX7).

Petitioner commenced post-operative physical therapy on July 21, 2021 at OSF St. Joseph Medical Center. The initial evaluation record noted that the onset of Petitioner's low back and left leg pain started on April 19, 2021, "when he twisted to grab the door when the wind blew the door of his trailer shut." (PX11; PX12). The record further stated that Petitioner was able to previously function without low back or left leg pain, weakness, numbness or tingling. (T.22; T.24; PX11; PX12). Petitioner was discharged from physical therapy on September 13, 2021. (T.25; PX11; PX12).

On October 18, 2021, Petitioner reported to Dr. Seibly that he was doing very well and walking independently with very little pain in his legs. However, he continued to have weakness in his legs. Examination revealed that Petitioner had full focal strength of the lower extremities despite his subjective weakness. Dr. Seibly encouraged Petitioner to do his home exercises and released him from care. Dr. Seibly further stated that given Petitioner's weakness, age and overall disposition, he did not recommend that Petitioner return to work as a truck driver but instead find a part-time job that was very easy and light duty. (T.26-27; PX7).

Arbitration Testimony (Continued)

Petitioner testified that as of October 2021, he had not regained any kind of strength and still had pain in his low back but not in his leg. He stated that he had returned to Dr. Seibly in April 2023 and that Dr. Seibly had recommended physical therapy but no further surgery. (T.27-28). Petitioner confirmed that he completed two more weeks of physical therapy. (T.28). The April 2023 record was not in evidence.

Petitioner also confirmed that he had been off work throughout his treatment and remained off work as of the arbitration date. He denied receiving any type of payment during this period other than Social Security retirement benefits. (T.23; T.32-33). Petitioner was 78 years old on April 19, 2021 and 80 years old on the arbitration date. He testified that he planned on retiring at 82. (T.48-49).

Petitioner explained that his daily low back pain affected his ability to sit or stand for long periods, he took Tylenol and used a cane. He also had numbness a couple of times a day going down his left leg and into his foot. (T.42-43). Petitioner had difficulty twisting, bending over, sitting down, standing up and walking. He could still drive a car but had difficulty driving for periods of time. (T.43-44; T.67-68). Petitioner denied taking his restrictions to anyone and having them evaluated for purposes of driving a truck. (T.44-45). He stated that Dr. Seibly told him that he could not drive and he had not driven a semi since the alleged accident. (T.45). Petitioner additionally had difficulty with showering, taking off his socks and brushing his teeth. (T.46-47). He avoided golfing, shooting his gun or fishing because he was not steady on his feet. (T.47-48).

Petitioner further denied completing an accident report or participating in a recorded interview with an investigator. He also did not review a transcript of the conversation. (T.54-56). Respondent's Exhibit 10 is Petitioner's recorded statement taken by Greg Bissmeyer from InfoQuest on May 7, 2021. Petitioner's description of the alleged work accident, his symptoms and treatment thereafter was consistent with his arbitration testimony and medical records. On pages 13 and 14 of the interview transcript, Petitioner denied having any prior back injuries but also informed Mr. Bissmeyer that he had been seeing a chiropractor for years. He further told Mr. Bissmeyer that the last time he treated for his back before the accident was in February 2021 with Dr. Bersche. Petitioner denied receiving treatment for his back from any other physician other than the chiropractor and he denied ever having back surgery. (RX10).

At arbitration, Petitioner acknowledged having prior workers' compensation cases and reviewed some Applications for Adjustment of Claim. He had a claim in 1984 for the neck and back against Schneider Transport but could not remember how the injury occurred. (T.38-39).

Petitioner also could not remember having a claim in 1990 against Brubaker Transfer for his back, neck and leg and could not remember how the accident occurred in the 2007 claim against Happs Incorporated for "multiple parts." (T.39-40). Respondent's Exhibit 4 is a 2009 medical questionnaire that indicated that Petitioner had injured his lower back in 2007 while performing excessive heavy lifting with Happs. He lost two days' worth of work. (RX4).

Upon further questioning by Respondent's attorney, Petitioner denied having a workers' compensation case before and denied receiving benefits. Respondent's Exhibits 11 through 13 were the IWCC computer case dockets which showed that the filed claims included injuries to the neck, back and left leg and they settled for 2.330% to 3% loss of use of the person as a whole. (T.56-60; T.68-69; RX10, pgs. 16-17; RX11-13).

Prior Medical Records

Petitioner testified that he saw Dr. Jay Bersche from Central Illinois Spine on and off (and through September 26, 2022 according to the medical records in evidence). (T.63; PX13; RX6). Dr. Bersche's records documented that Petitioner had neck and low back pain as well as headaches after a rear-end collision in January 2010. (RX6). Petitioner then began receiving chiropractic treatment on February 5, 2010 and he would follow-up one to two times per month on average (sometimes more on a given month) for varying complaints to his upper back, neck, shoulders, mid-back, low back, buttocks and both upper extremities. Petitioner's complaints included frequent aching, tightness and discomfort. Evidence of shooting pain in the legs first appeared in the records on July 3, 2012. The records further demonstrated that Petitioner's symptoms, as they related to the low back and left leg, would continually come and go. He was diagnosed with radiculitis on December 28, 2012. Petitioner's last visit before his alleged work accident was on March 11, 2021. He reported a constant dull and tightness discomfort in his low back, his pain level was a six out of 10 and the visit note stated that Petitioner's discomfort would decrease with chiropractic care. Petitioner also described his low back symptoms as soreness. The next visit note was on June 2, 2021 and stated that Petitioner was scheduled for surgery and that he had a slip and fall on April 19, 2021 where he hurt his back. "It has been hurting him ever since." (PX13; RX6).

Petitioner also received treatment for his entire spine at Wright Chiropractic from June 9, 2012 through April 16, 2021. The records indicated that Petitioner had had symptoms since the 1970s. Cervical, thoracic and lumbar myospasms were noted as well as reduced range of motion in the cervical and lumbar spine with stiffness. His diagnoses included lumbar neuritis but he primarily received treatment for his cervical spine. (T.63; RX7). At the April 16, 2021 appointment, the notes stated that Petitioner's neck pain was better but that his neck and upper back felt tight. Petitioner's lumbar spine was not mentioned in the visit note. He did receive some treatment to his right SI joint. (RX7). Petitioner testified that he treated with both chiropractors simultaneously depending on everyone's schedule. (T.63-64). He additionally treated at Prairieland Wellness Center on November 21, 2012 for his cervical and lumbar spine. (T.65; RX8).

Deposition of Dr. Jason Seibly – February 7, 2022

Dr. Seibly is a board-certified neurosurgeon. (PX8, pgs. 6-7). He testified that Petitioner's treatment was focused on addressing his symptoms of left-sided leg pain and weakness. (PX8, pgs.

14-15). Dr. Seibly diagnosed Petitioner with lumbar radiculopathy due to lumbar spinal stenosis and foraminal stenosis based on Petitioner's subjective complaints, objective findings of weakness in the left leg and MRI confirmation. (PX8, pgs. 16-17; pg. 48). He opined that Petitioner's injury and symptoms were directly related to his work accident on April 19, 2021. (PX8, pgs. 35-37; pg. 39). Dr. Seibly further opined that the physical therapy, epidural steroid injections and surgery were medically necessary and reasonably related to the April 19, 2021 work accident. (PX8, pg. 19; pg. 22; pg. 32; pgs. 38-40).

Dr. Seibly confirmed that he had Petitioner off work prior to surgery due to his severe pain, weakness and difficulty with walking. (PX8, pg. 23). He had no further treatment recommendations for Petitioner, other than a home exercise program, and believed that Petitioner was at maximum medical improvement (MMI). (PX8, pgs. 38-39; pgs. 48-49; pg. 51). Dr. Seibly added that Petitioner would most likely have some degree of permanent leg weakness, but that that would not prevent him from operating a standard vehicle. Dr. Seibly was concerned, however, about Petitioner's safety while operating a semi-truck and having to load and unload and use a weak leg to drive. (PX8, pg. 39; pg. 50). He testified that he would allow Petitioner to drive a truck if he really wanted to, but would defer to a DOT physician as he or she would have more specific knowledge about the driving requirements for that vehicle. (PX8, pg. 51).

Dr. Seibly did not review any medical records pre-dating April 2021 but he did review Dr. Mark Levin's September 14, 2021 Section 12 report. He disagreed with Dr. Levin's opinion that Petitioner's pre-existing condition would have required treatment regardless of the work accident. (PX8, pgs. 12-13; pgs. 40-42; pgs. 45-46). Dr. Seibly stated that Dr. Levin's opinion was inconsistent with the history that Petitioner had provided which suggested a lack of presenting symptoms before the work-related injury. He indicated, however, that his opinion could change depending on the source of any new information. (PX8, pg. 42; pg. 44; pg. 47).

Dr. Seibly was aware that Petitioner had treated with Dr. Nardone in 2007 and that surgery had been mentioned but not specifically recommended. He testified that Petitioner's condition was still being worked up because Dr. Nardone had ordered arterial doppler studies. The June 15, 2007 bilateral lower extremity arterial doppler exam (according to Dr. Levin's September 14, 2021 Section 12 report) noted some stenosis in the femoral artery on the left side. Dr. Seibly testified that Petitioner's stenosis in 2021 was very severe from L2 through L5 which was different from 2007 based on the documentation. (PX8, pg. 54).

Dr. Seibly further testified that his opinion would not change if Petitioner had some treatments for his back because back pain was a common ailment. "So unless he had, you know, left-sided radicular pain and weakness symptomatically, treatments for back pain intermittently over the course of years wouldn't change my opinion to the 4/19/21 causation." (PX8, pg. 47). Dr. Seibly agreed that spinal stenosis was a degenerative, chronic condition that could progress over time. (PX8, pg. 48).

Deposition of Dr. Mark Levin – May 11, 2022

Dr. Levin is a board-certified orthopedic surgeon. (RX2, pg. 6). He performed a Section 12 examination of Petitioner on September 14, 2021 and prepared two reports. (T.25; RX2, pgs.

9-10; Dep. Exs. 2 and 3). Dr. Levin testified consistent with his Section 12 report dated September 14, 2021 which also stated that he had found no evidence of symptom magnification or malingering. He confirmed that the only previous records he had seen were some chiropractic records. (RX2, pgs. 12-13). Dr. Levin did not specifically testify regarding his addendum report dated March 17, 2022. According to the report, he had reviewed additional records including records from Wright Chiropractic Health Center and Dr. Seibly's deposition. (RX2, Dep. Ex. 3).

Dr. Levin noted Petitioner's job duties for Respondent and provided a consistent history of the work injury on April 19, 2021, the onset of symptoms and subsequent treatment. (T.36; RX2, pgs. 15-18; pg. 26; pgs. 36-37; pgs. 39-42). He testified that his physical examination findings were consistent with a patient who was post-op for spinal stenosis and that Petitioner needed the surgery no matter what. "It was appropriate because of the severe nature of his underlying chronic condition." (RX2, pgs. 22-23; pg. 25). Dr. Levin confirmed that he reviewed the actual films from the April 30, 2021 MRI of the lumbar spine and found severe spinal stenosis. (RX2, pg. 13). He further noted that the MRI referenced 2007 imaging and records. Dr. Levin testified that the 2021 MRI showed a chronic condition related to aging and that there was no evidence of any acute pathology. He opined that the imaging together with his clinical findings demonstrated that the source of Petitioner's symptoms were the result of a progressive arthritic condition not related to his alleged work injury. (RX2, pg. 14; pgs. 23-25).

Dr. Levin also testified that Petitioner denied having an MRI prior to April 2021 and that he had not seen any doctor in over a year for any low back complaints. (RX2, pg. 18). Petitioner further reported treating with a chiropractor twice a year in the past and that 18 years ago, Dr. Nardone had told him that he needed surgery because his back was weak and the spine opening was too small. Petitioner denied having or seeking treatment for pain or weakness at that time. (RX2, pgs. 18-19).

Dr. Levin did not recommend further treatment and believed Petitioner would reach MMI about six months after surgery. (RX2, pg. 25; pg. 30). He also believed that Petitioner should be restricted from driving due to the weakness in his foot which was expected based on his chronic spinal stenosis. (RX2, pgs. 27-28). Dr. Levin testified that Petitioner would have difficulty driving a clutch vehicle but would have no problem driving an automatic truck. (RX2, pg. 28). He added that Petitioner had other restrictions that could prevent him from passing a DOT physical and driving, including his age and issues with his neck. (RX2, pgs. 28-30).

Deposition of Steven Blumenthal – October 10, 2023

Mr. Blumenthal is a certified vocational rehabilitation counselor. (PX17, pgs. 5-6). He had interviewed Petitioner by telephone on February 3, 2023 and prepared a report dated September 15, 2023. (PX16; PX17, pgs. 8-9; pgs. 12-13).

Mr. Blumenthal discussed Dr. Seibly's June 26, 2023 Physical Capacity Form which stated that Petitioner had the ability to work part-time hours, minimal light duty and he needed to avoid crouching, crawling, climbing, working at unprotected heights, and lifting and carrying more than 20 pounds. (PX16; PX17, pgs. 9-10). Mr. Blumenthal further noted that the Physical Capacity Form indicated that Petitioner had the ability to occasionally (or 2.6 hours or less per 8-hour

workday) stand, walk, bend, stoop, kneel, reach above or below shoulder level, work with moving machinery and be exposed to noise or vibration. Petitioner also had the ability to frequently (or 2.7 to 5.3 hours per 8-hour workday) drive auto equipment or vehicles, work outdoors and be exposed to dampness and humidity. He further had the ability to constantly (or 5.4 hours or more per 8-hour workday) sit, work indoors and lift up to 20 pounds. (PX16; PX17, pg. 10). Mr. Blumenthal testified that Dr. Seibly added that Petitioner could use his hands for repetitive actions to perform simple grasping, pushing, pulling, and fine manipulation, and he could use his feet for repetitive movements in operating foot controls. He stated that Dr. Seibly had indicated that any formal functional capacity evaluation (FCE) would outweigh these recommendations but was not necessary. (PX16; PX17, pgs. 10-11). Petitioner did not undergo a formal FCE. Mr. Blumenthal additionally testified that Dr. Levin had recommended that Petitioner avoid driving a tractor trailer that required any left foot motion and that he should also avoid climbing ladders. (PX17, pg. 12).

Mr. Blumenthal opined that the inability to stand and walk on more than an occasional basis placed Petitioner in the sedentary level of physical demand according to the United States Department of Labor. (PX17, pg. 12). He also noted Petitioner's back surgery, subsequent treatment and that he used a cane when walking due to weakness on the left side of his body. (PX17, pg. 14). Petitioner further reported that he experienced pain daily and that standing, brushing his teeth, vacuuming and walking would exacerbate his pain. (PX17, pgs. 14-15). He managed his pain with Tylenol and was able to feed, dress, shower and use the toilet independently but required assistance with getting his socks on. (PX17, pgs. 15-16). Mr. Blumenthal stated that Petitioner's self-reported physical tolerances overall were consistent with the Physical Capacity Form. (PX17, pgs. 16-17).

Mr. Blumenthal next noted that Petitioner did not have a high school diploma or GED. He had not completed any other formal education or construction apprenticeship programs. Petitioner additionally did not hold any license or certifications other than his driver's license and FOID card. He was also not computer literate. (PX17, pgs. 17-18). Mr. Blumenthal further testified that Petitioner had a fairly singular work history as a truck driver going all the way back to 1968. (PX17, pgs. 18-19).

Mr. Blumenthal opined that Petitioner no longer had access to his occupation as a truck driver based on his current physical demand level and the different range of motion factors that he was not qualified to perform. (PX17, pgs. 19-20). Mr. Blumenthal additionally performed a transferable skills analysis using Petitioner's education, his work history and work restrictions and found no occupation that Petitioner could access in a stable labor market. (PX17, pgs. 20-21). Mr. Blumenthal explained the DOT Occupation Matches document that he had attached to his report and stated that the software could not find any jobs that would match Petitioner's level of restriction. (PX16; PX17, pgs. 21-23). He further opined that Petitioner would not be a candidate for vocational rehabilitation services because there was no occupation he could perform in a stable labor market. (PX17, pgs. 23-25; pg. 29).

Mr. Blumenthal testified that the sedentary level of physical demand comprised about 10 to 11-percent of all jobs that existed in the labor market. "And many of those tend to be more office, computer-oriented. So that in and of itself is very restricting." (PX17, pg. 35). Mr. Blumenthal also agreed that Petitioner's age was restricting as well. "It's not something that I

needed to evaluate to state that he would not have access to employment in a stable labor market." (PX17, pgs. 35-36). He added: "[A]ge in and of itself isn't a specific factor that prevents somebody from being able to work." (PX17, pg. 36).

CONCLUSIONS OF LAW

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

The Arbitrator found that Petitioner lacked credibility regarding his work accident and his prior history for the low back and left leg, and concluded that Petitioner did not sustain a work-related accident on April 19, 2021. The Commission is not bound by the Arbitrator's findings. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n*, 291 Ill. App. 3d 734, 740 (1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)). Interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972).

The fact that the accident had been unwitnessed, that Petitioner completed his shift despite his alleged injury, and the truck inspection report (which was not an actual accident report) failed to mention a work accident, does not defeat Petitioner's injury claim. The Commission notes that Petitioner's testimony regarding the accident was corroborated in nearly every medical record, as well as the Workers Compensation Questionnaire, the transcript of Petitioner's recorded interview with Mr. Bissmeyer and Dr. Levin's September 14, 2021 Section 12 report and deposition testimony. One record that was not consistent with Petitioner's testimony regarding his work accident was Dr. Michaels' April 26, 2021 visit note. The other record was Dr. Bersche's June 2, 2021 visit note that stated Petitioner had a slip and fall on April 19, 2021. The Commission notes Petitioner's testimony that he had informed Dr. Michaels about the accident and finds that the overall evidence, including Respondent's own evidence, corroborated Petitioner's claim of a work-related accident on April 19, 2021. The Commission also notes the parties' stipulation that Petitioner notified Isaac in dispatch about the accident on April 19, 2021. His testimony in this regard was also corroborated by the Workers Compensation Questionnaire and Mr. Bissmeyer.

The Commission further finds credible Petitioner's testimony that he had completed his delivery route but had done so with pain in his lower back which traveled down his left leg and he also began experiencing weakness in his leg. When Petitioner returned to Illinois on April 23, 2021, he testified that he called the office "and told them the load was sitting out there, that I was going to the doctor." (T.17-18). There was no testimony or evidence to rebut Petitioner's version of events on this date. Petitioner sought treatment with Dr. Kabir on April 23, 2021. Although the work accident was not expressly documented in the visit note, the record did state that Petitioner was there for a job-related issue and the nature and timeline of Petitioner's complaints were consistent with Petitioner's testimony.

Based on the preponderance of the evidence, the Commission finds that Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on April 19, 2021 and reverses the Arbitrator's decision accordingly.

With respect to causal connection, there were discrepancies with what Petitioner had testified to or reported regarding his prior back condition and treatment. He denied ever having a previous injury or treatment for a similar condition prior to April 19, 2021, but also admitted to receiving chiropractic treatment for years. The Commission further notes instances during Petitioner's testimony where he could not recall certain events that were clearly documented. He denied completing an accident report or participating in the recorded interview with Mr. Bissmeyer even though the Workers Compensation Questionnaire and interview transcript were submitted as evidence. Petitioner further acknowledged having prior workers' compensation cases but also testified to never having a workers' compensation case before or receiving benefits. Respondent provided evidence of the IWCC case dockets. The Commission has considered all the testimony, exhibits and arguments submitted by the parties in order to resolve these conflicts.

The Commission first notes that Respondent's Exhibit 4, the 2009 medical questionnaire, demonstrated that Petitioner lost two days' worth of work after injuring his low back while working for Happs in 2007. The workers' compensation case dockets also indicated that Petitioner's injuries settled between 2.330%-3% loss of use of the person as a whole. The Commission finds that if Petitioner had indeed injured his low back previously, it had not been a significant injury.

Petitioner's prior medical records additionally revealed that he had complaints of low back and left leg pain for many years that would worsen and then improve. His last visit for the low back before the alleged work accident was on March 11, 2021 with Dr. Bersche. Petitioner reported a constant dull and tightness discomfort in his low back. His pain level was a six out of 10 but his discomfort would decrease with chiropractic care. Petitioner also described his low back symptoms as soreness. He testified that his previous pain was different than his pain after the work injury, it was not constant and did not involve loss of feeling/numbness, tingling or instability in his leg. Petitioner was also able to drive a semi-truck without restrictions prior to April 19, 2021.

Respondent's Section 12 examiner, Dr. Levin, did not believe that Petitioner was magnifying his symptoms or malingering but opined that Petitioner's condition was degenerative, not caused by the alleged work accident and Petitioner's need for surgery pre-dated his employment with Respondent as well as the alleged work accident. Dr. Levin confirmed that the only previous medical records he had seen were some chiropractic records. According to his deposition transcript and his Section 12 reports, he did not review the actual 2007 MRI report or films or Dr. Nardone's records. Dr. Seibly also did not review these medical records but was aware that surgery had been discussed and not specifically recommended. The Commission gives little weight to any reliance on Dr. Nardone as these records were not in evidence. The information relating to Dr. Nardone or any surgical discussion or recommendation was vague, scarce, incomplete and too remote in time from the April 19, 2021 work accident to be considered significant.

With that said, the Commission finds Dr. Seibly's testimony more persuasive and consistent with the evidence than Dr. Levin's testimony. Dr. Seibly opined that Petitioner's injury and symptoms were related to his work accident on April 19, 2021 based on Petitioner's subjective complaints, objective findings of weakness in the left leg and MRI confirmation. He disagreed that Petitioner would have required treatment regardless of the work accident given the lack of symptoms before the work-related injury. Dr. Seibly also testified that his causation opinion would not change even if Petitioner had intermittent treatment for back pain over the course of years. The Commission finds that despite Petitioner's prior complaints and treatment related to his low back and left leg, the quality of those complaints and the extent of Petitioner's treatment changed after the work accident. His symptoms and complaints no longer waxed and waned but became constant and chiropractic treatment alone no longer improved his condition.

Based on the preponderance of the evidence, particularly Petitioner's prior condition, his condition after the work accident, the chain of events and the change in his ability to work, the Commission finds sufficient basis that the April 19, 2021 work accident was a cause in Petitioner's current condition of ill-being in his lumbar spine.

The Commission next addresses Petitioner's entitlement to workers' compensation benefits. Respondent disputed liability for benefits based on its position on the issues of accident and causal connection. Having determined those issues in favor of Petitioner, the Commission awards the reasonable and necessary medical expenses incurred as a result of the April 19, 2021 work accident and as detailed in Petitioner's Exhibit 1. The Commission also awards Petitioner TTD benefits from April 24, 2021 through October 18, 2021. The evidence demonstrated that Petitioner last worked for Respondent on April 23, 2021 and remained off work through his release from Dr. Seibly's care on October 18, 2021. There was no evidence of any further office visits or work statuses after October 18, 2021 and Petitioner conceded on the Request for Hearing form and his Brief, that he was entitled to TTD benefits through October 2021. The Commission further awards Petitioner permanent total disability (PTD) benefits. With regard to PTD benefits:

> If the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into the 'odd-lot' category--one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. (Citation omitted). The claimant ordinarily satisfies his burden of proving that he falls into the odd-lot category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 544 (2007).

The Appellate Court added that "the most recent cases making an odd lot determination on the basis that there is no stable job market for a person of the claimant's age, skills, training, and work

history have required evidence from a rehabilitation services provider or a vocational counselor. *Id.* at 545.

Based on the physician testimonies in this claim, there is no medical evidence to support a claim of total disability. Both Dr. Seibly and Dr. Levin believed Petitioner could perform some type of work in his present condition. There was also no evidence that Petitioner participated in diligent but unsuccessful attempts to find work in order to support an odd-lot PTD finding. With respect to the second method of establishing odd-lot PTD, Petitioner produced the evidence deposition of Mr. Blumenthal, a certified vocational rehabilitation counselor.

Mr. Blumenthal not only considered Petitioner's present physical capabilities, which put him into the sedentary physical demand level, but he also factored in Petitioner's education, training and singular work history as a truck driver. Mr. Blumenthal opined that Petitioner no longer had access to his occupation as a truck driver and that the transferable skills analysis found no occupation that Petitioner could access in a stable labor market. Mr. Blumenthal explained that Petitioner's age was not used nor required for the analysis. He further opined that Petitioner would not be a candidate for vocational rehabilitation services because there was no occupation he could perform in a stable labor market. Mr. Blumenthal's opinions were unrebutted.

The Commission finds that Petitioner established his entitlement to PTD benefits on an odd-lot basis, and having done so, the burden shifted to Respondent to prove that Petitioner was employable in a stable labor market and that such a market exists. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 544 (2007). Respondent failed to meet its burden. As such, the Commission awards Petitioner PTD benefits commencing on October 19, 2021 and continuing for life.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on December 12, 2023, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills pursuant to Sections 8(a) and 8.2 of the Act and as detailed in Petitioner's Exhibit 1.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $987.82 per week for 25 3/7 weeks, from April 24, 2021 through October 18, 2021, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent and total disability benefits of $987.82 per week commencing on October 19, 2021 and continuing for life as provided in Section 8(f) of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

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 the Circuit Court.

September 25, 2024

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

CAH/pm
O: 9/12/24
052

/s/ *Marc Parker*
Marc Parker

DISSENT

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

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018570
Case Name	Phillip Taylor v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0455
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Damon Young
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/25/2024

/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

PHILLIP TAYLOR,

Petitioner,

vs. NO: 22 WC 18570

STATE OF ILLINOIS,
DEPARTMENT OF TRANSPORTATION,

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 issue of the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Correction

The Commission corrects the Decision to reflect Petitioner's Temporary Total Disability benefit rate is $996.00.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2024 as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $996.00 per week for a period of 95 weeks, representing October 27, 2021 through August 23, 2023, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $30,650.90 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $389.45 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $896.40 per week for a period of 64.5 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 30% loss of use of the right leg.

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

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

Pursuant to §19(f)(1), this decision is not subject to judicial review.

September 25, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 9/4/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018570
Case Name	Phillip Taylor v. State of Illinois - Illinois DepT of Transportation
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Damon Young
Respondent Attorney	Joseph L. Moore

DATE FILED: 5/7/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 7, 2024 5.155%

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

May 7, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

Phillip Taylor
Employee/Petitioner

v.

IDOT
Employer/Respondent

Case # **22** WC **018570**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **03/26/2024**. 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. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **10/27/2021**, 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 **$77,688.00**; the average weekly wage was **$1,494.00**.

On the date of accident, Petitioner was **53** 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 $**30,650.90** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**-0-**.

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

ORDER

RESPONDENT SHALL PAY REASONABLE AND NECESSARY MEDICAL SERVICES OF $389.45, AS PROVIDED IN SECTION 8(A) AND 8.2 OF THE ACT.

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $960.00/WEEK FOR 95 WEEKS, COMMENCING 10-27-2021 TO 08-23-2023, AS PROVIDED IN SECTION 8(A) OF THE ACT.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $896.40/WEEK FOR 64.5 WEEKS, BECAUSE THE INJURIES SUSTAINED CAUSE THE 30% LOSS OF THE RIGHT LEG, AS PROVIDED IN SECTION 8E12 OF THE ACT.

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

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

Edward Lee_____
Signature of Arbitrator

May 7, 2024

FACTS

Petitioner testified in October 2021, he was employed at the Illinois Department of Transportation and his job duties included mowing areas next to the interstate and inner areas of the on and off ramps. His mowing duties included operating a tractor, this is illustrated by photos in Plaintiff's Exhibit 12.

On October 27, 2021, Petitioner testified he was mowing the on and off ramp area grass on I-74. He stepped off the tractor at somewhat of an angle coming down, "I put my right foot down and turned and that's when I got a pull in my knee." Petitioner testified he immediately notified the lead worker Joe Taft. (TX pg 8). Petitioner stated he injured his right knee by stepping into a hole and turning. (TX pg 10).

Petitioner filled out an accident report on the date of the accident in which he states he was mowing and injured among other things his right knee. (PX 2)

Petitioner went to Memorial Medical Express Care, giving a history of a work accident. (PX 4). He followed up with medical care on November 1, 2021 giving a history of injuring his right knee while driving a tractor five days prior. Petitioner continued to treat with Dr. Bilyeu and on November 21, 2021, gave a history of ongoing knee injury due to twisting his right knee getting off a tractor. (PX 5).

Petitioner was referred to Orthopedic Center of Illinois and was seen by Dr. Herrin. (PX 7). On December 22, 2021, Petitioner gave a history of an acute knee injury, where he stepped in a hole and injured his knee at work. Dr. Herrin recommended an MRI.

An MRI was completed on January 27, 2022, illustrating a torn meniscus, an MCL strain and joint effusion. (PX 7). On January 31, 2022, Dr. Herrin reviewed the MRI and read it as an acute medial meniscus tear, with cartilage defects, ACL sprain and chondromalacia. Dr. Herrin recommended surgery. (PX 7).

February 14, 2022, Petitioner underwent a right knee surgery and Dr. Herrin did perform a limited debridement of the patella area to accomplish a chondroplasty. (PX 7). A meniscus tear was not found.

Petitioner followed up post op with Dr. Herrin on February 23, 2022, complaining of continued clicking, grinding, and cramping in his knee. He was also having pain with walking and walked with a limp. He continued to follow up with Dr. Herrin with mild discomfort and pain. On May 16, 2022, Dr. Herrin performed a right knee cortisone injection. (PX 7). He continued to treat conservatively with Dr. Herrin. His last follow up with Dr. Herrin on August 11, 2022, he was still complaining of right knee pain and problems. (PX 7).

On August 23, 2023, Petitioner followed up with Dr. Lawrence Li at Orthopedic and Shoulder Center for a second opinion. (PX 8). He gave a history of getting off a tractor

at work, stepping in a hole and his knee popping. He states that he did not see the hole and he twisted his right knee. He stated Dr. Herrin performed an arthroscopic surgery on the right knee, but was still having pain both anteriorly and posteriorly. (PX 8). Dr. Li recommended conservative care that included a home exercise program and took Petitioner off work until further notice. (PX 8).

After failed conservative care, Dr. Li performed a right knee arthroscopy with partial medial meniscectomy and chondroplasty of the medial femoral condyle on November 1, 2022.
(PX 9).

Petitioner followed up with Dr. Li on November 8, 2022, for a post-op follow up. Petitioner was doing well, but received a compression sleeve to reduce swelling, inflammation and pain. Physical therapy was recommended and completed at Dr. Li's office. (PX 8).

On December 19, 2022, Petitioner followed up with Dr. Li and his right knee was feeling much better than before surgery. The plan was to finish therapy and start a home exercise program. He continued to follow up with Dr. Li for post -op care. Petitioner last followed up with Dr. Li on August 23, 2023. Petitioner gave a history of having better function in his knee but is still having pain both anteriorly and posteriorly. He also had pain when standing and walking for a couple of hours. Dr. Li released Petitioner from care and recommended a home exercise program. (PX 8).

Dr. Li's deposition was taken on October 17, 2023. (PX 16). Dr. Li testified he was a Board-Certified Orthopedic Surgeon and was the treating physician of the Petitioner. (PX 16 pgs. 5-7). Dr. Li stated the first time he saw Petitioner was October 13, 2022. Petitioner gave a history of getting off a tractor, stepping in a hole, twisting his knee and felt a pop. Also, he had seen Dr. Herrin who did an arthroscopy for a meniscus tear but did not find one. He followed up with Dr. Li for a second opinion. (PX 16 pg .6). After physical examination and reviewing Petitioner's history, it was Dr. Li's recommendation for a second knee surgery. Dr. Li opined Petitioner had a poor result from the first knee surgery as he was still having symptoms and residual dysfunction. (PX 16 pg 7).

Dr. Li performed surgery on November 1, 2022 and found Petitioner had a medial meniscus tear and grade 3 chondral injury in the medial femoral condyle of the patella. (PX 16 pg. 8). Dr. Li testified Petitioner's meniscus tear was caused by work due to the history of a twisting injury. It was Dr. Li's opinion, Dr. Herrin simply missed the meniscus tear in the first surgery. (PX 16 pg. 9).

Dr. Li testified Petitioner was doing better after the first visit from his surgery. He recommended post-op therapy and then released Petitioner from care on August 3, 2023. (PX 16 pg. 10). Dr. Li anticipated Petitioner having issues with prolonged standing

and walking. Based on this, Dr. Li testified Petitioner would have permanent restrictions of not doing repetitive kneeling and squatting. (PX 16 pgs. 11-12).

Dr. Li reviewed Dr. Nagowlski's Independent Medical Exam Section 12 report and stated he disagreed, and Petitioner's vascular issues had no bearing on Petitioner's right knee condition. Dr. Li opined Petitioner did have a traumatic meniscal tear and an aggravation of his chondral issues. Dr. Li testified to a reasonable degree of medical certainty Petitioner's right knee meniscus tear was caused by his work injury and it aggravated his chondral issues. (PX 16 pg 14-16).

Respondent had Petitioner seen by Dr. Nagowlski for a Section 12 examination on February 22, 2023 and his evidence deposition was completed on January 8, 2024. (RX 1).

Dr. Nagowlski testified he was a Board-Certified Orthopedic Surgeon and he was employed at Orthopedic Associates. (RX 1 pg 5). Dr. Nagowlski testified about 40% of his practice was related to knee treatment. (RX 1 pg 7). Dr. Nagowlski testified he performed a Section 12 exam of the Petitioner and reviewed medical records from Springfield Clinic express care, Dr. Herrin, Decatur Memorial Hospital, Midwest Orthopedic Center, Dr. Li and Ireland Grove Center for Surgery. Dr. Nagowlski also performed a physical exam of Petitioner's right knee. Dr. Nagowlski opined Petitioner had stable ligament exam, but he had generalized pain in the anterior and posterior area of the knee. (RX 1 pg 9-10). Dr. Nagowlski was given a history of Petitioner getting off his tractor slowly and spun on the ball of his foot and had a pull in his right knee. (RX 1 pg 11-12). Dr. Nagowlski stated Petitioner eventually underwent surgery with Dr. Herrin on February 14, 2022. Petitioner gave a history of his knee continuing to bother him and sought a second opinion with Dr. Li in Bloomington, IL. Petitioner underwent surgery with Dr. Li on November 1, 2022, and Petitioner stated a history of his knee improving after this surgery. (RX 1 pgs. 12-13).

Dr. Nagowlski's assessment was Petitioner underwent two right knee arthroscopies without correlation to the October 27, 2021, event. Dr. Nagowlski felt Petitioner's vascular issues were the cause of the right knee pain. Dr. Nagowlski did note Dr. Herrin did not find a meniscus tear. (RX 1 pg 15-16). Dr. Nagowlski opined Petitioner could go back to work full duty. (RX 1 pgs. 19-20). Post examination, Dr. Nagowlski admitted he did not have all of Dr. Herrin's medical records. Specifically, he stated he did not have Dr. Herrin's records for his clinical exam findings before and after his February 14, 2022, surgery. (RX 1 pgs. 29-30). Dr. Nagowlski also did not know the history the Petitioner gave at Dr. Herrin's first visit. (RX 1 pg. 30).

Dr. Nagowlski testified it was his understanding the first time there was a history of a right knee twisting event was when he saw Dr. Li. Dr. Herrin's report stated Petitioner gave a history of twisting his knee. This was well before seeing Dr. Li. (RX 1 pg 31). Dr.

Nagowlski opined Petitioners hobbies of motorcycle riding, roller skating, and dirt car racing was a factor in the Petitioner's knee injury. When asked on cross-examination if he knew of any specific injuries to Petitioner's right knee prior to the accident, he stated he did not know. (RX 1 pg 33-34). Dr. Nagowlski admitted he was not given any accident report as part of his Independent Medical Exam. (RX 1 pg 34).

Petitioner testified at trial he had never injured his right knee nor had any problems or pain complaints prior to the accident. Petitioner testified at trial he had significant improvement after his second surgery with Dr. Li, but was still having soreness, pain, and difficulty standing and walking long periods of time. Petitioner also testified his permanent restrictions were not accommodated at work and he was not allowed to return to his employment with the Respondent.

CONCLUSIONS OF LAW

ISSUES:

(f) Is Petitioner's current condition of ill-being casually related to the injury?

Petitioner testified credibly and was unrebutted at trial. Petitioner testified he injured his right knee when he stepped off a tractor, stepped in a hole and twisted his knee and felt a pop. Respondent stipulated to accident. Petitioner immediately reported the October 27, 2021, accident by written report. Petitioner followed up with medical care complaining of right knee pain. He followed up with his general practitioner, Dr. Bilyeu, on November 1, 2021, complaining of knee pain. He followed up with Dr. Herrin on December 2, 2021 with a history of stepping in a hole and twisting his right knee. Petitioner underwent surgery on February 14, 2022, with a poor result. Petitioner followed up for second opinion with Dr. Lawrence Li, who performed right knee surgery on November 22, 2022.

Arbitrator notes while Dr. Herrin did not see a meniscus tear, Petitioner had a poor result after Dr. Herrin's surgery, and underwent physical therapy and injections. In the second surgery, Dr. Li discovered the meniscus tear, repaired it and Petitioner had a better recovery. Petitioner underwent conservative care with physical therapy and was released with permanent restrictions of no repetitive kneeling and squatting.

Dr. Li testified to a reasonable degree of medical certainty; the best explanation was the meniscus tear was missed by Dr. Herrin. Dr. Li found it and was able to repair it. He opined it was caused by the work accident. Dr. Li also testified the chondral defect that was repaired by both Dr. Herrin and Dr. Li was aggravated by the accident in question. Dr. Li put emphasis on the twisting mechanism as to the cause of the

meniscus tear. As stated before, Petitioner testified at trial he twisted his right knee stepping off tractor, he gave Dr. Li this history and Dr. Herrin the same history.

Respondent's Section 12 examiner, Dr. Nagowlski testified Petitioner's right knee problems were related to a vascular issue and possibly the low back injury unrelated to this accident injury. Taking the records as a whole, there is no evidence of vascular issues in regards to the right knee and Dr. Li rebuts this in his evidence deposition.

Arbitrator does find it significant Dr. Nagowlski admitted he did not have all of Dr. Herrin's medical treatment records, including office notes in regards to the mechanism of injury. It was Dr. Nagowlskis understanding Petitioner did not complain of a twisting event until he saw Dr. Li. This is incorrect as the Petitioner gave Dr. Herrin the twisting mechanism history on December 22, 2021.

Based on this information, Arbitrator finds Dr. Li's opinions more plausible and persuasive. Thus, Arbitrator finds Petitioner proved his right knee condition of ill-being is causally related to the injury and the two knee surgeries were related to the accident.

(j) Were the medical services that were provided to Petitioner reasonable and necessary?

Petitioner introduced outstanding medical expenses incurred as a result of the October 27, 2021 work accident totaling $389.45.

Based on the findings of causation, Arbitrator finds the medical bills due, reasonable and causally related to Petitioners work accident of October 27, 2021.

(k) What temporary benefits are in dispute?

Petitioner missed work for his work-related injury from October 27, 2021 to August 23, 2023. Petitioner missed 95 weeks of work or $91,200.00, and based on findings of causation, Arbitrator awards TTD benefits in the amount of $91,200.00.

(l) What is the nature and extent of the injury?

(i) Arbitrator notes neither party submitted an impairment. The arbitrator therefore gives no weight to this factor.

(ii) Arbitrator notes Petitioner was released with permanent restrictions. Thus, Petitioner has presented evidence he cannot return to work as a

manual worker. The Arbitrator, therefore, gives some weight to this factor.

(iii) Arbitrator notes Petitioner was 53 years old at the time of the accident, Thus, Petitioner will have a significant amount of time to deal with the issues to his right knee injury. Arbitrator therefore gives some weight to this factor.

(iv) Petitioner has permanent restrictions which could affect his earning capacity. The Arbitrator gives moderate weight to this factor.

(v) Arbitrator finds Petitioner was a credible witness and suffered significant injuries due to the accident. Petitioner underwent two knee surgeries and had to have his meniscus repaired and his chondral defect corrected. Arbitrator notes Petitioner was given permanent restrictions of no prolonged kneeling or squatting by his treating physician, Dr. Li. Arbitrator gives greater weight to this factor.

Based on the above factors and the records taken as a whole, the Arbitrator finds the Petitioner sustained permanent partial disability in the amount of 30% loss of use of the right leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC038045
Case Name	Jeffery Michael Henderson v. Safeway Scaffolding/Safeway Services, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0456
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	James Keefe Jr, Edward Unsell
Respondent Attorney	Toney Tomaso

DATE FILED: 9/26/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFERY MICHAEL HENDERSON,

Petitioner,

vs. NO: 18 WC 38045

SAFEWAY SCAFFOLDING/
SAFEWAY SERVICES LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, maintenance benefits, credits, temporary partial disability, prospective care, and vocational rehabilitation, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof. The Commission 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 History

In this case, the original Arbitrator filed a decision on April 16, 2020, ruling that Petitioner's lumbar injury and surgery was causally connected to his work accident, but denying TTD benefits after July 8, 2019, and denying maintenance and vocational rehabilitation. On April 29, 2021, the Commission issued a decision affirming the Decision of the Arbitrator, with one Commissioner dissenting in part. On January 18, 2022, the Circuit Court of Madison County reversed the Commission's decision on the issues of TTD and maintenance, and remanded the case directly to the Arbitrator for further Section 19(b) proceedings. On April 26, 2023, the Illinois Appellate Court dismissed Respondent's appeal on jurisdictional grounds. Based on the Circuit Court order, the matter was remanded directly to an Arbitrator and tried on a subsequent Section

19(b) petition, giving rise to the instant review.

The Commission writes additionally on the issues of temporary total disability, maintenance benefits, credits, and temporary partial disability.

II. Temporary Total Disability

The Arbitrator ordered Respondent to pay temporary total disability (TTD) benefits of $1,199.67 per week for the period from July 9, 2019, through October 13, 2019. However, the Circuit Court ordered that benefits should be paid for the period from November 14, 2018, through October 14, 2019. The Commission is charged with following the order of the Circuit Court. *Noonan v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152300WC, ¶ 11. Accordingly, the Commission modifies the Arbitrator's decision to award TTD benefits of $1,199.67 per week from November 14, 2018, through October 14, 2019.

III. Maintenance

The Circuit Court also ordered that maintenance benefits were to be paid "in like amount" from October 14, 2019, through the February 19, 2020, first hearing date. This award will result in Petitioner being paid benefits twice for October 14, 2019 (TTD and maintenance). Nevertheless, the Commission will follow the Circuit Court's specific directive as compelled by the Court in *Noonan* as reflected in the award stated below.

The Arbitrator ordered Respondent to pay maintenance benefits from October 14, 2019, through June 29, 2020, which is the day prior to the date the Arbitrator found that Petitioner started employment at Gold Mine Gaming. Petitioner's start date for this job appears only in his exhibits setting forth his calculations, but Respondent has not objected to that date on review. The Circuit Court ordered that maintenance be paid through the original hearing date, February 19, 2020, and the testimony and documentary evidence submitted at the subsequent Section 19(b) hearing establish that Petitioner continued his job search after the original hearing date without assistance from Respondent until he found employment at Gold Star Gaming. Accordingly, the Commission affirms the Decision of the Arbitrator to award maintenance benefits of $1,199.67 per week to be paid for the period from October 14, 2019, through June 29, 2020.

IV. Credits

The Circuit Court further ordered that Respondent was to be awarded a credit of $43,918.95 against the awards of TTD and maintenance benefits, which is consistent with the initial arbitration decision. The Arbitrator did not specifically refer to this credit on remand. The Commission observes that Respondent is awarded this credit.

V. Temporary Partial Disability

The Arbitrator found that Petitioner was working light duty on a part-time basis or full-time basis and earning less than he would be earning if employed in the full capacity of his prior job, entitling Petitioner to temporary partial disability (TPD) benefits. "Temporary partial

disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working.' 820 ILCS 305/8(a) (West 2024).

In this case, Petitioner testified without rebuttal regarding his subsequent employment at Gold Mine Gaming, the Belleview Community Church, and Harpole's Heartland Lodge in positions within the restrictions imposed by Dr. Coyle at wages below those he earned while working for Respondent. Accordingly, the Commission affirms the Arbitrator's award of TPD benefits as modified pursuant to the following calculations:

- June 30, 2020 - December 31, 2020: Petitioner's prior average weekly wage was previously found to be $1,799.51. Petitioner's gross wages from Gold Mine Gaming were $3,313.75, which amounts to a $125.38 gross weekly wage for 26.43 weeks. The difference between Petitioner's prior average weekly wage and 2020 gross weekly wage is $1,674.13. The weekly TPD is two-thirds of this amount, or $1,106.08. The total amount of the TPD claim for this 26.43-week period is $29,497.99.

- January 1, 2021 - September 8, 2021: Petitioner's gross wages from Gold Mine Gaming were $7,837.50. The Arbitrator also found that Petitioner's gross wages from Bellevue Community Church were $6,894.80, adopting the representations set forth by Petitioner.[1] The sum of these wages ($14,732.30) results in gross weekly wages of $410.83 over 35.86 weeks. The difference between these gross weekly wages and Petitioner's prior average weekly wage is $1,388.67. The weekly TPD is two-thirds of this amount, or $975.72. The total amount of the TPD claim for this 35.86-week period is $33,196.32.

- September 9, 2021 - December 31, 2021: Petitioner's gross wages from Harpole's were $9,324.59. The Arbitrator also found that Petitioner's gross wages from Bellevue Community Church were $3,103.21, again adopting the representations set forth by Petitioner. The sum of these wages ($12,427.80) results in gross weekly wages of $770.00 over the 16.14-week period (not the $764.68 propounded by Petitioner and adopted by the Arbitrator). The difference between these gross weekly wages and Petitioner's prior average weekly wage is $1,029.51. The weekly TPD is two-thirds of this amount, or $686.34. The total amount of the TPD claim for this 16.14-week period is $11,077.53.

- 2022: Petitioner's gross wages from Harpole's were $32,673.91 and from Bellevue Community were $12,375.00, per Petitioner's W-2 and 1099 forms. The sum of these wages ($45,048.91) results in a gross weekly wage of $866.33 over the 52-week period. The difference between these gross weekly wages and Petitioner's prior average weekly wage is $933.18. The weekly TPD is two-thirds of this amount, or $622.13. The total amount of the TPD claim for this year is $32,350.76.

[1] Petitioner did not submit a 1099 form for the church for 2021, and the gross church wages Petitioner stated in PX10 are not readily derived from Petitioner's 1040 return for 2021. However, Respondent has raised no specific objection to Petitioner's representations of his church wages in 2021.

- January 1, 2023 - November 2, 2023: Petitioner's gross wages from Harpole's were 26,776.42, per the pay stub submitted by Petitioner. Petitioner's gross wages from Belleview Community Church were $10,402.14 (not the $10,250.00 propounded by Petitioner and adopted by the Arbitrator), based on 43.71 weeks of Petitioner's *2022* wages. The sum of these wages ($37,178.56) results in a gross weekly wage of $850.57 over the 43.71-week period. The difference between this gross weekly wage and Petitioner's prior average weekly wage is $949.94. The weekly TPD is two-thirds of this amount, or $632.63. The total amount of the TPD claim for this 43.71-week period is $27,654.79.

Accordingly, the Commission modifies the Decision of the Arbitrator to award Petitioner TPD benefits in the total amount of $133,777.39 for the period from June 30, 2020, through November 2, 2023.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator on remand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 18, 2024, is hereby affirmed and adopted as modified herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,199.67 per week for the period November 14, 2018 through October 14, 2019, for a period of 47 and 6/7ths weeks, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that in addition to the maintenance benefits ordered by the Circuit Court, Respondent shall pay Petitioner maintenance benefits of $1,199.67 per week commencing October 14, 2019, through June 29, 2020, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary partial disability benefits of $1,106.08 per week for 26 and 3/7ths weeks, commencing June 30, 2020, through December 31, 2020. Respondent shall pay temporary partial disability benefits of $975.72 for 35 and 6/7ths weeks, commencing January 1, 2021, through September 8, 2021. Respondent shall pay temporary partial disability benefits of $686.34 for 16 and 1/7ths weeks, commencing September 9, 2021, through December 31, 2021. Respondent shall pay temporary partial disability benefits of $622.13 for 52 weeks, commencing January 1, 2022, through December 31, 2022. Respondent shall pay temporary partial disability benefits of $632.63 for 43 and 5/7ths weeks, commencing January 1, 2023, through November 2, 2023, as provided in Section 8(a) of the Act.

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, including $26,771.40 for temporary total disability benefits already paid and $17,147.55 in other 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 this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court 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.

SEPTEMBER 26, 2024

O: 09/12/24
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	18WC038045
Case Name	Jeffery Michael Henderson v. Safeway Scaffolding/Safeway Services, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	James Keefe Jr, Edward Unsell
Respondent Attorney	Toney Tomaso

DATE FILED: 1/18/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/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
19(b)

Jeffery Michael Henderson
Employee/Petitioner

v.

Safeway Scaffolding/Safway Services, LLC
Employer/Respondent

Case # **18** WC **038045**

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 **Herrin**, on **11/2/23**. 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 **Vocational Rehabilitation**

FINDINGS

On the date of accident, **10/26/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**32,691.57**; the average weekly wage was $**1,799.51**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **3** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and **$17,147.55 (PPD Advance)** for other benefits, for a total credit of $**17,147.55**.

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

ORDER

Respondent is ordered to authorize and pay for the return visit to Dr. Coyle and any necessary testing associated with the evaluation.

Respondent shall pay Petitioner Temporary Total Disability Benefits from July 9, 2019, through October 13, 2019, representing 13-6/7 weeks at a rate of $1,199.67 for **$16,623.99.**

Respondent shall pay Petitioner Maintenance Benefits from October 14, 2019, through June 29, 2020, representing 37-1/7 weeks at a rate of $1,199.67 for **$44,559.17**

Respondent shall pay Petitioner Temporary Partial Disability Benefits from June 30, 2020 through November 2, 2023 of **$132,301.86**. *See attached Decision*

Vocational rehabilitation is premature pending any additional medical recommendations from Dr. Coyle.

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 18, 2024**
Signature of Arbitrator

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffery Michael Henderson,	)	
	)	
Petitioner,	)	
	)	
v.	)	IWCC No.: 18-WC-038045
	)	
Safeway Scaffolding/	)	
Safeway Services, LLC,	)	
	)	
Respondent.	)	

PROCEDURAL POSTURE

Petitioner filed an Application for Adjustment of Claim alleging he sustained a lumbar spine injury on October 26, 2018, while employed by Respondent.

On January 15, and February 19, 2020, the case proceeded to arbitration on Petitioner's 19(b) Petition. On April 16, 2020, the Arbitrator filed a Decision holding that Petitioner's L4-5 and L5-S1 surgery was causally connected to the work accident but that Petitioner could return to work without restrictions. The Arbitrator denied Petitioner's claim for temporary total disability benefits from July 9, 2019, through October 14, 2019, and maintenance benefits from October 15, 2019, through February 19, 2020. The Arbitrator denied Petitioner's request for vocational rehabilitation. (Px. 2).

On April 29, 2021, the Commission filed its Decision affirming and adopting the Arbitration Decision regarding denial of TTD benefits, maintenance benefits, and vocational rehabilitation. Commissioner Mark Parker filed a Dissent. (Px. 3).

On January 18, 2022, the Circuit Court of Madison County reversed the Decision of the Commission. The Circuit Court held that the Commission Decision denying TTD benefits, maintenance benefits, and vocational rehabilitation was against the manifest weight of the evidence. The Court remanded the case to the Commission with instructions to award TTD benefits through October 14, 2019, and maintenance benefits through February 19, 2020. The Court further instructed the Commission to hold further proceedings on determination of additional TTD benefits, maintenance compensation, and vocational rehabilitation, if any. (Px. 4).

Respondent filed an appeal in the 5th District Appellate Court, Workers' Compensation Commission Division. On April 26, 2023, the Appellate Court held it lacked jurisdiction to review the Circuit Court's order remanding the matter to the Commission for further proceedings addressing vocational rehabilitation. (Px. 5).

The case on remand went to Arbitration on November 2, 2023, before Arbitrator Edward Lee. The disputed issues were causation, temporary disability benefits, maintenance benefits, vocational rehabilitation, and prospective medical care. (Px. 6, Arb. Ex. 1).

STATEMENT OF FACTS

Testimony

Petitioner testified that he is 49 years of age, a single parent to three minor children. Since the February 2020 arbitration hearing, Petitioner has not received any benefits from Respondent.

Petitioner testified that Dr. Coyle placed permanent restrictions of no lifting greater than 30 pounds and no extended sitting as a result of his two-level lumbar fusion. (Tr. 13). Petitioner testified that since Dr. Coyle placed him at maximum medical improvement, he started looking for work and consulted with a vocational expert. (Tr.14). Petitioner testified the job search included internet searches, want ads, and word-of-mouth. (Tr. 14). Petitioner received no assistance finding a job by Respondent. (Tr. 15).

Petitioner testified that Respondent has never offered him a permanent job within his restrictions. (Tr. 15).

Petitioner testified the first job he found in the summer of 2020 was at Gold Mine Gaming in Pittsfield, Illinois. He worked there for a little over one year. (Tr. 15-16).

Petitioner testified that he continued to look for other jobs while employed with Gold Mine Gaming because it did not offer a lot of hours. (Tr. 16).

Petitioner testified that in September 2021, he started working at Harpole's Heartman Lodge, which is a hunting facility in Pike County. (Tr. 17). He concurrently worked as a minister at Bellevue Community Church. (Tr. 18). The ministry paid him $250.00 per week. (Tr. 18).

Petitioner testified he had to take a personal loan on his Harley-Davidson, which he no longer rides, and cashed out his 401(k) for money to support his kids. (Tr. 19-20). Petitioner currently works for Harpole's and as a youth minister. His job duty at Harpole's includes making breakfast and lunch for guests. (Tr. 23). The job is stressful, but not physically demanding. He does not have to lift more than 20-25 pounds. (Tr. 24). Petitioner explained that his boss has done a fantastic job in acquiescing to Dr. Coyle's restrictions. (Tr. 25).

Petitioner testified he continues to look for better paying jobs. (Tr. 26). He previously worked as an insulator for 23.5 years. (Tr. 26). Petitioner has also been looking online for courses in seminary and child psychology. He believes he could be a minister at a bigger church with a larger congregation, which would increase his pay. (Tr. 28).

Petitioner testified that he has not smoked and kept his weight under control as recommended by Dr. Coyle. (Tr. 25). Petitioner testified that his back pain radiating down to his groin, legs, and feet has increased dramatically in the last 12 to 16 months. (Tr. 30). Petitioner testified he tried to get back into Dr. Coyle's office, but they would not see him without Respondent's approval. (Tr. 31). To help the symptoms, Petitioner tries to walk and takes Tylenol as needed. He also used CBD oil, but it was expensive. He would like to return to Dr. Coyle. (Tr. 32-33).

Petitioner's kids are on the state health insurance. Petitioner does not have health insurance. (Tr. 27). Petitioner testified that his kids get food stamp money. (Tr. 54).

On cross-examination, Petitioner admitted that he had been looking for other jobs as early as June 2019. (Tr. 39-40). He did not have any job search logs other than those admitted at the time of the first arbitration hearing. (Tr. 41).

Petitioner acknowledged that if the congregation of his church grows then he more likely will make more money. (Tr. 48). Petitioner testified that he has not driven his Harley-Davidson in years. It sits in a friend's garage collecting dust. (Tr. 49-50). Petitioner testified that he has tried to contact Dr. Coyle's office about a visit one time since being released in October 2019. (Tr. 51-52). He has not seen any other doctors between October 2019, and June 2023. (Tr. 52). Petitioner explained that he has not seen a chiropractor in the last 12 to 16 months when the symptoms worsened because Dr. Coyle told him not to since he had surgery. (Tr. 52-53).

On redirect examination, Petitioner testified that he started working looking for other jobs in March 2019, at his doctor's recommendation. (Tr. 56).

Records

On June 30, 2023, Petitioner's counsel sent Respondent's counsel an email requesting approval for Petitioner to return to Dr. Coyle. (Px. 15).

On August 1, 2023, Respondent's counsel sent Petitioner's counsel a letter explaining it would not approve a visit to Dr. Coyle because they consider him at maximum medical improvement as of October 2019. Further, it was denying the claims for TTD benefits and vocational rehabilitation benefits because Petitioner did not intend to return to work. (Rx. 1).

On August 14, 2023, Petitioner's counsel sent Respondent's counsel a letter with Petitioner's W2s and 1099s for 2020, 2021, and 2022, along with the Circuit Court Order. Petitioner demanded payment of maintenance and differential benefits of $183,662.37 and prospective wage differential benefits since July 8, 2023. Petitioner requested vocational rehabilitation and approval for a return visit to Dr. Coyle. Petitioner's counsel explained that Petitioner likely is dealing with adjacent segment disease as opined by Dr. Coyle and Dr. Wayne. (Px. 7).

Petitioner's Exhibit 8 is a portion of Dr. Andrew Wayne's testimony in which he admits the adjacent segments to Petitioner's lumber fusion are more susceptible to injury or collapse because of the fusion. (Px. 8).

On September 25, 2023, Respondent filed responses to Petitioner's petition for prospective medical care and vocational rehabilitation stating that it was relying on the initial Commission Decision and Opinion on Review. (Rx. 3, 4).

Petitioner started work on June 30, 2020. From June 30, 2020, through December 31, 2020, is 26-3/7 weeks. Petitioner earned gross wages of $3,313.75 from Gold Mine ($125.38 per week). The temporary partial claim (TPD) is $1,799.51 - $125.38 = $1,674.13 x 2/3 = $1,116.08. (Px. 10-11).

$1,116.08 x 26-3/7 weeks = $29,497.99 claimed in temporary partial disability in 2020.

From January 1, 2021, to September 8, 2021, 35-6/7 weeks< Petitioner earned $7,837.50 from Gold Mine and $6,894.80 from Bellevue Community Church, which results in a gross weekly earnings of $410.83. The TPD claim is $1,799.51 - $410.83 = $1,388.67 x 2/3 = $925.72. (Px. 10-11).

$925.72 x 35-6/7 weeks = $3,196.32 claimed in TPD from January 1, 2021 through September 8, 2021.

From September 9, 2021, through December 31, 2021, is 16-1/7 weeks, Petitioner earned from Harpole's $9,324.59 and Bellevue $3,103.21 for the gross weekly wage of $764.68. The TPD claim is $1,799.51 - $764.68 = $1,034.83 x 2/3 = $689.89. (Px. 10-11).

$689.89 x 16-1/7 weeks = $11,134.82 claimed in temporary partial disability from September 9, 2021 through December 31, 2021.

The total TPD claim in 2021 is $33,196.32 + $11,134.82 = $44,331.14.

In 2022, 52 weeks, Petitioner earned from Harpole's $32,673.91 and from Bellevue $12,375.00 for $45,048.91 resulting in a gross weekly wage of $866.33. The TPD claim is $1,799.51 - $866.33 = $933.18 x 2/3 = $622.13. (Px. 10-14).

$622.13 x 52 weeks = $32,350.76, covering January 1, 2022, through December 31, 2022.

From January 1, 2023, to November 2, 2023, 43-5/7 weeks, Petitioner earned from Harpole's $26,776.42 and from Bellevue $10,250.00 for $37,026.42 resulting in a gross weekly wage of $903.08. The TPD claim is $1,799.51 - $903.08 = $896.43 x 2/3 = $597.62. (Px. 10-14).

$597.62 x 43-5/7weeks = $26,121.97 covering January 1, 2023 through November 2, 2023.

CONCLUSIONS OF LAW

Disputed Issue F – Is Petitioner's current condition of ill being causally related to the injury?

Petitioner's current lumbar spine condition is causally connected to the work accident. In support of the conclusion, the Arbitrator relies on the Circuit Court Order of January 11, 2022, finding Petitioner's current lumbar spine condition is causally related to the work accident and ordering Respondent to take additional evidence regarding Petitioner's medical condition.

The Commission is charged with following the court's order, reversing the Commission, and ordering it to award benefits. Noonan v. Illinois Workers' Comp. Comm'n, 2016 IL App (1st) 152300WC, ¶ 11, 65 N.E.3d 530, 534.

Moreover, the Arbitrator notes that Petitioner underwent an undisputed L4-5 and L5-S1 fusion. Both Dr. Coyle and Dr. Wayne opined that Petitioner was at risk for adjacent level failure. Petitioner testified that he has had significantly worsening symptoms in the last 12 to 16 months with no intervening accident, staying within the restrictions placed by Dr. Coyle, and abstaining from smoking.

The Arbitrator finds that Petitioner's current lumbar spine condition is causally connected to the accident.

Disputed issue K—Is Petitioner entitled to prospective medical care?

The Arbitrator finds Petitioner is entitled to prospective medical care by returning to Dr. Coyle. In support of the conclusion, the Arbitrator relies on the Circuit Court's January 11, 2022, Order.

Furthermore, the Arbitrator notes that Dr. Coyle and Dr. Wayne opined Petitioner was at risk for adjacent level failure from the two-level lumbar fusion. Petitioner did not suffer any intervening injuries, has stayed within Dr. Coyle's restrictions, and abstained from smoking.

Respondent is ordered to authorize and pay for the return visit to Dr. Coyle and any necessary testing associated with the evaluation.

Is Petitioner entitled to temporary benefits?

Petitioner is awarded the following temporary total disability, maintenance, and temporary partial disability benefits.

a. TTD benefits- Pursuant to the Circuit Court's January 11, 2022, Order, Respondent shall pay Petitioner Temporary Total Disability Benefits from July 9, 2019, through October 13, 2019, representing 13-6/7 weeks at a rate of $1,199.67 for **$16,623.99.**

b. Maintenance Benefits- Pursuant to the Circuit Court's January 11, 2022, Order, Respondent shall pay Petitioner Maintenance Benefits from October 14, 2019, through February 19, 2020. Further, Petitioner remained out of work February 20, 2020 through June 20, 2020. Petitioner is awarded maintenance benefits from October 14, 2019 through June 29, 2020, representing 37-1/7 weeks at a rate of $1,199.67 for **$44,559.17**.

c. Pursuant to the Circuit Court's order of January 11, 2022, the Arbitrator finds as held above that Petitioner is entitled to return to Dr. Coyle for his lumbar spine condition. Petitioner has work restrictions that only allow Petitioner to work light duty on a part-time basis earning less than he would be earning if employed in the full capacity of his pre-accident job and classification. 820 ILCS 305/8. As result, Petitioner is awarded temporary partial disability benefits as follows.

Petitioner started work on June 30, 2020. From June 30, 2020, through December 31, 2020, is 26-3/7 weeks (26.43 weeks). Petitioner earned gross wages of $3,313.75 from Gold Mine ($125.38 per week). The temporary partial claim (TPD) is $1,799.51 - $125.38 = $1,674.13 x 2/3 = $1,116.08.

The total TPD award for 6/30/20 – 12/31/20 is $1,116.08 x 26-3/7 weeks = $29,497.99.

From January 1, 2021, to September 8, 2021, is 35-6/7 weeks (35.86 weeks). Petitioner earned $7,837.50 from Gold Mine and $6,894.80 from Bellevue Community Church, which results in gross weekly earnings of $410.83. The TPD is $1,799.51 - $410.83 = $1,388.67 x 2/3 = $925.72.

The total TPD owed from 1/1/21 – 9/8/21 is $925.72 x 35-6/7 weeks = $33,196.32

From September 9, 2021, through December 31, 2021, is 16-2/7 weeks (16.14 weeks). Petitioner earned from Harpole's $9,324.59 and Bellevue $3,103.21 for the gross weekly wage of $764.68. The TPD is $1,799.51 - $764.68 = $1,034.83 x 2/3 = $689.89.

The total TPD owed from 9/9/21 – 12/31/21 is $689.89 x 16-2/7 weeks = $11,134.82.

The total TPD award for 2021 is $33,196.32 + $11,134.82 = $44,331.14.

From January 1, 2022 through December 31, 2022, is 52 weeks, Petitioner earned from Harpole's $32,673.91 and from Bellevue $12,375.00 for $45,048.91 resulting in a gross weekly wage of $866.33. The TPD is $1,799.51 - $866.33 = $933.18 x 2/3 = $622.12.

The total TPD award for 2022 is $622.13 x 52 weeks = $32,350.76

From January 1, 2023, to November 2, 2023, is 43-5/7 weeks (43.71 weeks). Petitioner earned from Harpole's $26,776.42 and from Bellevue $10,250.00 for $37,026.42 resulting in a gross weekly wage of $903.08. The TPD is $1,799.51 - $903.08 = $896.43 x 2/3 = $597.62.

The total TPD award for 1/1/23 – 11/2/23 is $597.62 x 43-5/7 weeks = $26,121.97.

Respondent shall pay Petitioner total partial benefits through November 2, 2023 of **$132,301.86**.

Disputed Issue of Vocational Rehabilitation

The Arbitrator finds that vocational rehabilitation is premature pending any additional medical recommendations from Dr. Coyle.

Edward Lee,
Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	06WC031038
Case Name	Terry L. Davis v. County of Cook
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0457
Number of Pages of Decision	5
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Michael Rusin, Mark Rusin

DATE FILED: 9/26/2024

/s/ Raychel Wesley, Commissioner

Signature

24IWCC0457

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

TERRY L. DAVIS,

Petitioner,

vs. NO: 06 WC 31038

COUNTY OF COOK,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission on Petitioner's Petition for Review of Arbitrator Williams' November 30, 2015 Order denying her Motion to Restore to Docket and/or Reinstate. Notice given to all parties, the Commission, after considering the issues and being advised of the facts and law, affirms the Arbitrator's Order. This matter was consolidated with case 08 WC 41213.

PROCEDURAL HISTORY

On July 18, 2006, Petitioner filed an Application for Adjustment of Claim alleging a March 6, 2006 injury while in the employ of Respondent. The claim was assigned number 06 WC 31038.

On September 17, 2008, Petitioner filed a second Application for Adjustment of Claim, this alleging a July 7, 2008 injury while in the employ of Respondent. The claim was assigned case number 08 WC 41213. The cases were thereafter consolidated.

On July 18, 2009, case 06 WC 31038 had been on file at the Commission for three years and therefore reached red line status pursuant to Commission Rule 9020.60(b)(2)(D). *50 Ill. Admin. Code 9020.60(b)(2)(D)*. The Commission takes judicial notice that the physical file does not contain any written requests for continuance that were thereafter required by Rule 9020.60(b)(2)(D)(i): For all cases which have been on file with the Commission for three years or more, "the parties or their attorneys must be present at each status call on which the case appears" and the case "will be set for trial unless a written request has been made to continue the case for good cause"; a request to continue a case "shall be made part of the case file." *50 Ill. Admin. Code 9020.60(b)(2)(D)(i)*.

On July 23, 2013, the cases were dismissed for want of prosecution by Arbitrator Williams.

FINDINGS OF FACT

On July 18, 2024, a hearing was held before Commissioner Raychel Wesley. The following evidence and arguments were adduced at the hearing:

1. Petitioner's Counsel states he did not receive a Notice of Case Dismissal for either claim following the dismissal order entered on July 23, 2013. T. 9. Counsel further states he continued to appear in-person every three months for status calls and was never notified and/or realized the cases were not on the status call. T. 9.

2. Petitioner's Counsel states he ultimately became aware the cases were dismissed in 2015. T. 32-33.

3. On October 28, 2015, Petitioner filed a Motion to Restore to Docket and/or Reinstate. The Motion sets forth the following allegations:

> 1. Following the completion of Petitioner's treatment, Petitioner's attorney telephoned Respondent's attorney to discuss settlement of Petitioner's cases.
> 2. After several attempts Petitioner's attorney was able to reach Respondent's attorney and speak with her. Respondent's attorney stated that she could not discuss settlement of Petitioner's cases, because the Illinois Workers' Compensation Commission's Case Information Screen showed the cases as having been dismissed.
> 3. Petitioner believes that the dismissals shown by the Workers' Compensation Commission's Case Information Screen are due to a clerical or other error, as Petitioner's attorney did not receive a Notice of Case Dismissal, as required by IWCC Rule Sec. 7020.90. The Rule states that if a case is dismissed for want of prosecution, "notices of dismissal shall be sent to the parties," and that the parties shall have 60 days from receipt of the dismissal order to file a Petition for Reinstatement. No dismissals were received. Therefore, Petitioner believes that the IWCC Case Information Screen's showing that Petitioner's cases were dismissed is a clerical or data entry error. If Petitioner had received Notices of Case Dismissal, Petitioner would have filed a Petition for Reinstatement. PX1.

4. On November 30, 2015, Arbitrator Williams denied Petitioner's Motion to Restore to Docket and/or Reinstate. PX1. No record was made of the proceedings.

5. On December 21, 2015, Petitioner filed a Petition for Review of the Arbitrator's November 30, 2015 Order. PX2.

6. Petitioner's Counsel stated that "after a while," when the cases "never showed up on review, then I started trying to contact or talk to somebody at the Commission to figure out, you know, did they lose the review or whatever happened. And I never got any satisfactory explanation." T. 15. Petitioner's Counsel was unable to say how often or how many times he contacted the Commission between 2016 and 2023, nor did he have written documentation of his efforts during that seven-year period.

CONCLUSIONS OF LAW

Rule 9020.90 governs reinstatement and provides, in pertinent part:

> a) When a cause has been dismissed from the Arbitration call for want of prosecution, the parties shall have 60 days from receipt of the dismissal order to file a Petition to Reinstate the cause onto the Arbitration call. Notices of dismissal shall be sent to the parties.
>
> b) Petitions to Reinstate must be in writing. The Petition shall set forth the reason the cause was dismissed and the grounds relied upon for reinstatement. The Petition must also set forth the date on which the Petitioner will appear before the Arbitrator to present the Petition. A copy of the Petition must be served on the other side at the time of filing with the Commission in accordance with the requirements of Section 9020.70. The Respondent may file a response to the Petition.
>
> c) Petitions to Reinstate shall be docketed and heard by the same Arbitrator to whom the case is assigned. Both parties must appear at the time and place set for hearing. Parties will be permitted to present evidence in support of, or in opposition to, the Petition. The Arbitrator shall apply standards of fairness and equity in ruling on the Petition to Reinstate and shall consider the grounds relied on by the Petitioner, the objections of the Respondent, and the precedents set forth in Commission decisions. A record shall be made of a hearing on any contested Petition. *50 Ill. Admin. Code 9020.90*.

As such, the Commission is tasked with analyzing both the timeliness and the merits of Petitioner's petition for reinstatement.

A. Timeliness

Petitioner's Counsel asserts he never received the Notice of Dismissal required by Rule 9020.90(a) and therefore the 60-day filing period for a Petition to Reinstate was not triggered until he learned of the dismissal from Respondent's Counsel. PX1. The Commission observes the physical file does not contain a Notice of Dismissal. Absent documentary evidence establishing a start date for the 60-day filing period, the Commission must accept Petitioner's Counsel's statement he was not notified of the dismissal until the communication from Respondent's Counsel. The Commission finds Petitioner's October 28, 2015 Motion to Restore to Docket and/or Reinstate was filed within 60 days of Petitioner's Counsel receiving notice of the dismissal and was therefore timely.

B. Merits of reinstatement

On a petition to reinstate before the Commission, the burden is on the claimant to allege and prove facts justifying the relief sought. *Banks v. Industrial Commission*, 345 Ill. App. 3d 1138, 1140 (5th Dist. 2004). Rule 9020.90(c) requires that standards of fairness and equity be applied when ruling on reinstatement. *50 Ill. Admin. Code 9020.90(c)*. As noted above, no record was made at the November 30, 2015 hearing on Petitioner's Motion to Restore to Docket and/or Reinstate. Therefore, the only documentary evidence of the allegations justifying reinstatement is

contained in the Motion itself. Therein, Petitioner's Counsel alleges he waited until Petitioner completed treatment then contacted Respondent's Counsel to discuss settlement; it took "several attempts" to actually speak with Respondent's Counsel, at which point he discovered the cases had been dismissed. PX1. The Commission observes the Motion is silent as to the merits of reinstatement, nor does the Motion provide details to explain the protracted delay in resolving the underlying cases, *i.e.*, were the accidents disputed, is there a causation dispute, what was the nature of the prolonged medical treatment, was Respondent paying benefits while Petitioner was treating for 13 years, etc. Petitioner provides the Commission with no reasonable justification for the inertia in moving the cases to resolution while they lingered above the line. *Compare Lawrence Dassinger v. Tiffany Express, Inc.*, 14 IWCC 0256, subsequently affirmed by the appellate court in 2016 IL App (3d) 150423WC-U:

> In the case at bar, the Arbitrator was equally frustrated by endless delays that were the result of an intentional strategy employed by Petitioner to ensure that the matter never moved forward. Finally, in abject frustration, Arbitrator Andros saw no option but to dismiss the matter for want of prosecution and to refuse to reinstate it. The Commission adopts and affirms the Decision of the Arbitrator as it recognizes and agrees with the Arbitrator's frustration.

The Commission further observes Respondent's ability to defend the cases has been significantly prejudiced by the nearly 20 years that have elapsed since the date of the initial accident. To be clear, after such a lengthy delay, witnesses may be unavailable and/or their ability to recall the incident diminished.

The Commission finds Petitioner failed to demonstrate sufficient justification for reinstatement. Additionally, given the extended delay in seeking reinstatement as well as the further delay in prosecuting the Petition for Review, the Commission concludes reinstatement would be highly prejudicial to Respondent. The Commission finds Petitioner's Motion was properly denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's November 30, 2015 Order denying reinstatement is hereby affirmed.

The bond requirement in §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 reinstatement herein, 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.

SEPTEMBER 26, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 9/4/24

/s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	08WC041213
Case Name	Terry L. Davis v. County of Cook
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0458
Number of Pages of Decision	5
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Michael Rusin

DATE FILED: 9/26/2024

/s/ Raychel Wesley, Commissioner

Signature

24IWCC0458

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

TERRY L. DAVIS,

Petitioner,

vs. NO: 08 WC 41213

COUNTY OF COOK,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission on Petitioner's Petition for Review of Arbitrator Williams' November 30, 2015 Order denying her Motion to Restore to Docket and/or Reinstate. Notice given to all parties, the Commission, after considering the issues and being advised of the facts and law, affirms the Arbitrator's Order. This matter was consolidated with case 06 WC 31038.

PROCEDURAL HISTORY

On July 18, 2006, Petitioner filed an Application for Adjustment of Claim alleging a March 6, 2006 injury while in the employ of Respondent. The claim was assigned number 06 WC 31038.

On September 17, 2008, Petitioner filed a second Application for Adjustment of Claim, this alleging a July 7, 2008 injury while in the employ of Respondent. The claim was assigned case number 08 WC 41213. The cases were thereafter consolidated.

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FINDINGS OF FACT

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1. Petitioner's Counsel states he did not receive a Notice of Case Dismissal for either claim following the dismissal order entered on July 23, 2013. T. 9. Counsel further states he continued to appear in-person every three months for status calls and was never notified and/or realized the cases were not on the status call. T. 9.

2. Petitioner's Counsel states he ultimately became aware the cases were dismissed in 2015. T. 32-33.

3. On October 28, 2015, Petitioner filed a Motion to Restore to Docket and/or Reinstate. The Motion sets forth the following allegations:

> 1. Following the completion of Petitioner's treatment, Petitioner's attorney telephoned Respondent's attorney to discuss settlement of Petitioner's cases.
> 2. After several attempts Petitioner's attorney was able to reach Respondent's attorney and speak with her. Respondent's attorney stated that she could not discuss settlement of Petitioner's cases, because the Illinois Workers' Compensation Commission's Case Information Screen showed the cases as having been dismissed.
> 3. Petitioner believes that the dismissals shown by the Workers' Compensation Commission's Case Information Screen are due to a clerical or other error, as Petitioner's attorney did not receive a Notice of Case Dismissal, as required by IWCC Rule Sec. 7020.90. The Rule states that if a case is dismissed for want of prosecution, "notices of dismissal shall be sent to the parties," and that the parties shall have 60 days from receipt of the dismissal order to file a Petition for Reinstatement. No dismissals were received. Therefore, Petitioner believes that the IWCC Case Information Screen's showing that Petitioner's cases were dismissed is a clerical or data entry error. If Petitioner had received Notices of Case Dismissal, Petitioner would have filed a Petition for Reinstatement. PX1.

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6. Petitioner's Counsel stated that "after a while," when the cases "never showed up on review, then I started trying to contact or talk to somebody at the Commission to figure out, you know, did they lose the review or whatever happened. And I never got any satisfactory explanation." T. 15. Petitioner's Counsel was unable to say how often or how many times he contacted the Commission between 2016 and 2023, nor did he have written documentation of his efforts during that seven-year period.

CONCLUSIONS OF LAW

Rule 9020.90 governs reinstatement and provides, in pertinent part:

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>
> c) Petitions to Reinstate shall be docketed and heard by the same Arbitrator to whom the case is assigned. Both parties must appear at the time and place set for hearing. Parties will be permitted to present evidence in support of, or in opposition to, the Petition. The Arbitrator shall apply standards of fairness and equity in ruling on the Petition to Reinstate and shall consider the grounds relied on by the Petitioner, the objections of the Respondent, and the precedents set forth in Commission decisions. A record shall be made of a hearing on any contested Petition. *50 Ill. Admin. Code 9020.90*.

As such, the Commission is tasked with analyzing both the timeliness and the merits of Petitioner's petition for reinstatement.

A. Timeliness

Petitioner's Counsel asserts he never received the Notice of Dismissal required by Rule 9020.90(a) and therefore the 60-day filing period for a Petition to Reinstate was not triggered until he learned of the dismissal from Respondent's Counsel. PX1. The Commission observes the physical file does not contain a Notice of Dismissal. Absent documentary evidence establishing a start date for the 60-day filing period, the Commission must accept Petitioner's Counsel's statement he was not notified of the dismissal until the communication from Respondent's Counsel. The Commission finds Petitioner's October 28, 2015 Motion to Restore to Docket and/or Reinstate was filed within 60 days of Petitioner's Counsel receiving notice of the dismissal and was therefore timely.

B. Merits of reinstatement

On a petition to reinstate before the Commission, the burden is on the claimant to allege and prove facts justifying the relief sought. *Banks v. Industrial Commission*, 345 Ill. App. 3d 1138, 1140 (5th Dist. 2004). Rule 9020.90(c) requires that standards of fairness and equity be applied when ruling on reinstatement. *50 Ill. Admin. Code 9020.90(c)*. As noted above, no record was made at the November 30, 2015 hearing on Petitioner's Motion to Restore to Docket and/or Reinstate. Therefore, the only documentary evidence of the allegations justifying reinstatement is

contained in the Motion itself. Therein, Petitioner's Counsel alleges he waited until Petitioner completed treatment then contacted Respondent's Counsel to discuss settlement; it took "several attempts" to actually speak with Respondent's Counsel, at which point he discovered the cases had been dismissed. PX1. The Commission observes the Motion is silent as to the merits of reinstatement, nor does the Motion provide details to explain the protracted delay in resolving the underlying cases, *i.e.*, were the accidents disputed, is there a causation dispute, what was the nature of the prolonged medical treatment, was Respondent paying benefits while Petitioner was treating for 13 years, etc. Petitioner provides the Commission with no reasonable justification for the inertia in moving the cases to resolution while they lingered above the line. *Compare Lawrence Dassinger v. Tiffany Express, Inc.*, 14 IWCC 0256, subsequently affirmed by the appellate court in 2016 IL App (3d) 150423WC-U:

> In the case at bar, the Arbitrator was equally frustrated by endless delays that were the result of an intentional strategy employed by Petitioner to ensure that the matter never moved forward. Finally, in abject frustration, Arbitrator Andros saw no option but to dismiss the matter for want of prosecution and to refuse to reinstate it. The Commission adopts and affirms the Decision of the Arbitrator as it recognizes and agrees with the Arbitrator's frustration.

The Commission further observes Respondent's ability to defend the cases has been significantly prejudiced by the nearly 20 years that have elapsed since the date of the initial accident. To be clear, after such a lengthy delay, witnesses may be unavailable and/or their ability to recall the incident diminished.

The Commission finds Petitioner failed to demonstrate sufficient justification for reinstatement. Additionally, given the extended delay in seeking reinstatement as well as the further delay in prosecuting the Petition for Review, the Commission concludes reinstatement would be unduly prejudicial to Respondent. The Commission finds Petitioner's Motion was properly denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's November 30, 2015 Order denying reinstatement is hereby affirmed.

The bond requirement in §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 reinstatement herein, 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.

SEPTEMBER 26, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 9/4/24

/s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020276
Case Name	Rosalind Brown v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0459
Number of Pages of Decision	19
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Daniela Roehm

DATE FILED: 9/26/2024

/s/ Raychel Wesley, Commissioner

Signature

24IWCC0459

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSALIND BROWN,

Petitioner,

vs. NO: 22 WC 20276

CHICAGO TRANSIT AUTHORITY,

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 the propriety of discussing pre-trial recommendations during trial, whether Petitioner's conditions are causally related to the June 29, 2022 work injury, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Decision as set forth below 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).

CONCLUSIONS OF LAW

I. Discussion of Pre-Trial Recommendation

During Respondent's cross-examination of Petitioner, immediately prior to Respondent playing the accident video, Petitioner's Counsel was permitted to make a statement on the record: "We had originally pre-tried this case I think January 26th, and we had viewed this video together, both parties and the arbitrator. At that time, a recommendation was made that the claim be

accepted." T. 37-38. Citing Illinois Rule of Evidence 408, Respondent argues "a pre-trial recommendation is a part of settlement negotiations and therefore prohibited at trial." Respondent's Statement of Exceptions, p. 6.

Illinois Rule of Evidence 408 reads as follows:

> (a) Prohibited Uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:
>
> (1) furnishing or offering or promising to furnish — or accepting or offering or promising to accept — a valuable consideration in compromising or attempting to compromise the claim; and
>
> (2) conduct or statements made in compromise negotiations regarding the claim.
>
> (b) Permitted Uses. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of settlement negotiations. This rule also does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness' bias or prejudice; negating an assertion of undue delay; establishing bad faith; and proving an effort to obstruct a criminal investigation or prosecution. Ill. R. Evid. 408.

The Commission finds an arbitrator's pre-trial recommendation does not constitute a "statement made in compromise negotiations" under Rule 408. We nonetheless observe it is irregular for the claimant's counsel to be invited to make a comment about the respondent's evidence prior to it being viewed at trial, and the Commission finds the Arbitrator erred in doing so, though we conclude the error was harmless. We first note the Arbitrator was aware of her prior recommendation and no third party decision-maker was present to be influenced by reference to the Arbitrator's pre-trial recommendation. Further, the fact that the Arbitrator opined the video showed an accident at the pre-trial did not require the Arbitrator to reach the same conclusion upon review of the totality of the evidence presented at trial. Finally, Respondent has seemingly abandoned its accident dispute as it advanced no argument on the issue before the Commission[1]. Therefore, we find the reference to the pre-trial accident recommendation was harmless error.

II. Causal Connection

The Arbitrator found Petitioner's current bilateral shoulder, cervical spine, and lumbar spine conditions are causally related to the work accident. The Commission views the evidence differently.

Our analysis begins with review of the accident video. At the 5:38 mark, Petitioner pulls the bus over and parks to wait for the relief driver. At 8:42, Angle 9 shows a tractor-trailer

[1] Respondent's Petition for Review identifies accident as an issue, however no related arguments were made in its Statement of Exceptions or during oral arguments; had Respondent pursued the issue, the Commission would have utilized a traveling employee analysis to find Petitioner sustained a compensable accident.

beginning to make a left turn from the cross street. At 8:52, the tractor-trailer collides with the bus; Angle 1 shows Petitioner jostled by the impact as she stands in the doorway. From 9:25 to 11:58, Petitioner walks around the bus and down the sidewalk while talking on the phone with the dispatcher. From 12:20 to 13:19, Petitioner comes around the back of bus, walks down the sidewalk, leans on the wall, then gets back on bus. At 17:50, the Fire Department arrives on scene.

With this mechanism of injury in mind, our analysis turns to the medical evidence and comparison of the accident histories to the video. Petitioner was taken from the scene to the emergency room at St. Bernard Hospital. The record reflects Petitioner described the incident as follows:

> 59-year-old female presents as unrestrained passenger in a bus that was rear-ended. She states she is the driver of the bus but was standing up looking out the door as it was parked awaiting for her relief to arrive. He [*sic*] was at this time that a car ran into the back of the bus. She states it caused the bus to rock back and forth. She tried to brace herself and at this point started having shoulder and low back pain. She did not fall to the ground. PX3 (Emphasis added).

The emergency room physician's physical examination findings included increased paraspinal tone and tenderness as well as pain with left shoulder abduction; noting there was concern for a repeat left shoulder rotator cuff injury, the doctor provided a sling and pain medication and recommended further evaluation. PX3.

The next day, Petitioner presented to Dr. Eugene Lipov. Dr. Lipov's June 30, 2022 office note reflects Petitioner complained of "acute neck pain, low back pain, and left shoulder pain" that began after a work injury the day before:

> The patient works as a CTA bus operator. She reports she was getting on the bus with the doors open. As she was looking for her relief person another vehicle hit the bus and this caused the patient to lose her balance and caused the patient's body to violently jar. She reports using her left arm to grab onto the door handle to avoid falling and developed immediate left shoulder pain. PX2 (Emphasis added).

Dr. Lipov noted several objective examination findings, including altered gait, tenderness and spasms at the paracervical musculature, and left shoulder tenderness and limited range of motion, as well as positive provocative testing, including positive Neer's, Hawkins, drop arm, and Kemp tests. Dr. Lipov diagnosed cervicalgia, low back pain, and left shoulder pain, authorized Petitioner off work, ordered a left shoulder MRI and physical therapy, and referred Petitioner for an orthopedic evaluation. PX2.

At the July 8, 2022 physical therapy initial evaluation, Petitioner gave a history that she "works as CTA driver and reports standing at door of bus while awaiting relief at 47th and Ashland when the bus was hit. She called her supervisor, and an ambulance was called." PX8.

On October 10, 2022, pursuant to Dr. Lipov's referral, Petitioner presented to Dr. Thomas Poepping for evaluation of her shoulder complaints. Dr. Poepping's record reflects Petitioner

complained of bilateral shoulder pain and gave a history as follows:

> …injured at work on 06/29/2022. At that point she was working as a CTA bus operator and was stopped and she was standing on the bus when another vehicle hit the bus. She was holding onto the door with both hands and injured her bilateral shoulders. She had severe pain at this point. PX2 (Emphasis added).

The Commission finds Petitioner's accident histories are overall consistent with the video. We observe, however, Petitioner's report to Dr. Poepping of immediate bilateral shoulder injuries is an expansion of her previously-documented complaints.

We next consider the opinions of Respondent's §12 expert, Dr. Daniel Troy. In his initial report, Dr. Troy documented the following accident history:

> She reported that she was standing in the doorway of a parked CTA bus getting ready to get off the bus holding onto both the right and left side handrails when she reported the rear of the bus on the driver's side was struck by an 18-wheel semitrailer tractor. She reported that the back of the bus was pushed in by about a foot. She did take pictures of this at the time of the event. She reported that she did not get knocked out and remembers being rocked back-and-forth inside the bus. She stated that she then stepped out of the bus and walked around the front of bus to the back to take a picture of the license plate of the tractor-trailer in the event it left the scene of the accident. She then walked back into the bus at which time she started developing back pain. RX1 (Emphasis added).

On examination, Dr. Troy observed "a significant amount of self-limiting behaviors as well as pain magnification identified," including cogwheel rigidity to her upper and lower extremities with giving way of strength, as well as "magnification of her pain complaints as well." RX1. In his responses to the posed questions, Dr. Troy reiterated his opinion that Petitioner "demonstrated a significant number of behaviors such as self-limitation on examination, pain magnification, nondermatomal pain complaints" and had "several Waddell factors" and ultimately concluded Petitioner's complaints "could overall be consistent with a strain to the shoulders neck and low back." RX1. On November 17, 2022, Dr. Troy authored an addendum wherein he explained his opinion had changed upon being made aware that the video he previously reviewed was the accident and not the aftermath like he previously believed:

> Considering the new information that the supplied video was the actual event and that there are no further videos to be supplied, then my prior opinions have in fact changed. Overall, my previously set forth opinions were since there was another video that existed which showed the individual being tossed around inside the bus during the event. The originally supplied video was assumed to be before and/or after the event that the individual stated occurred. The supplied video does not demonstrate any type of injury occurring…
> After reviewing the video, I see no evidence of an injury being sustained by the claimant. If there is an additional video to prove that an injury took place, it should be submitted. If this is the only video of the accident, then I maintain that there is

> no proof of injury due to a traumatic event. Again, my previous statements were based on the assumption that there were additional videos of the accident. In light of the fact that this is the only video submitted, my opinion is that there is no evidence of injury sustained via a work incident. RX2 (Emphasis added).

The Commission is not persuaded by Dr. Troy's opinions. The Commission, like the Arbitrator, finds Petitioner credible, and we conclude Dr. Troy's opinions are inconsistent with Petitioner's testimony and the medical evidence documenting objective physical examination findings immediately after the accident, including positive paraspinal and left shoulder findings in the emergency room as well as cervical, low back, and left shoulder findings observed by Dr. Lipov on June 30, 2022. The Commission finds the preponderance of the credible evidence establishes causal connection between the accident and Petitioner's cervical spine, lumbar spine, and left shoulder conditions.

The Commission further finds the evidence does not support a causal relationship between the work accident and Petitioner's right shoulder condition. In denying causal connection, the Commission emphasizes the first documented right shoulder complaints are not until October 5, 2022, more than three months after the accident. In our view, the modest nature of the impact coupled with the significant gap before Petitioner voiced any right shoulder complaints to her treating physicians is fatal to a finding of right shoulder causation.

III. Medical and Prospective Medical

Consistent with our causation determination, the Commission modifies the Decision to reflect Respondent is liable for the left shoulder, cervical spine, and lumbar spine treatment expenses detailed in Petitioner's Exhibits 4, 5, 6, 7, and 9. Respondent is further ordered to provide and pay for treatment as prescribed by Dr. Lipov, including but not limited to the recommended lumbar transforaminal injection.

Respondent is not liable for charges incurred for right shoulder treatment, including the right shoulder injections performed by Dr. Poepping on December 19, 2022 and March 13, 2023. PX5. Petitioner's claim for prospective right shoulder treatment is denied.

IV. Correction

The Commission corrects the Decision to reflect Petitioner's TTD benefit rate is $976.27, and the awarded period encompasses 45 weeks.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 6, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $976.27 per week for a period of 45 weeks, representing June 30, 2022 through May 10, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the expenses incurred for treatment of Petitioner's left shoulder, cervical spine, and lumbar spine as detailed in Petitioner's Exhibits 4, 5, 6, 7, and 9, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for low back treatment as recommended by Dr. Eugene Lipov, 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.

Under §19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

SEPTEMBER 26, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 8/7/24

/s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020276
Case Name	Rosalind Brown v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Daniela Roehm

DATE FILED: 7/6/2023

THE INTEREST RATE FOR THE WEEK OF JULY 5, 2023 5.26%

/s/Antara Nath Rivera, 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)

Rosalind Brown
Employee/Petitioner

Case # **22WC020276**

v.

Consolidated cases: _____

Chicago Transit Authority
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 **Antara Nath Rivera,** Arbitrator of the Commission, in the city of **Chicago**, on **May 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. ☒ 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 **06/29/2022,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**75,136.32**; the average weekly wage was $**1,464.40**.

On the date of accident, Petitioner was **59** 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 $**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 all reasonable and necessary medical services, incurred, pursuant to the medical fee schedule and as outlined in PX 4, PX 5, PX 6, PX 7, and PX 9 as provided in Sections 8(a) and 8.2 of the Act.

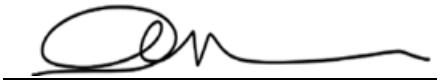
Respondent shall approve, and pay for, low back injections as recommended by Dr. Lipov and Dr. Poepping, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $976.75/week for 44-6/7 weeks, commencing June 30, 2022, through May 10, 2023, as provided in Section 8(b) of the Act.

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

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

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



JULY 6, 2023

Signature of Arbitrator
ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSALIND BROWN,	)	
	)	
Petitioner	)	
v.	)	Case No. 22WC020276
	)	
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

This matter proceeded to hearing on May 10, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include accident, causal connection, medical bills, prospective medical care, and temporary total disability ("TTD"). (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Rosalind Brown ("Petitioner") testified that she was employed, as a bus operator, by the Chicago Transit Authority ("Respondent"). (Transcript "T." 12) Petitioner testified that she was approximately 5 feet 5.5 inches tall and weighed about 250 pounds. (T. 13) Petitioner testified that her duties were to drive the bus, pick up and drop off passengers, and make sure passengers were safe. *Id.* Petitioner testified that she worked as a bus operator for Respondent for 12 years. (T. 14)

Petitioner testified that, on June 29, 2022, she was parked and waiting at a bus stop for her relief to arrive. (T. 14) Petitioner testified that she was standing in the doorway of the bus, holding each handrail, looking out of the bus, when a truck rear ended the bus. (T. 14-15) Petitioner testified that after the truck made contact with the bus, she jumped off and walked toward the truck. (T. 15) Petitioner testified that she took a picture of the front of the truck, walked back to the bus, and started feeling pain. *Id*. Petitioner testified that after she got on the bus she sat down because she felt pain. (T. 16) Petitioner testified that she notified dispatch of the accident and that she believed she needed an ambulance. *Id*.

Petitioner testified that her left shoulder, back and legs started aching. *Id*. Petitioner testified that she felt a "shooting pain" down her back and into her buttocks and down her leg. (T. 18) Petitioner testified that an ambulance arrived about 10-15 minutes later. *Id*.

Petitioner testified that there was video of the accident as well as video of the 10-15 minutes she was on the bus. (T. 19-20; Respondent's Exhibit ("RX") 3) Petitioner testified that the "film" continues to roll while the bus is running and 30 minutes thereafter. (T. 20; RX 3) Petitioner testified that the video depicted another passenger on the bus. (T. 19; RX 3) Petitioner testified that she asked the passenger if he

was okay and that he responded that he was fine and wanted to get on the next bus. *Id*. Petitioner testified that the man outside the bus, as depicted in the video, was her husband who was there to pick her up. *Id*.

Petitioner testified that she had surgery on her left shoulder in 2013 and returned to work full duty. (T. 17) Petitioner testified that while having a prior work injury she had no residual pain on June 29, 2022. *Id*. Petitioner testified that she never injured her back prior to June 29, 2022. *Id*.

Petitioner testified that she was taken to St. Bernard Hospital on June 29, 2022. (T. 21; Petitioner's Exhibit "PX" 3 at 3) Petitioner was seen by Dr. Joseph Capannari, D.O.. (PX 3) Petitioner provided a history of standing in the doorway of the bus when it was struck by another vehicle causing the bus to rock back and forth. Petitioner had to brace herself during the accident. (PX 3) Dr. Capannari diagnosed Petitioner with a motor vehicle collision shoulder pain and rotator cuff tendinitis and prescribed medication and a shoulder sling. (PX 3 at 4, 18)

On June 30, 2022, Petitioner presented to Dr. Eugene Lipov, M.D. at Illinois Orthopedic Network. (PX 2) Petitioner provided a history of getting on the bus with the doors open while another vehicle hit the bus. (PX 2 at 3) She further reported that she used her left arm to grab onto the door handle to avoid falling and developed immediate left shoulder pain rated at 8/10. *Id.* Petitioner also reported pain to her neck and back. *Id.* Dr. Lipov diagnosed Petitioner with cervicalgia, low back sprain, and left shoulder sprain. (PX 2 at 4) Dr. Lipov recommended an MRI of the left shoulder and a course of physical therapy for her cervical and lumbar spine three times per week for four weeks. (PX 2 at 5) Petitioner was prescribed Meloxicam, Tizanidine and Lidocaine patches. Petitioner was taken off work by Dr. Lipov. (PX 2 at 6)

On July 1, 2022, Petitioner was evaluated for physical therapy by Metro Continued Care LLC. (PX 8) Petitioner testified that physical therapy took place in her home three days per week through September 2022. (T. 31; PX 8)

On August 10, 2022, Petitioner followed up with Dr. Lipov and complained of neck pain radiating down her right arm, hand, and fingers. (PX 2 at 12) She also reported pain in her left shoulder and low back which now radiated to her buttocks bilaterally down bilaterally legs, knees, feet, and toes. *Id*. (PX 2 at 12) Dr. Lipov diagnosed Petitioner with cervical radiculopathy, lumbar radiculopathy, and left rotator cuff injury. (PX 2 at 13-14) Dr. Lipov noted that Petitioner sustained injuries to her cervical and lumbar spine and left shoulder secondary to an injury while at work. *Id*. Dr. Lipov recommended a cervical, lumbar and left shoulder MRI. *Id*.

On October 1, 2022, Petitioner underwent an MRI of the left shoulder, cervical spine and low back at High Tech Medical Park. (PX 2 at 23-28; T. 25) The MRI demonstrated lumbar degenerative disc disease as well as joint disease. (PX 2 at 23-28) The MRI of the cervical spine demonstrated cervical degenerative disc disease and joint disease and large bilateral thyroid nodules. *Id*. The MRI of the left

shoulder demonstrated mild supraspinatus and subscapularis tendonitis. *Id*. Petitioner testified that during this time, she was in a lot of pain and could hardly move. (T. 25)

On October 5, 2022, Petitioner was evaluated by Section 12 examiner, Dr. Daniel Troy, M.D., for an independent medical examination ("IME"). (RX 1) Petitioner testified that the exam lasted about 40-60 minutes. (T. 28) Petitioner provided a history of standing in the doorway of the bus when the left rear side was struck by a truck. (RX 1) Petitioner reported that she was rocked back and forth inside the bus. (RX 1 at 2) Petitioner reported injury to her neck, back, and left shoulder. *Id.* Dr. Troy opined Petitioner "demonstrated a significant number of behaviors such as self-limitation on examination, pain magnification, nondermatomal pain complaints into her right and left upper extremity, and diffuse numbness to both hands and legs…She had significant limitation in regard to range of motion of the bilateral shoulders." (RX 1 at 10-11) The report noted that Petitioner also had significant limitation with range of motion in regard to her lumbar spine. (RX 1 at 11) Dr. Troy noted that Petitioner had pre-existing degenerative changes to the cervical spine and lumbar spine as well as self-reported surgical intervention to the left shoulder. *Id.* Dr. Troy found causation based on the Petitioner's history of the mechanism of injury and denial of any prior symptoms to the neck, back, and bilateral shoulders. *Id.* Dr. Troy opined the Petitioner suffered from strains to the cervical, lumbar, and bilateral shoulders. (RX 1 at 12) Lastly, Dr. Troy found Petitioner's treatment to have been reasonable and agreed Petitioner was unable to return to work until she had a functional capacity evaluation ("FCE") at an independent facility due to the "…nondermatomal pain patterns, pain out of proportion to examination, exacerbation of her pain, limitations, and self-limiting behaviors." (RX 1 at 13) In this report, Dr. Troy did not comment on the video.

On October 10, 2022, Petitioner presented to Dr. Lipov to review the MRI results. (PX 2 at 29) The lumbar MRI found L4-L5 moderate to severe bilateral facet arthropathy. *Id.* The cervical MRI found changes at C5-C6 and C6-C7 with disc height loss with a thyroid nodule. *Id.* Dr. Lipov diagnosed Petitioner with lumbar facet pain and recommended an EMG to the lower extremity to determine etiology. *Id.* Dr. Lipov also referred Petitioner to orthopedic physician, Dr. Thomas Poepping, M.D., for an injection of the left shoulder. (PX 2 at 39, 34-35)

On October 10, 2022, Petitioner presented to Dr. Poepping. (PX 2 at 33-35) Petitioner complained of pain to both shoulders. *Id.* Dr. Poepping described the left shoulder MRI as having no abnormalities. *Id.* Dr. Poepping diagnosed Petitioner with bilateral shoulder pain and administered an injection to the left shoulder. *Id.*

On November 17, 2022, Dr. Troy issued an addendum to his October 5, 2022, report. (RX 2) In the addendum, Dr. Troy addressed the video and stated, "[t]he originally supplied video was assumed to be before and/or after the event that the individual stated occurred." (RX 2 at 1) Dr. Troy further stated that his previously set forth opinions were based on the assumption that another video existed that showed the Petitioner being rocked back and forth as she provided in her history. *Id.* Upon review of the video,

Dr. Troy concluded that Petitioner had no objective findings, many Waddell factors, and the video did not demonstrate "any type of injury occurring". *Id.*

On November 21, 2022, Petitioner followed up with Dr. Lipov for her lumbar pain. (PX 2 at 46) The EMG results demonstrated left sided L5 lumbar radiculopathy. *Id.* Dr. Lipov recommended an injection to L4-L5 and L5-S1. *Id.*

On December 19, 2022, Dr. Poepping administered an injection to Petitioner's right shoulder. (PX 2 at 49)

On March 13, 2023, Petitioner had another injection to the right shoulder after receiving continual treatment. (PX 2 at 53, 57, 60)

On April 24, 2023, Petitioner followed up with Dr. Poepping stating that her main issue was the lumbar spine. (PX 2 at 63) During Petitioner's last visit with Dr. Poepping, on April 24, 2023, he reiterated Petitioner's need for low back injections, as recommended by Dr. Lipov, and prescribed Tramadol and Flexeril. (PX 2 at 64) Petitioner testified that it is her desire to undergo further treatment to her shoulders and injections to her low back as recommended by Dr. Lipov and Dr. Poepping. (R.27)

Petitioner testified that she has a hard time sleeping due to her pain in both shoulders. (T. 29) Petitioner further testified that her back is "killing" her and that she is in a lot of pain after the accident. (T. 30) Petitioner testified that she never experienced this type of pain in her life. *Id*.

Respondent entered into evidence the video footage depicting the incident from ten different camera angles. (RX 3) The video is a continuously streaming video and is not frame by frame. Camera 1 is from the interior that faces the front door of the bus. *Id*. The video showed a white truck strike the bus at 9:43:10. *Id*. In the video, Petitioner was seen in the doorway of the bus speaking to another individual. *Id*. The video showed that the bus jerked causing Petitioner to move while standing and holding the railing. *Id*. The video showed Petitioner look back toward the left rear of the bus and step off the bus. *Id*. The video showed Petitioner standing and walking around. *Id*. The video showed Petitioner return to the bus. *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 credible and that she was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

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*.

To be compensable under the Act, an injury must "arise out of" and be "in the course of" the employee's employment. *Kochilas v. Industrial Comm'n*, 274 Ill.App.3d 1088, 1090 (1995) The burden of establishing that the injury "arose out of" and was "in the course of the employment" rests with the applicant. *Rockford Cabinet Co. v. Industrial Comm'n*., 295 III. 332, 335 (1920)

The Arbitrator notes that Petitioner testified that she was employed, as a bus operator, by Respondent. (T. 12) The Arbitrator notes that Petitioner testified that, on June 29, 2022, she was parked and waiting at a bus stop for her relief to arrive. (T. 14) The Arbitrator notes that Petitioner testified that while she was standing in the doorway of the bus, holding each handrail, a truck rear ended the bus. (T. 14-15; RX 3) The Arbitrator notes that Petitioner testified that she took a picture of the front of the truck,

walked back to the bus, and got on the bus to sit down because she felt pain. (T. 16; RX 3) The Arbitrator notes that Petitioner testified that she notified dispatch of the accident and that she believed she needed an ambulance. (T. 16) The Arbitrator notes that Petitioner testified that her left shoulder, back and legs started aching. *Id*. Petitioner testified that she felt a "shooting pain" down her back and into her buttocks and down her leg. (T. 18)

The Arbitrator notes that the video illustrated that while Petitioner was standing by the door of the bus, holding the handrails with both hands. (RX 3) The Arbitrator notes that Petitioner and the bus shook simultaneously upon impact from the truck. *Id*. The Arbitrator notes that Petitioner testified consistent with the video.

The Arbitrator notes that Dr. Capannari diagnosed Petitioner with a motor vehicle collision shoulder pain and rotator cuff tendinitis and prescribed medication and a shoulder sling. (PX 3 at 4,18) The Arbitrator notes that Dr. Lipov diagnosed Petitioner with cervical radiculopathy, lumbar radiculopathy and sprain, and left rotator cuff injury. (PX 2 at 4, 13-14) Dr. Lipov noted that Petitioner sustained injuries to her cervical and lumbar spine and left shoulder secondary to an injury while at work. (PX 2 at 13-14) The Arbitrator notes that the MRI of the left shoulder demonstrated mild supraspinatus and subscapularis tendonitis. (PX 2 at 23-28)

The Arbitrator further notes that Dr. Poepping diagnosed Petitioner with bilateral shoulder pain and administered an injection to the left shoulder. (PX 2 at 33-35) The Arbitrator notes that the EMG results demonstrated left sided L5 lumbar radiculopathy. *Id.* Dr. Lipov recommended an injection to L4-L5 and L5-S1. (PX 2 at 46) During Petitioner's last visit with Dr. Poepping, he reiterated Petitioner's need for low back injections. (PX 2 at 64)

Based on the Petitioner's testimony and medical records, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent on June 29, 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 Comm'n*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

As the Arbitrator found that the accident arose out of and in the course of Petitioner's employment by Respondent on June 29, 2022, the Arbitrator finds that Petitioner's current bilateral shoulder, cervical and lumbar complaints are causally related to her work injury.

The Arbitrator notes that Petitioner was diagnosed by Dr. Lipov and Dr. Poepping with cervical radiculopathy, lumbar radiculopathy and sprain, left rotator cuff injury, and bilateral shoulder pain. The Arbitrator notes that after Dr. Troy examined Petitioner for 40-60 minutes, he found causation based on the Petitioner's history of the mechanism of injury and denial of any prior symptoms to the neck, back, and bilateral shoulders. (RX 1 at 11; T. 28) The Arbitrator notes that Dr. Troy initially opined that Petitioner suffered from strains to the cervical, lumbar, and bilateral shoulders and agreed that Petitioner was unable to return to work until she had an FCE. (RX 1 at 12-13)

The Arbitrator notes that Petitioner continually complained of pain in both of her shoulders and lower back to her doctors. (PX 2 at 33-35) The Arbitrator also notes that Petitioner testified that she has a hard time sleeping due to her pain in both shoulders. (T. 29) Petitioner further testified that her back is "killing" her and that she is in a lot of pain after the accident. (T. 30) Petitioner testified that she never experienced this type of pain in her life. *Id*.

After hearing the testimony of Petitioner and reviewing Petitioner's medical records, the Arbitrator finds Petitioner to be credible and found that Dr. Lipov and Dr. Poepping's opinions, as well as Dr. Troy's initial opinion to be persuasive.

Thus, the Arbitrator finds that Petitioner's current condition of ill-being, with respect to her low back and shoulders, is causally related to the accident of June 29, 2022.

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:

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that the medical treatment and services Petitioner received were reasonable and necessary. (PX 4, PX 5, PX 6, PX 7, and PX 9) The Arbitrator notes that Petitioner incurred a total of $40,573.62 in charges for treatment received as follows: City of Chicago Fire Department in the amount of $3,022.00 (PX 4); Illinois Orthopedic Network in the amount of $4,085.64 (PX 5); St. Bernard's Hospital in the amount of $1,341.00 (PX 6); Midwest Specialty Pharmacy in the amount of $5,552.98 (PX 7); and Metro Continued Care in the amount of $26,572.00. (PX 9)

Thus, the Arbitrator finds that Respondent shall pay all reasonable and necessary medical services, incurred, pursuant to the medical fee schedule and as outlined in PX 4, PX 5, PX 6, PX 7, and PX 9 as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER IS ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being was causally related to the injury sustained on June 29, 2022, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Lipov and Dr. Poepping. (PX 2)

The Arbitrator notes that based on their opinion, they recommended low back injections. (PX 2) Petitioner testified that it is her desire to undergo further treatment to her shoulders and injections to her low back as recommended by Dr. Lipov and Dr. Poepping. (R.27)

As such, the Arbitrator finds that Respondent shall approve, and pay for, low back injections as recommended by Dr. Lipov and Dr. Poepping, as provided in Section 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHETHER PETITIONER IS ENTITLED TO ANY TEMPORARY TOTAL DISABILITY BENEFITS AND TEMPORARY PARTIAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

Under Illinois law, temporary total disability is awarded for the time period between when an injury incapacitates the Petitioner to the date the Petitioner's condition has stabilized or the Petitioner has recovered to the amount the character of the injury will permit. *Whiteney Productions, Inc. v. Industrial Comm'n*, 274 Ill.App.3d 28, 30 (1995). 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).

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her shoulders and low back were causally related to the injury sustained on June 29, 2022, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator notes that Petitioner's testimony and medical records reflect that she was authorized off work from June 30, 2022, through May 10, 2023. (PX 2) The Arbitrator notes that there was no evidence presented to the contrary.

Respondent shall pay Petitioner temporary total disability benefits of $976.75/week for 44-6/7 weeks, commencing June 30, 2022, through May 10, 2023, as provided in Section 8(b) of the Act.

It is so ordered:

Arbitrator Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023499
Case Name	Sandra Gdowski v. Muse Railroad Materials, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0460
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Cristi Nelson

DATE FILED: 9/26/2024

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SANDRA GDOWSKI,

Petitioner,

vs. NO: 20 WC 23499

MUSE RAILROAD MATERIALS, LLC,

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 issue of whether Illinois has jurisdiction over the claim and being advised of the facts and law, reverses the Decision of the Arbitrator.

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

The threshold issue a petitioner must establish is the Illinois Workers' Compensation Commission possesses jurisdiction over the claim. The Act confers Illinois jurisdiction over "persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois, persons whose employment results in fatal or non-fatal injuries within the State of Illinois where the contract of hire is made outside of the State of Illinois, and persons whose employment is principally localized within the State of Illinois, regardless of the place of the accident or the place where the contract of hire was made…." *820 ILCS 305/1(b)2*. The Commission observes Respondent's owner, Derrick Kilgore, testified Muse Railroad Materials ("Muse") is a Georgia corporation operating in the southeastern United States. RX1, p. 5-6. We

further note Petitioner, who was assigned to job sites in various states over her tenure with Muse, alleges an accidental injury while in Tennessee. T. 45. As such, for the Commission to possess jurisdiction over this claim, the contract of hire must have been made in Illinois. *See Mahoney v. Industrial Commission*, 218 Ill. 2d 358, 374 (2006) ("the place of the contract of hire is the sole determining factor for the existence of jurisdiction over employment injuries occurring outside this state.")

A contract of hire is made where the last act necessary for the formation of the contract occurs. *Cowger v. Industrial Commission*, 313 Ill. App. 3d 364, 370 (5th Dist. 2000). The Arbitrator concluded the last act necessary for the contract formation occurred in Illinois. The Commission views the evidence differently.

Petitioner, whom the Commission finds credible, testified she was initially contacted by an individual named Chris about coming to work for Respondent: "A gentleman that I used to work with at another company gave Chris my phone number, and Chris called me…He wanted Dave and I to go to work for Muse." T. 17. Petitioner was living in Chicago when Chris phoned her. T. 18. Petitioner explained what occurred after the first contact with Chris:

> Well, I was laid off from my previous job. Dave was working in New Jersey. I had to call him and talk to him about what was going on with Muse wanting us to go to work with them…I said no for me because they weren't going to pay me what I wanted…I believe I contacted Chris and said, no, we're not going to do it because they weren't going to pay me what I wanted…[Chris] contacted me about a week or so later asking me the same questions…I think he called me a couple of times, and then Derrick [Kilgore] called me…He agreed to pay me what I wanted. He wanted us to go to work - - to be in Alabama in one week, and I told him that wasn't possible because Dave was still working in New Jersey and Dave would have to give his employer a two-week notice. And I asked Derrick if this was a for sure thing. He said yes. I said because I don't want Dave to quit his job if this is just a maybe. He said no, it's a for sure thing, I need yous [*sic*] down there. T. 18-22.

Petitioner testified she was in Illinois when Derrick phoned her: "I was in Chicago. I was swimming with my grandchildren. The phone rang. I got out, answered the phone, and talked to Derrick." T. 22. After the conversation with Derrick, Petitioner phoned Dave and they agreed to take the jobs. T. 22. Respondent forwarded hiring packets, including a urine test, insurance papers, hiring papers, and application, for both Petitioner and Dave to Petitioner's Illinois address; Petitioner testified she completed the paperwork in Illinois. T. 22-23. Critically, however, Indiana is where the completed employment documents were posted back to Respondent; the Commission emphasizes Petitioner repeatedly testified she returned the completed paperwork to Respondent from a FedEx location in Indiana. T. 23, 53.

The Commission finds the last act necessary for formation of the contract was Petitioner returning the completed paperwork. As Petitioner testified this act occurred in Indiana, the Commission finds Illinois does not have jurisdiction over Petitioner's claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the

Arbitrator filed November 16, 2023 is hereby reversed, and the award of benefits therein is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the claim is dismissed for lack of jurisdiction.

The bond requirement in §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 dismissal of the claim herein, 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.

SEPTEMBER 26, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 8/7/24

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023499
Case Name	Sandra Gdowski v. Muse Railroad Materials, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Cristi Nelson

DATE FILED: 11/16/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/ Joseph Amarilio, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

SANDRA GDOWSKI
Employee/Petitioner

v.

MUSE RAILROAD MATERIALS, LLC
Employer/Respondent

Case # **20** WC **23499**

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 D. Amarilio**, Arbitrator of the Commission, in the city of **CHICAGO**, on **8/29/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/29/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**15,625.00**; the average weekly wage was $**1,250.00**.

On the date of accident, Petitioner was **60** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services. Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $833.33/week for 153- 4/7th weeks, commencing 9/19/2020 through 8/29/2023, as provided in Section 8(b) of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

Respondent shall pay directly to Petitioner's attorney reasonable and necessary medical services, pursuant to the medical fee schedule, of $210.00 to DOC Orthopaedics, $4,081.50 to Expert Pain Physicians, $8,314.00 to Hinsdale Orthopedics, $7,729.08 to ATI Physical Therapy, and $218.00 to American Family Decatur, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Templin including the cervical fusion, any preoperative and post operative treatment, physical therapy or other reasonable and necessary care related to the cervical fusion surgery.

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

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

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

/s/ *Joseph D. Amarilio* **NOVEMBER 16, 2023**

Signature of Arbitrator

ICArbDec19(b)

SANDRA GDOWSKI v. MUSE RAILROAD MATERIALS, LLC.
20 WC 023499
ATTACHMENT TO ARBITRATION DECISION
19(b)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY.

Ms. Sandra Gdowski (Petitioner) caused to be filed an Application for Adjustment of Claim for benefits under the Illinois Worker's Compensation Act (Act). Petitioner alleged that she sustained an injury on August 29, 2020 while working in her capacity with Muse Railroad Materials, LLC.(Respondent) . This claim proceeded to hearing on August 29 2023 pursuant to Section 19(b) of the Act. before the Arbitrator in the City of Chicago, County of Cook.

The parties jointly submitted a Request For Hearing stipulating that the parties were prepared to try this matter to completion on August 29, 2023 on the following disputed issues: 1. Whether the Petitioner and Respondent were operating under the Illinois Workers' Compensation Act based on the issue of whether the Illinois has jurisdiction. 2. Whether Petitioner sustained accidental injuries on August 29, 2020 that arose out of an in the course of her employment with Respondent. 3. Whether Respondent was given notice of the accident within the time limits stated in the Act. 4. Whether Respondent is liable for unpaid medical bills. 5. Whether Petitioner is entitled to temporary total disability benefits. And 6. Whether Petitioner is entitled to receive prospective medical treatment.

Petitioner testified in support of her claim as well as Mr. David Gdowski. Mr. Derrick Kilgore testified on behalf of Respondent via an evidence disposition. The submitted exhibits and the trial transcript of the hearing were examined by the Arbitrator. The parties mutually requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (Arb. X 1)

II. FINDINGS OF FACT

Petitioner testified that on August 29, 2020, she was employed by Muse Railroad Materials, LLC, Respondent. Tx9. Respondent is a railroad contractor that removes old rails from track. Id. Petitioner's job was to cut the old rail into different sections and drive a boom truck to assist another worker in picking up the old rail. Id. at 10. Petitioner testified that her bosses were Chris (last name not stated) and Derrick Kilgore. Id. at 11. Muse is contracted to remove rail wherever that assigned rail is located, and an average job assignment would take a matter of weeks to complete. Id. at 12. Petitioner started working for Respondent on June 19, 2020, and last worked for them around September 1, 2020. Id. at 12. She worked Monday through Saturday. Id. at 13. Chris and Derrick would occasionally be on-site at the locations she was working, along with other Muse employees. Id. at 13. One of those employees was Petitioner's husband, Dave. Id. at 14.

Petitioner testified she was a W-2 employee with health insurance. Id. at 14. A typical day consisted of going to the work location, having a job briefing with the railroad itself, and then picking and cutting rail. Id. at 16. She worked six weeks on, and one week off per the schedule, but it didn't always work out that way. Id.

Petitioner first came into contact with Respondent through a gentleman she used to work with at another company. Id. at 17. That person gave Chris Petitioner's phone number, and Chris called her to attempt to hire Petitioner and Dave to work for Muse. Id. at 18. At this time, Dave was working in New Jersey, and Petitioner was laid off by the same New Jersey company and in Chicago, Illinois, which was her primary residence. Id. She was living with her daughter, son-in-law, and grandchildren. Id. at 18-19. After discussing on the phone with Chris, Petitioner and Dave discussed taking the job. Id. Petitioner was unhappy with the proposed rate of pay, but Dave was interested in taking the job. Id. at 19. These conversations began approximately two months prior to her June 19, 2020 start date with Respondent. Id. at 20. After further telephone conversations with Petitioner, Chris, and Derrick, Respondent agreed to pay Petitioner what she wanted to work for Respondent. Id. at 21. Per Petitioner, Derrick wanted her and Dave to start in a week, but Dave had to give notice at his job in New Jersey first. Id. at 21. Petitioner confirmed with Derrick that this was a 'for-sure' thing, that there was a job for both of them, and Dave would not have quit his job for just a 'maybe.' Id. at 22. This final conversation occurred between Petitioner and Derrick while Petitioner was located in Chicago - Petitioner recalled that at the time of the call, she was swimming with her grandchildren and had to get out of the water to take the call. Id. at 22. After this conversation with Derrick, Petitioner called Dave, he gave his two weeks notice, and they agreed to take the job with Respondent. Id. at 22. Respondent sent to Petitioner a hiring package of paperwork, including insurance paperwork, hiring paperwork, and a formal application via FedEx. Id. at 23. Petitioner completed this paperwork in Illinois. Id. She does not know where Dave was when he completed his paperwork. Id. She completed all of her paperwork in Illinois and sent it to Muse via FedEx in Indiana. Id. at 24. Following this, Dave came from New Jersey to Chicago, and the two of them drove to Alabama together to report for work with Muse. Id. at 24.

On August 29, 2020, Petitioner was driving from Kentucky to Alabama for work - she was driving from one Muse worksite to another, at the direction of Muse. Id. at 25. Dave was making the same drive, in his own vehicle. Id. at 25. Petitioner was paid a salary was being paid her salary as she made the drive from Kentucky to Alabama at the direction of the Respondent. Id. at 26. Petitioner was driving on Interstate 65 at a consistent speed, and a truck next to her was varying its speed as she drove. Id. at 27. Petitioner testified that this truck veered into her lane and pulled back, causing that driver's trailer to hit the back of Petitioner's camper. Id. Petitioner lost control of her vehicle, which rolled onto its roof, and landed right-side up in the median. Id. at 28. Petitioner testified that she was traveling at approximately 60 miles per hour when the accident occurred. Id. Petitioner was wearing her seat-belt at the time. Id. at 29. She was in shock after

the crash, and believes she lost consciousness. Id. Police and emergency medical services arrived at the scene. Id. She had glass in her forehead and elbow which was removed by emergency medical personnel. Id. at 30. She had pain in her right arm from her shoulder to her wrist. Id. She was not taken to a hospital. Id. Her vehicle was towed away, and she traveled with Dave to a hotel approximately ten miles away. Id. at 31.

Petitioner was first seen on September 2, 2020 at American Family Care in Decatur, Alabama. Px5. Dr. Travis Harris recorded complaints of right arm and elbow pain following a car accident. Id. at 3. X-ray was negative for fractures, but positive for a foreign body or calcification in the forearm. Id. at 7. Dr. Harris referred the claimant to DOC Orthopaedics and Sports Medicine. Px1 at 27. Two days later, on September 4, 2020, Petitioner followed up with Dr. Russell Ellis, MD at DOC. Id. at 15. Dr. Ellis took a consistent history and noted ongoing right elbow pain following a motor vehicle accident. Id. at 13. His diagnosis was a right triceps strain, right elbow contusion, and right olecranon bursitis. He prescribed medication and took the claimant off work until her next appointment. Id. at 15. On September 11, 2020, Dr. Elis ordered a right elbow MRI, and kept the claimant off work. Id. at 9.

Thereafter, Petitioner returned to her home in Illinois and was seen by Dr. Robert Thorsness at Hinsdale Orthopaedics on September 21, 2020. Px3 at 6. Dr. Thorsness evaluated the right elbow and shoulder. Id. His history was likewise consistent. Id. He ordered medication and x-rays, along with reiterating the prior prescription for a right elbow MRI. Id. at 9. He kept her off work. Id. at 10. The right elbow MRI was completed on October 12, 2020, and was positive for common extensor tendinosis and focal subchondral cystic change along the radial head. Id. at 12. As of October 19, 2020, Dr. Thorsness performed a right elbow steroid injection and kept the claimant off work. Id. at 17. He also referred her to a psychiatrist as a result of the accident. Id. On November 16, 2020, Dr. Thorsness noted that the claimant was unsure if the injection was really helpful. Id. at 18. He recommended therapy and additional medication and kept the claimant off work. Id. at 20. Another elbow injection was performed on November 30, 2020. Id. at 23. Dr. Thorsness recommended an EMG study and kept the claimant off work. Id. at 24. On December 14, 2020, Dr. Thorsness reviewed the EMG study. Id. at 29. The EMG was largely normal, and Dr. Thorsness suspected a cervical radiculopathy may be the cause of some of the arm complaints. Id. at 31. He ordered a cervical MRI and kept Petitioner off work. Id. The MRI study was completed on December 17, 2020, and showed severe right and moderate to severe left neural foraminal stenosis at C5-6, along with a small bulge at C6-7. Id. at 33-34. On December 21, 2020, Dr. Thorsness stated, “The MRI of the cervical spine explains why she is having persistent right upper extremity pain. This is a common diagnosis after motor vehicle accidents.” Id. at 37. He referred the claimant to Dr. Nitin Malhotra for a cervical steroid injection, and if that failed, she was to see Dr. Cary Templin for surgical evaluation and treatment. Id. at 37.

Dr. Malhotra first met with the claimant on December 30, 2020. Px2 at 76. Dr. Malhotra took a consistent history. Id. Dr. Malhotra noted the right C5-6 pathology and concurred with the recommendation for an epidural steroid injection, to be performed under sedation. Id. at 78. This injection was performed on January 13, 2021. Id. at 74-75. Petitioner followed up with Dr. Malhotra on January 27, 2021. Id. at 72. The ESI resulted in incomplete relief of the elbow symptoms, with hand paresthesias gone, and significant neck/arm improvement. Id. A second injection was recommended, and the claimant was kept off work. Id. at 73. The second injection was done February 4, 2021, with a better response to the pain in the elbow. Id. at 68. Claimant was kept off work and directed to follow up with Dr. Thorsness.

On April 5, 2021, Dr. Malhotra recommended a possible third cervical ESI, depending on the outcome of further PT. Id. at 65. On April 26, 2021, Dr. Malhotra recommended a referral to Dr. Cary Templin, as discussed by Dr. Thorsness earlier in the year. Id. at 62.

On May 27, 2021, Petitioner met with Dr. Cary Templin. Px3 at 39. Dr. Templin again took a consistent history. Id. He reviewed the existing medical information and recommended a targeted right C6 epidural steroid injection. If this resulted in temporary relief, he would recommend a C5-6 cervical fusion. Id. at 39. That third injection was done on June 10, 2021, with significant relief, taking Petitioner's pain to 1/10 at rest. Px2 at 52. On June 24, 2021, Dr. Templin's PA recommended a course of work conditioning, with the possibility of surgical intervention in the future. Id. at 43. On August 4, 2021, Dr. Templin's PA confirmed the C5-6 cervical fusion recommendation and kept Petitioner off work pending surgery. Petitioner followed up regularly with Dr. Malhotra between this time and the date of trial. Px2, generally.

Petitioner confirmed that she has not worked since she finished with Muse in September 2020. Tx38. She continues to have significant pain down her right arm, and wishes to have the surgery as recommended by Dr. Templin. Id.

She met with Dr. Sam Biafora at the request of the Respondent on January 25, 2023 pustant to Section 12 of the Act. Id. at 37. She never had any prior right arm or neck issues before this accident. Id. at 38-39. She has difficulty with household activities like sweeping, mopping, and vacuuming. Id. She has ongoing numbness and tingling in her right hand. Id. at 39.

On cross examination, Petitioner confirmed that she was unemployed between December 2019 when she was laid off in New Jersey, and when she started with Muse in June 2020. Tx42. She stated her last hiring conversation with Derrick was in Chicago over the phone. Id. She agreed that when she was conversing with Derrick by phone, he may have been in Buford, Georgia, where Muse is headquartered. Id. at 44. She never did any work for Muse in Illinois. Id. The first job she worked for Muse was in Alabama in June 2020. Id. at 45.

Petitioner confirmed she was reimbursed by Respondent for her travel from Illinois to Alabama after being hired by Muse. Tx52. She confirmed she is receiving Social Security Disability benefits as of the time of trial. Tx55.

Petitioner next called David Gdowski to the stand. Tx66. Dave testified that he is still legally married to the claimant, but they have been separated for at least 20 years. Id. He became aware of the Muse job when Petitioner (in Illinois) called him (in New Jersey) to tell him about the job opportunity. Tx67. He only spoke with Chris at Muse once all of the terms of employment had been agreed - otherwise Petitioner was the one in communication with Muse during the hiring process. Tx69. After speaking with Chris, Dave understood that he was being hired, and had to complete some paperwork; he put in his two-week notice. Tx70-71. He received the hiring paperwork from Petitioner, and then he mailed it back to her so she could send it to Muse. Tx70-71. He largely confirmed Petitioner's testimony with respect to the occurrence of the accident and testified that he has been providing her financial support since the accident. Tx72-77. He would not have put in his two-week notice if he was not sure he had a job waiting for him with Muse. Tx78.

On cross examination, Dave Gdowski testified that he believed he was hired by Muse when he finished his phone call with Chris and put in his two weeks' notice. Tx79.

Respondent's witness, Mr. Derrick Kilgore, testified on behalf of the Respondent via deposition and the same was entered as Respondent's Exhibit #1 at the time of hearing. Mr. Kilgore testified that he is the owner of Muse Railroad Materials. Muse Railroad Materials is located at 36C East Main Street, Buford, GA 30518. He has had ownership of Muse Railroad for approximately twelve years. (Rx1, Pg. 5)

Muse Railroad is in the business of buying and selling railroad materials. Mr. Kilgore testified that his company removes railroad materials from the tracks that they purchase from the railroad. He stated that the workers get on track and remove the materials that they are salvaging. The business of Mr. Kilgore is principally located in the southeast states of the United States. They currently contract with Norfolk Southern as well as CSX. (Rx1, Pg. 6) Mr. Kilgore employs approximately 15 people including actual field workers and office workers. (Rx1, Pg. 7)

Mr. Kilgore testified that he was familiar with the Petitioner Sandra Gdowski because she was employed by Muse Railroad. He testified that the Petitioner worked for Muse Railroad in 2020. He first came upon her because he was looking for someone to operate one of his boom trucks. Derrick had been given the name of the Petitioner's ex-husband and he reached out to hire him to operate the boom truck and Petitioner became the go between. (Rx1, Pg. 7)

Mr. Kilgore testified that the Petitioner became "part of the deal" (emphasis added) to hire the ex-husband. Mr. Kilgore testified that he reached out to the ex-husband to discuss work with him. Mr. Kilgore was present in Georgia at the home base of the company at the time of the call. (Rx1, Pg. 8)

According to the witness, the Petitioner's ex-husband was working in New Jersey at the time of the call. When Derrick first spoke to the ex-husband about work, the Petitioner was not on the line. At some point thereafter, Derrick spoke with the Petitioner. The witness stated unequivocally that the Petitioner was in New Jersey at the time of the call and where both Petitioner and her ex-husband had been working. He testified that the Petitioner also worked with the company of the ex-husband, and she had been recently let go. According to the witness, the Petitioner was present in New Jersey and staying at a campground in a camper. He testified that she was staying at the same place and at the same campground the ex-husband was staying in, the only difference being that she was no longer employed by that prior NJ company. (Rx1, Pg. 9)

It was the witness' recollection that the agreement as to salary for Petitioner was made in early June via phone (Rx1, Pg 11). The documentation indicated that her first paycheck date was 6/26/2020 and that would have been after the first week of employment when she was paid. (Rx1, Pg. 12) According to the witness, he believed that the agreement regarding salary and the future employment of both the ex-husband and the Petitioner occurred while both the Petitioner and the ex-husband were in New Jersey. It was also his understanding that this agreement was reached when the Petitioner's husband was still employed by the prior employer. (Rx1, Pg. 13)

Following this discussion, regarding salary and working, they discussed that travel would need to occur between New Jersey and the southeast U.S. The witness did not recall whether the Petitioner was paid for travel between New Jersey and the first job site location. (Rx1, Pg. 13) According to the witness, the Petitioner and her husband worked in Alabama, Tennessee, and Kentucky. He did not recall the first location of work they were assigned. They were never contracted to work in Illinois. The witness testified that after the conversation was had with the Petitioner regarding work, the Petitioner would have had to get in touch with the office of Muse Railroad Systems in Georgia and fill out employment documents. (Rx1, Pg. 15)

The witness testified that he was "out of the loop once all that starts", referring to the HR paperwork. The witness testified that he would be made aware if there was a red flag or anything that was going to stop somebody from being hired. He confirmed that the process of paperwork did occur between the last conversation and negotiation of salary and the actual employment start date. The witness also testified that there may have been a drug test undertaken by the Petitioner at the request of his HR department. (Rx1, Pg. 19)

The witness then said that neither the Petitioner nor her ex-husband were hired at the time of the conversation while he was in Georgia, and they were in New Jersey. Rather, the witness testified unequivocally that when "boots are on the ground is when they are hired." He relayed this as similar to when you buy a truck, "until I get in it, it's not mine just because I agreed on the price over the phone." (Rx1, Pg. 20) The witness could not recall specifically whether the first job site location where Petitioner started work was in Kentucky or Alabama.

The witness testified that at the time of the Petitioner's auto accident, the Petitioner was moving from one Muse work site to another for another assignment. (Rx1, Pg. 21-22) At the time of the loss, the witness testified that the Petitioner was either heading between Kentucky and Alabama or the reverse. The accident did not occur enroute between her previous employment in NJ and the first Muse work location. (Rx1, Pg. 22-23)

Respondent also offered the Section 12 report of Dr. Sam Biafora. (Rx2). Dr. Biafora confirmed the Petitioner's ongoing right elbow complaints were causally related to the work accident. Id. at 5. He did not opine on the cervical spine. Id. He gave a diagnosis of mild right elbow lateral epicondylitis and extensor mass pain that may be secondary to radial tunnel syndrome. Id. He agreed treatment on the elbow had been reasonable and necessary, and again did not comment on treatment for the cervical spine. Id. at 6. He recommended a radial tunnel steroid injection, as well as a steroid injection to the lateral epicondyle with PT. Id. at 7. Following this, elbow surgery might be necessary. Id. He believed work restrictions of no forceful repetitive gripping with the right arm were reasonable. Id. at 7. He believed a consultation with a cervical spine specialist would also be warranted, but specifically declined to opine otherwise on the cervical spine. Id. at 8.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. The Act provides that, in order to obtain compensation under the Act, the employee bears the burden of proving, by a preponderance of the evidence, all of the elements of the claim. *820 ILCS 305/1(d)*. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

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

and consistent with the record as a whole. The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47 Petitioner's testimony is found to be credible. She does appear to be an unsophisticated individual and any inconsistencies in her testimony are not attributed to an attempt to deceive the finder of fact. It is noteworthy that Petitioner gave a consistent history to all her medical providers. It is further noted that none of her treating medical providers found evidence of malingering or symptom magnification.

The Arbitrator further finds the testimony of Mr. Gdowski to be credible. His testimony and demeanor also appeared to be straight forward, non-evasive and truthful.

The Arbitrator further finds the evidence disposition testimony of Mr Kilgore to be unpersuasive for the reasons stated below. The Arbitrator notes that Mr. Kilgore did not seem to have a solid command of the material facts, had made incorrect assumptions and reached conclusions that were not persuasive. Neither Ms. Gdowski nor Mr. Gdowski agreed with Mr. Kilgore that they would travel over 700 miles for a conditional offer of employment. Ms. Gdowski clearly testified that she would not have traveled to Georgia unless she had a done deal when she accepted the offer of employment while in Illinois. To reach the opposite conclusion defies commons sense.

WITH RESPECT TO ISSUE (A), WAS THE RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Petitioner and Respondent were operating under, and subject to the Illinois Workers' Compensation Act at the time of the accident, and that their relationship was one of employer and employee. The primary question in this case is the *situs* of the contract for hire, and the Commission's jurisdiction over this matter.

A contract is a promise or set of promises between two or more competent parties, supported by legal consideration, to do or not to do a particular act and for the breach of which the law recognizes a remedy. *Steinberg v. Chicago Medical School*, 69 Ill.2d 320 (1977); The requirements of a valid contract are offer and acceptance, consideration, competent parties, legal purpose, and, if agreed to by the parties, a written agreement. *Lal v. Naffah*, 149 Ill.App.3d 245 (1st Dist.1986). A contract may be express or implied. Express contracts are those in which the terms of the contract are disclosed in the words or writings of the parties. *Bull v. Mitchell*, 114 Ill.App.3d 177 (3d Dist.1983); Implied contracts are those where the agreement is inferred from the acts or conduct or course of dealings of the parties. *In Re Estate of Brumshagen*, 27 Ill.App.2d 14 (2d Dist.1960). An offer is an act by one person (offeror) which gives to another (offeree) the power to accept the offer according to its terms. *McCarty v. Verson Allsteel Press Co*., 89 Ill.App.3d 498, (1st Dist.1980); The offer must be communicated to the offeree. *Carroll v. Preferred Risk Insurance Co.,* 34 Ill.2d 310 (1966). In order to create a contract, the offer must be

accepted. *Zinni v. Royal Lincoln-Mercury, Inc.,* 84 Ill.App.3d 1093 (1st Dist.1980); The acceptance must be communicated to the offeror. *Rosin v. First Bank of Oak Park,* 126 Ill.App.3d 230 (1st Dist.1984). The place of acceptance is the place of the contract. *Cowger v. Industrial Comm'n*, 313 Ill. App. 3d 364, 371 (2000). The Arbitrator finds that a valid contract for hire was entered into by the Petitioner and Respondent

Pursuant to the Act, Illinois may acquire jurisdiction over a claim (1) if the contract for hire was made in Illinois, (2) if the accident occurred in Illinois, or (3) if the claimant's employment was principally located in Illinois. 820 ILCS 305/1(b)(2) (West 19940. In the instant case, claimant's work was not principally located in Illinois, nor was he injured within Illinois. Accordingly, the Illinois Workers' Compensation Commission may exercise jurisdiction over this matter only if the contract for hire was made in Illinois.

"'Employment contracts made in Illinois are normally to be interpreted as including an agreement by the parties to be bound by the Act even when the contemplated employment is exclusively in other States.'" *Burtis v. Industrial Comm'n,* 275 Ill. App. 3d 840, 842 (1995), quoting United Airlines, Inc. v. Industrial Comm'n, 96 Ill. 2d 126, 130 (1983). A contract for hire is made where the last act necessary for the formation of the contract occurred. *Hunter Corp. v. Industrial Comm'n,* 268 Ill. App. 3d 1079, 1083 (1994). Whether Illinois has jurisdiction over this matter "involves a factual inquiry as well as an application of the law" to the facts. *United Airlines, Inc. v. Industrial Comm'n*, *96* Ill.2d *126*, 131-32 (1983). A factual determination, such as whether a contract for hire has been made in Illinois, is within the purview of the Commission and will not be disturbed on review unless it is against the manifest weight of the evidence. *Hunter*, 268 Ill. App. 3d at 1083.

In this case, the last act necessary for contract formation was concluded by the Petitioner while within the state of Illinois. Petitioner credibly testified that all of her conversations regarding hiring occurred while she was physically present in the state of Illinois. The medical records consistently record Petitioner's Illinois home address. Derrick Kilgore testified he thought Petitioner was in New Jersey for those conversations, but the fact that the Respondent mailed the employment paperwork to Petitioner in Illinois and reimbursed her for travel from Illinois belies that testimony. Petitioner testified very specifically that she recalled her last conversation with Respondent (where she accepted the offer of employment) began while she was swimming with her grandchildren in Illinois. Petitioner's last conversations with Respondent prior to hire occurred in Illinois, and she completed the necessary paperwork in Illinois. The place of acceptance is the place of the contract. *Cowger v. Industrial Comm'n*, 313 Ill. App. 3d 364, 371 (2000). The Arbitrator finds Petitioner's detailed account of her activities in Illinois more credible than Mr. Kilgore's mere assertion that he believed Petitioner to be in New Jersey as these events occurred.

Mr. Derrick Kilgore via evidence deposition. Rx1. Mr. Kilgore testified that he became aware of Dave Gdowski in 2020 and wanted to hire him to work for Muse (though he originally mistakenly identified Dave or David Gdowski as 'Dan.' Rx1 at 7. Mr. Kilgore confirmed that for any telephone conversations about hiring, he was physically located in the state of Georgia. Id. at

8. He knew Dave Gdowski was working in New Jersey, and he believed Petitioner was in New Jersey as well, staying in her camper. Id. at 9. He confirmed Petitioner acted as a go-between in the hiring process between himself and Dave. Id. at 10. He confirmed there were some telephonic salary negotiations, and an agreement was eventually reached. Id. at 10. Mr. Kilgore confirmed that once the salary was agreed, Dave had to put in his two weeks' notice at his existing position, and then Dave and Petitioner came south to work for Muse. Id. at 11. Again, he believed Petitioner to be in New Jersey with Dave during this time. Id. He believed the agreement on salary was reached in early June 2020. Id. at 12. He was asked on direct if he considered Petitioner to be an employee after the end of the telephone conversations, and did not directly answer the question, stating that there would also be employment documents to fill out, but that he was not involved in that process. Id. at 16.

In *Energy Erectors,* the Appellate Court decided a similar, but distinguishable fact pattern. *Energy Erectors, Ltd. v. Industrial Comm'n*, , 230 Ill.App.3d 158 (1992). In that case, the claimant was a resident of Illinois and working with a friend named Olson. Olson left Illinois to begin work in Virginia. Olson testified that at some point, he told his wife to call the claimant and have him come down to Virginia to work for him. Evidently Olson's wife only spoke with the claimant's wife, and the claimant made his way down to Virginia to apply for a job, and was hired. Testimony from multiple Respondent witnesses was that the decision of whom to hire and when was made "at the job site." Employment paperwork, payroll forms, etc. were completed in Virginia. The appellate court found that jurisdiction did not lay in Illinois, as the mere answering of a telephone call in Illinois did not give rise to a contract for hire, where there was no meeting of the minds between the parties based on a telephone call between Olson's wife and the claimant's wife. *Energy Erectors, Ltd. v. Industrial Comm'n*, 230 Ill.App.3d 158 (1992).

The case at bar is distinguishable. Petitioner and Respondent had detailed telephone conversations, which included a meeting of the minds on a start date and salary (which was apparently a point of negotiation.) Necessary paperwork was signed in Illinois. In *Energy Erectors*, the Court found that the last act necessary for contract formation occurred in Virginia, and that the claimant's travel from Illinois to Virginia alone was insufficient to establish a contract for hire. In the case at bar, Petitioner did much more in Illinois than merely take a phone call and begin travel out of state. Petitioner negotiated and agreed upon a salary, and executed all necessary paperwork in Illinois. Finally, in *Energy Erectors*, the claimant was not reimbursed for travel expenses from Illinois to Virginia. 230 Ill.App.3d at 163 In this case, Petitioner was reimbursed for travel expenses from Illinois to her first job site with Respondent.(PX 7).

The present case is somewhat analogous to the case of *Chicago Bridge & Iron v. Industrial Comm'n* (1993), 248 Ill. App. 3d 687 (1993) In *Chicago Bridge,* the employer, a Minnesota company, hired the claimant, an employee residing in Illinois. The employer telephoned the claimant and asked if he was available for employment in Minnesota. After being informed of the

wage rate, claimant agreed to go to the job site. While reporting for work, claimant was struck by a passing vehicle several hundred yards from the employer's parking lot. In affirming the Commission's determination that Illinois had jurisdiction, this court held that the testimony of the employer's field personnel manager that a job offer was made and accepted in Illinois sufficient to support the Commission's determination that the contract for hire was made in Illinois. *Chicago Bridge,* 248 Ill. App. 3d at 692. And, in the case at bar the Petitioner was paid to travel from Illinois to the job site. Petitioner accepted the job offer in reliance that a contract for hire was entered in her call with Respondent. Respondent was made aware that the offer would not be accepted unless an employment contract for hire was entered between the parties so that Petitioner's husband could give a two-week notice to his New Jersey employer.

The Arbitrator is mindful that the evidence is that Respondent approached Petitioner and her husband and offered them employment and did so with follow up calls. Neither Petitioner nor her husband approached Respondent for employment. Rather Respondent courted Petitioner. Respondent's representative tendered an offer of employment by phone. Petitioner accepted the offer at her home in Illinois. The Arbitrator finds that Respondent sent employment forms to Petitioner in Illinois. The forms were completed in Illinois. Petitioner credibly testified that she and her husband would not have accepted a conditional employment offer and drive from Illinois to Georgia unless a contract for hire was entered into before Mr. Gdowski tendered a two week notice to his then current employer and before Petitioner and Mr. Gdowski drove from Illinois to Georgia. Petitioner testified unrebutted that she was paid travel expenses from Illinois to Georgia and submitted a travel expense documents in corroboration. Other than the travel expense form submitted into evidence by Petitioner, neither party submitted any other documents to corroborate their testimony.

Thus, the Arbitrator finds that the contract-for-hire was completed in Illinois, and thus the Petitioner and Respondent were operating under, and subject to, the Act at the time of the Petitioner's accident. The Arbitrator finds that Illinois does have jurisdiction to adjudicate Petitioner's application for adjustment of claim.

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:

Respondent disputed that Petitioner was involved in accident that arose out of and in the course of her employment. At issue is whether the claimant's injuries, suffered while she was traveling in her own vehicle from one work location to another. Whether a claimant's injury arose out of or in the course of his employment is typically a question of fact to be resolved by the Commission, and the Commission's determination will not be reversed unless it is against the manifest weight of the evidence. *Cox v. Illinois Workers' Compensation Comm'n,* 406 Ill.App.3d 541, 546 (2010); *Joiner v. Industrial Comm'n,* 337 Ill.App.3d 812, 815 (2003).

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2. An injury "arises out of" one's employment if "its origin is in some risk connected with or incident to the employment, so that there is a causal connection between the employment and the accidental injury." *Saunders v. Industrial Comm'n,* 189 Ill.2d 623, 627 (2000); see also *Parro v. Industrial Comm'n,* 167 Ill.2d 385, 393 (1995). A risk is "incidental to the employment" when it "belongs to or is connected with what [the] employee has to do in fulfilling his duties." *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 58 (1989).

"In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n,* 66 Ill.2d 361, 366 (1977). Injuries sustained at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co.,* 129 Ill.2d at 57.

The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n,* 109 Ill.2d 194, 199 (1985). A "traveling employee" is one whose work requires him to travel away from his employer's office. *Hoffman v. Industrial Comm'n,* 128 Ill.App.3d 290, 293, (1984), *aff'd,* 109 Ill.2d 194 (1985). It is not necessary for an individual to be a traveling salesman or a company representative who covers a large geographic area in order to be considered a traveling employee. *Id.* Rather, a traveling employee is any employee for whom travel is an essential element of his employment. *Urban v. Industrial Comm'n,* 34 Ill.2d 159, 163 (1966). A traveling employee is deemed to be in the course of his employment from the time that he leaves home until he returns. *Cox,* 406 Ill.App.3d at 545. An injury sustained by a traveling employee arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, *i.e.,* conduct that "might normally be anticipated or foreseen by the employer." *Robinson v. Industrial Comm'n,* 96 Ill.2d 87. 92, (1983); see also *Cox,* 406 Ill.App.3d at 545–46, *Venture–Newberg,* 2012 IL App (4th) 110847 WC, ¶ 14

The dispositive question is whether Petitioner was injured while engaging in conduct that was reasonable and that might reasonably be anticipated or foreseen by the employer. *Robinson,* 96 Ill.2d at 92, *Cox,* 406 Ill.App.3d at 545–46. The evidence establishes that both of these conditions were satisfied. Petitioner was injured while traveling from one railroad work site to another. Respondent's witness acknowledged that Petitioner's job duties required her to travel to various work sites. It was both reasonable and foreseeable that the Petitioner would drive on the highway with her trailer. The very nature of her job involved travel. Thus, travel was clearly an essential element of the claimant's job, rendering her a traveling employee as a matter of law. See, *e.g., Urban,* 34 Ill.2d 159, 163 (1966); *Hoffman,* 128 Ill.App.3d 290 , 293 (1984).

The undisputed facts establish that Petitioner's job duties required her to travel between worksites throughout the south. It is also undisputed that Petitioner was involved in a motor vehicle accident. The question is whether this constitutes an accident under the Act. At the time of the incident, Petitioner was driving her personal vehicle and trailer from one Respondent job

site location to another. In *Kertis v. Illinois Workers' Compensation Comm'n.* 2013 IL App (2d) 120252WC, the Appellate Court found that travel between two employer locations occurs in the course of employment. An injury suffered by a traveling employee is compensable so long as the employee's conduct is reasonable and foreseeable. It is certainly reasonable to drive on the interstate at sixty miles per hour from one state to another, and it is reasonable and foreseeable that a motor vehicle accident can occur while doing so. Thus, under the rules applicable to traveling employees, the undisputed facts establish that the Petitioner injuries arose out of and in the course of her employment with Respondent.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

On the Request for Hearing Form, Respondent disputed notice of accident. However, Mr. Gdowski testified that on the day of the accident, he called the employer and notified them of Petitioner's motor vehicle accident. (T. 76). Mr. Gdowski's testimony was unrebutted. Respondent's witness did not challenge notice of accident during the course of his evidence deposition. Accordingly, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that timely notice was given to Respondent.

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 *Rosenbaum v. Industrial Com. (1982), 93 Ill.2d 381, 386.* 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 (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 *(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).

Petitioner seeks compensation for her current condition of ill-being in the right arm and cervical spine. Respondent does not dispute Petitioner's current condition of ill-being is causally to her injury of August 29, 2020. (ARB X 1, ¶ 4).The Arbitrator finds that Petitioner's conditions of ill-being to her right arm and cervical spine are causally related to her accident. Even the Respondent's Section 12 examiner, opined that the right elbow condition was causally related, although he did not comment on the cervical spine. All histories taken by all treating physicians specifically reference, in detail, the motor vehicle accident in question. Thus, the Arbitrator finds that the Petitioner's conditions of ill-being are causally related to the 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:

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 (2011). Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary medical related to Petitioner's back would be compensable.

Petitioner offered PX 1 through PX 6, the medical records and the medical bills incurred by Petitioner for the treatment for the accidental injuries to her right arm and neck as follows:

1. DOC Orthopaedics - $210.00
2. Expert Pain Physicians - $4,081.50
3. Hinsdale Orthopedics - $8,314.00
4. ATI Physical Therapy - $7,729.08
5. American Family Decatur - $218.00
6. Alliance Clinical Associates – No bills submitted.

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Respondent's Section 12 examiner opined that Petitioner's treatment with respect to the elbow was reasonable and necessary. Respondent presented no utilization review reports. Having found for the Petitioner on the issue of causation, the Arbitrator awards all past medical bills as claimed by the Petitioner at trial. Wherefore, Respondent shall pay directly to Petitioner's attorney, in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission, reasonable and necessary medical services, pursuant to the medical fee schedule, of $210.00 to DOC Orthopaedics, $4,081.50 to Expert Pain Physicians, $8,314.00 to Hinsdale Orthopedics, $7,729.08 to ATI Physical Therapy, and $218.00 to American Family Decatur, as provided in Sections 8(a) and 8.2 of the Act.

**WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:**

Having found for Petitioner on the issue of causal connection, the Arbitrator awards the cervical fusion surgery as proposed by Dr. Templin. Having noted three effective cervical epidural injections for Petitioner, the Arbitrator finds that the proposed fusion surgery is reasonable and necessary and awards prospective medical. Treatment. Respondent shall authorize and pay for the reasonable and necessary preoperative and post operative medical treatment consistent the recommendations of Dr. Templin including the cervical fusion and the reasonable and necessary care related to the cervical fusion surgery.
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WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, 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 maximum medical improvement. *Interstate Scaffolding v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132 (2010) *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 findings with respect to Causal Connection and Prospective Medical, Petitioner is not yet at maximum medical improvement.

Petitioner claims entitlement to TTD benefits from September 19, 2020 through August 29, 2023, the date of trial. Petitioner has been off work during this entire period, on orders from her original physicians in Alabama, and then by Dr. Thorsness, Dr. Malhotra, and Dr. Templin. Respondent's Section 12 examiner opined that Petitioner could work with no forceful repetitive gripping with the right arm, but that was only with respect to the elbow diagnosis, not the cervical. There is also no evidence of an offer of light duty within these restrictions. The Arbitrator awards TTD benefits as claimed by the Petitioner. Therefore, Respondent shall pay Petitioner temporary total disability benefits of $833.33/week for 153- 4/7th weeks, commencing 9/19/2020 through 8/29/2023, as provided in Section 8(b) of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010387
Case Name	Karen Hanson v. Kendall County Sheriff's Office
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0461
Number of Pages of Decision	24
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Richard Turner
Respondent Attorney	Frank Johnston

DATE FILED: 9/26/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF Ottawa)

☒ 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

Karen Hanson,

Petitioner,

vs. NO: 19 WC 10387

Kendal County Sheriff's Office,

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 issue of 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. 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 August 31, 2023, is hereby affirmed and adopted.

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

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

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

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.

SEPTEMBER 26, 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	19WC010387
Case Name	Karen Hanson v. Kendall County Sheriff's Office
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	***Corrected*** Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Richard Turner
Respondent Attorney	Frank Johnston

DATE FILED: 8/31/2023

/s/ Roma Dalal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

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

☐ 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
19(b)

Karen Hanson
Employee/Petitioner

v.

Kendall County Sheriff's Office
Employer/Respondent

Case # **19** WC **010387**

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 **Roma Dalal**, Arbitrator of the Commission, in the city of **Ottawa**, on **June 26, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 17, 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 $**96,626.40**; the average weekly wage was $**1,858.20**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **2** 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 $**24,517.42** TTD, $**0** for TPD, $**0** for maintenance, and $0.00 or other benefits, for a total credit of $**24,517.42**.

Respondent is entitled to a credit for amounts paid by group health insurance, as stipulated to by the parties, under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's low back and left hip conditions as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid. Pursuant to Section 8.2(e), neither the Petitioner nor the Respondent are responsible for the outstanding chiropractic treatment as it is duplicative in nature.

Respondent shall be given a credit for medical benefits that have been paid by the employer's group health insurance plan, 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.

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. Nho, including, but not limited to a left arthroscopy labral repair, acetabular rim trimming, femoral osteochondroplasty and capsular plication.

Petitioner's request for penalties and fees 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.

Signature of Arbitrator

August 31, 2023

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF LASALLE)

BEFORE THE WORKERS' COMPENSATION COMMISSION
OF THE STATE OF ILLINOIS

KAREN HANSON,)
)
Petitioner,)
) No. 19 WC 10387
v.)
) Arbitrator Roma Dalal
KENDALL COUNTY SHERIFF'S OFFICE)
)
Respondent.)

FINDINGS OF FACT

This matter proceeded to hearing on June 26, 2023 in Ottawa, Illinois before Arbitrator Roma Dalal. Issues in dispute include causal connection, disputed medical, penalties and prospective medical. (Arb. Ex. 1, T.4).

Karen Hanson, (hereinafter referred to as the "Petitioner"), at the time of the injury was 45 years old. (Arb.Ex.1). Petitioner testified she was employed at Kendall County Sheriff's Office (hereinafter referred to as the "Respondent) as a patrol deputy on February 17, 2019. (T.10). Within her job duties she would take calls for service, serve subpoena summons, and conduct traffic stops. On February 17, 2019, her and another deputy went to serve a warrant. There was fresh snow on the ground and Petitioner slipped and fell to the ground, hitting more the left side than the right side of her butt. (T.11-12). Petitioner notified her deputy in charge and proceeded to the emergency room at Rush Copley. (T.13). Petitioner testified she drove herself there. She noted she had a hard time sitting directly straight down because she was inflamed. She injured her tailbone, low back and both hips, left more than right. (T.13-14). Per the WC employee injury report, Petitioner stepped out of the squad to attempt to serve a warrant and slipped on the ice and landed directly down on her butt injuring her tailbone and hips. (RX9).

Petitioner testified consistently with her medical care. (T.14-27). She further noted she never treated for her hips prior to the February 17, 2019 injury. (T.16). On April 23, 2019 Petitioner returned to work with restrictions. (T.19). Petitioner further noted she eventually returned to full duty work as of September 6, 2019. (T.23). Petitioner stated she was back on patrol and required to get in and out of squad cars. She also had to tend to people in car crashes, walk on different terrains, going up and downstairs to people's residences. (T.23-24). During those physical activities she feels left hip pain to the point where she wants to cry when she goes to bed because she is in so much discomfort. Petitioner noted she bought a king size foam pillow to place under her left hip to keep pressure off of it. (T.24). She also has to switch between ibuprofen and Tylenol to relieve the pain. (T.24). Petitioner further testified she was treating with Dr. Bansal for pain management. (T.24). Petitioner testified she received an injection into the left hip which first provided excruciating pain, but then she received temporary relief for quite a few months but

gradually came back in full swing. (T.26) Petitioner testified she eventually came under the care of Dr. Shane Nho who recommended surgery for the labrum tear. (T.26).

Petitioner testified she notices that she is unable to be as physical as she would like. She cannot walk around the block with her kids without pain in her left hip. Her exercise has gone down to zero. She also gets sharp pains and has to keep pressure off that hip. She testified it has taken a toll on her overall health. (T.31). Petitioner notices pain at the top of the left hip that shoots across the spine and the pain shoots into her groin, down her butt and leg, and into her big toe. She also experiences a lot burning sensation throughout her thigh area. (T.31-32). She further indicated she no longer is treating for her SI joint or lumbar back. Lastly, she noted a substantial amount of weight gain since the incident (T.32).

On Cross-Examination, Petitioner noted her symptoms were different than they were in the summer of 2019. She does not have the flare-ups like she did with the lumbar or sacrum or tailbone. (T.33). Petitioner noted her left hip complaints had been consistent since 2019. Petitioner agreed she has been able to work without restrictions since September 6, 2019. (T.34).

Petitioner testified she told Dr. McGivney about her hip but never received feedback from it. Dr. Bansal recommended treatment with Dr. Nho. (T.37).

Medical Summary

Petitioner presented to Rush-Copley on February 17, 2019. Petitioner was a 45-year-old who slipped and fell on ice, complaining of tailbone and low back/hip pain. Petitioner had no leg numbness or weakness. Petitioner was diagnosed with a tailbone injury and was to return. (PX1, p.18-19). X-rays taken of the low back, sacrum coccyx and pelvis/hips were normal. *Id*. at 30-31.

On February 20, 2019 Petitioner presented to Advocate Dryer Medical Clinic noting she slipped on ice and fell back into a seated position. Petitioner was diagnosed with bilateral hip pain and was to undergo therapy. (PX3, p.10-11).

In the initial physical therapy evaluation at Advance Physical Therapy of Yorkville on February 25, 2019, Petitioner claimed pain at the top of her hips and across her back, with the worst pain at that time in her tailbone. Petitioner was prescribed therapy three times per week for four weeks. (PX2, p.23-25). Petitioner treated with Advanced Physical Medicine throughout February and March 2019. Petitioner treated primarily for her low back at the SI joint, however, had a continued diagnosis of pain in the bilateral hips. (PX2). As of March 15, 2019 Petitioner noted her low back was starting to feel better. Her PCP advised she could go back to work with restrictions, but her job required her to be at full duty. *Id.* at 82.

As of March 19, 2019, Petitioner worked two twelve-hour shifts, and noted to be very sore after the same. Petitioner received chiropractic care. (PX2, p.86). Petitioner continued to complain of the pain on the left backside. *Id.* at 87-97. Petitioner had a physical therapy reevaluation on March 26, 2018 presenting with tailbone/hip and low back pain. Petitioner had made slow improvements and was to undergo therapy. She was also recommended an MRI. *Id.* at 105-107.

Petitioner continued with chiropractic care throughout April 2019, May 2019, June 2019, July 2019, and August 2019 with limited relief. (PX2). Eventually a medical doctor at the clinic, Dr. Farah

Malik, determined to place her active treatment plan on hold on August 15, 2019, pending an MRI of her sacrum/coccyx and an MRA of her left hip. (PX2, p.611-612).

Petitioner returned to Dryer Medical Clinic on March 1, 2019 with a complaint of low back pain. Petitioner was to undergo physical therapy three times a week for four weeks. (PX3, p.13-14). Petitioner returned again on March 8, 2019 with continued pain in bilateral hips, sacrococcygeal pain, a decreased mobility. Petitioner was to continue with therapy. *Id*. at 15-16. Petitioner returned on March 15, 2019 with low back pain radiating to the left leg. Petitioner was to continue with therapy. *Id*. at 18-19.

Petitioner followed up at Dreyer Clinic on April 5, 2019. Petitioner still complained of low back pain, hip pain, and tailbone tenderness. Petitioner had burning across the left hip and lower gluteus with sciatic pain down left posterior thigh. Petitioner was referred for pain management which was denied. Petitioner was to continue with therapy. (PX3, p.22-24).

On April 4, 2019 Petitioner presented to Dr. Steven Mash for a Section 12 examination. (RX1, Ex.2). Petitioner was diagnosed with low back syndrome with left sciatica. He noted Petitioner's mechanism of a fall on ice with a direct blow to the buttock/tailbone area was consistent with her complaints. Petitioner should be in care of an orthopedic physician. Chiropractic treatment was no longer indicated, although physical therapy may be necessary. Lastly, he opined Petitioner had not reached MMI.

Petitioner testified she saw Dr. McGivney for this injury on April 16, 2019, although she previously treated with him for a prior unrelated neck condition. (T.17-18).

On April 16, 2019 Petitioner first presented to Dr. McGivney. Dr. McGivney noted he had dealt with her chronic neck pain in the past. Petitioner stated she slipped on ice and landing on a seated position on February 17, 2019 with complaints of tailbone pain, low back pain and some shooting sciatic type pain. Petitioner was to undergo an MRI of the lumbar spine and provided medication. She was diagnosed with acute left-sided low back pain and remained off work. (PX4, p.57-61).

Petitioner returned to Dr. McGivney on April 23, 2019, with no significant positive findings on the lumbar MRI. Petitioner was recommended continued therapy and possible work conditioning. He referred Petitioner to Dr. Bansal to try some injections. Petitioner was diagnosed with acute midline low back pain with bilateral sciatica with a 20 lb. lifting restriction. (PX4, p.21-26).

Dr. Mash wrote an addendum report on May 17, 2019. (RX1, EX3). He reviewed updated medical records noting Petitioner's diagnosis would not be considered discogenic low back syndrome, rather it would be low back pain with left sciatica. Petitioner's condition was aggravated her injury. He also noted traditional physical therapy was recommended. He noted Petitioner was unable to work full duty. *Id*.

Petitioner saw Dr. McGivney on May 21, 2019. Petitioner continued to complain of tailbone pain in the area between the sacrum and the tailbone and occasional sciatic pain. Petitioner's MRI was normal. Petitioner was to continue another month of therapy and referred to pain management. (PX4, p.123).

Petitioner returned to Dr. McGivney on June 25, 2019. Petitioner reported she was feeling better. Her exam was stable and noted stiffness in her coccyx. Petitioner was to discontinue therapy and return in a month when she would be released from care. (PX4, 103-105).

On August 2, 2019 Petitioner returned for another Section 12 examination with Dr. Mash. Dr. Mash diagnosed Petitioner with low back syndrome with left sciatica and coccydynia, rule out internal derangement of the left hip. Dr. Mash recommended a left hip arthrogram and MRI of the sacrum and coccyx. He also noted Petitioner could return to work with restrictions of no bending, stooping, twisting, or climbing and 10 pounds lifting. (RX1, Ex.4).

On August 6, 2019 Petitioner returned to Dr. McGivney. The Doctor noted the recent IME with Dr. Mash and possibility of a labral tear to her left hip. This was news to him. Petitioner complained of pain in the coccyx and left SI joint area with some radiating pain to the left groin. He advised that there was nothing surgical to offer. Instead, he recommended a referral to pain management for injections to the coccyx area and SI joint. He also agreed with the recommended MRI of the sacrum and SI joint. He noted that her symptoms were worsening. Petitioner was diagnosed with coccydynia and lumbar degenerative disc disease. He advised the labral hip problems were not his area of expertise and advised she would need to go to a hip specialist. She could return to a pain physician. (PX4, p.88-91).

Petitioner underwent an August 15, 2019 MRI scan of the sacrum/coccyx at DuPage Medical Group. The scan was read to reveal abnormal SI joints, consistent with chronic sequelae of sacroiliitis for which clinical correlation is needed. (PX5, p.60).

Petitioner also underwent a hip MRI scan on August 15, 2019 which revealed normal signal and morphology of the left acetabular labrum, without discrete labral tears or paralabral cyst formation, normal femoroacetabular osseous anatomy, including sufficient bony offset of the femoral head-neck junction and normal periarticular bone marrow signal along the left hip joint, without periarticular osseous stress injuries or specific MR signs of avascular necrosis of the femoral head. (PX4, p. 365-366; PX5 p.65-66).

On September 4, 2019, Dr. Mash authored an addendum report. He reviewed the MRI reports of the sacrum and coccyx and left hip arthrogram. He opined Petitioner had reached maximum medical improvement and could return to work full duty. (RX1, EX5).

On September 9, 2019, Petitioner presented to Dr. Sachin Bansal with left hip pain. Petitioner had an injury when she fell on her back and had significant left buttock pain with radiation into her anterior thigh with burning, numbness, and tingling in the region. It was noted she had discomfort with internal rotation of her left hip. Petitioner was diagnosed with coccydynia, lumbar degenerative disc disease, right lumbar radiculopathy. Dr. Bansal ordered a repeat MRI of her lumbar spine and an MRI of her pelvis to evaluate any compression of her sciatic nerve that is non spinal in nature. In addition, Petitioner underwent 3 trigger point injections. (PX4, p.357-362).

On September 12, 2019, Petitioner underwent a lumbar spine MRI which revealed a mild annular bulge of the L3-L4 intervertebral disc with a small left extraforaminal protrusion abutting the extraforaminal left L3 nerve without impingement, a minor annular bulge of the T12-L1 and L1- L2 intervertebral discs and mild multilevel degenerative changes with moderate L4-L5 facet joint degenerative changes. (PX4, p. 346-347).

On September 12, 2019, Petitioner underwent an MRI of the pelvis as ordered by Dr. Bansal. The results of the scan were read to reveal chronic bilateral sacroiliitis without significant reactive marrow edema or bony ankylosis. (PX4, p.353-354).

Dr. Bansal reviewed the MRI scan on September 12, 2019 and advised that there was a very small disc herniation at L3-L4 which typically would not cause her pain but still possible. He recommended that Petitioner undergo a left L3-L4 transforaminal injection and if she gets significant relief then the disc herniation is the source of pain. With no relief, they could inject the SI joint. (PX4, p.338).

On October 3, 2019, Petitioner underwent a L3-L4 transforaminal epidural steroid injection as performed by Dr. Bansal. The diagnosis was listed as lumbosacral neuritis and lumbar disc herniation (PX4, p.317).

Dr. McGivney authored a narrative report dated November 19, 2019. He first reviewed his history with Petitioner, including treatment related to this work accident. He noted Petitioner never complained of any groin pain. Therefore, he did not know the clinically significance of any hip pain. He diagnosed Petitioner with coccydynia, low back pain, chronic, with evidence of degenerative disc disease. Dr. McGivney noted Petitioner had a documented history in the past for chronic neck pain that did not respond to "nonconventional treatment in a very fast fashion." He wrote that he was "concerned about other issue and that some of her pain complaints may not be confirmed objectively." He again noted that he found no evidence of any structural lesions in her back and minimal evidence of anything on her low back. Her pain complaints were non reproducible and "totally subjective and not verifiably objectively." He could not anticipate a full return as he had not seen her since she started treatment with Dr. Bansal. He opined that the slip and fall on ice caused the onset of coccydynia and most likely aggravated her preexisting degenerative disc disease. However, he could not confirm any correlated to the left hip labral pathology which was out of his specialty. (PX7).

Petitioner saw Dr. Bansal on November 18, 2019. She reported about 50% relief of radiating left leg pain with the left L3-L4 TFESI. Overall, the left leg pain improved significantly but she still had some discomfort. She complained of pain as aching and radiating at time with no weakness or loss of bowel/bladder function. Examination findings significant for back pain. No pain with bilateral hip internal or external rotation. Dr. Bansal diagnosed Petitioner with lumbar radiculopathy, right lumbar radiculopathy, lumbar degenerative disc disease, myofascial pain dysfunction syndrome, and herniation of lumbar intervertebral disc with radiculopathy. He noted that she was doing better with the back but still had symptoms. He recommended a repeat left sided lumbar TFESI (PX4, p. 257).

On December 17, 2019, Petitioner underwent a left L3-L4 transforaminal epidural steroid injection under fluoroscopy as performed by Dr. Bansal. The operative diagnosis with lumbar radiculopathy. (PX4, p.157). On February 10, 2020, Petitioner underwent a left L3-L4 transforaminal epidural steroid injection performed by Dr. Bansal. She was diagnosed with lumbar radiculopathy. She noted that she was investigating a death in a home and had to go up and down stairs several times and was standing over 6 hours. She advised that this exacerbated her pain. She noted she was doing very well after the previous injection and had significant pain relief. There were no examination findings related to the left hip. (PX4, p.508-512). Petitioner underwent a left L3-L4 transforaminal epidural steroid injection performed by Dr. Bansal on February 20, 2020. The diagnosis was listed as lumbar radiculopathy. (PX4, p.486).

Petitioner returned to Dr. Bansal on June 1, 2020. She reported excellent relief from the L3-L4 ESI in February but noted the pain recently came back similar to her previous complaints. She advised that she has been very active in her work as a police officer since the recent civil uprisings/riots occurring in the Aurora area. She was positive for back pain but negative for arthralgias. She had no significant

tenderness to palpitation in bilateral lumbar paraspinals and limited range of motion with pain at extension and flexion. She was diagnosed with left lumbar radiculopathy, and he recommended another injection. He noted that he would add an injection at L4-L5 to see if this offered her relief. He advised that she had degenerative changes at L4-L5 though her problem is more significant at L3-L4. The left hip examination was negative and there were no complaints listed for left hip pain. (PX4, p.605-610).

On June 5, 2020, Petitioner underwent a left L3-L4 and L4-L5 transforaminal epidural injection by Dr. Bansal. The operative diagnosis was listed as lumbar radiculopathy. (PX4, p.550-551).

Petitioner returned to Dr. Bansal on November 30, 2020. She had complaints of pain in her low back and left leg. She reported she had good relief until recently from the June TFESI. She reported she has been on her feet at work at lot wearing her gun and dealing with a double homicide. She noted aggravation of low back pain and left sided leg pain. She noted that the TFESI's helped almost completely for quite some time with her pain and Dr. Bansal advised that the injections to be diagnostic and therapeutic. He diagnosed Petitioner with left lumbar radiculopathy. (PX8, p.80-85).

On December 18, 2020, Petitioner underwent a left L3-L4 lumbar transforaminal epidural steroid injection and left L4-L5 lumbar transforaminal epidural steroid injection. The operative diagnosis was listed as lumbar radiculopathy. (PX8, p.26-27).

On January 26, 2021, Petitioner followed up with Dr. McGivney with low back pain. She reported she had been getting injections with Dr. Bansal which helped for 3-4 months but the pain returned. Dr. McGivney noted that he did not find any surgical lesions in her back, and she was not a surgical candidate. He could only recommend additional treatment with Dr. Bansal, including SI joint injection, but she would have to discuss that with Dr. Bansal. He diagnosed Petitioner with chronic left-sided low back pain with left sided sciatica. (PX8, p.239-240).

On January 29, 2021, Petitioner returned to Dr. Bansal. Petitioner had complaints of pain in her left buttock and left lateral thigh. She reported good relief with prior epidural injection for her leg pain, but the pain seemed to be focused in the left buttock area inferiorly. Petitioner was diagnosed with left lumbar radiculopathy. Dr. Bansal recommended a repeat L3-L4 TFESI on the left and a left sacroiliac joint injection. (PX8, p.196-201)

On February 4, 2021, Petitioner underwent a left L3-L4 lumbar transforaminal epidural steroid injection, left L4-L5 lumbar transforaminal epidural injection, and a left sacroiliac joint injection as performed by Dr. Bansal. She was diagnosed with lumbar radiculopathy and left sacroiliitis ((PX8, p.135-136).

On March 17, 2021 Petitioner left Dr. Bansal a note indicating she was still experiencing pain in the sacrum and the left hip inquiring into what her next steps should be. She noted the injections never took care of the pain in the hip, but the low back was fairly good. Her discomfort was still in the sacrum and left hip. (PX2, p.275).

On April 5, 2021 Petitioner underwent an arthrogram of the left hip which revealed a partially detached anterosuperior labral tear. (PX2, p.493).

On April 8, 2021 Petitioner asked Dr. Bansal if the labral tear was a result of the fall and he noted it was a possibility noting it wouldn't be a bad idea to get a consult due to her pain. (PX8, p.269).

On April 29, 2021 Petitioner presented to Dr. Shane Nho at Midwest Orthopaedics at Rush with complaints of left hip pain. Petitioner noted she had pain since Spring 2019 noting she stepped out of her police car and fell, landing on her buttocks. Petitioner noted the MRA arthrogram dye provided 50% relief in pain. The L3-L5 injections provided some relief, while the SI joint injection did not provide relief. He diagnosed Petitioner with left hip acetabular labral tear and underlying femoral acetabular impingement. Petitioner was administered a left hip joint injection and recommended a left hip arthroscopy, labral tear, acetabuloplasty, femoroplasty, and capsular plication due to failing conservative treatment. (PX9, p.13-15).

Petitioner followed up with Dr. Nho on May 27, 2021 for her hip pain. She reported the first night she had a significant pain and then it began to improve. She continued to have pain posteriorly, into the groin and within the buttock. Petitioner presented with ongoing left hip pain, consistent with femoral acetabular impingement and acetabular labral tear. Petitioner was recommended a left arthroscopy, labral tear, acetabular rim trimming, femoral osteochondroplasty, and capsular plication.

On May 27, 2021 Dr. Nho authored a narrative report. He went over her symptoms and opined on account of no prior history of left hip pain or treatment and a mechanism of injury on February 17, 2019 (twist/fall) consistent with the injury sustained (labral tear) and immediate onset of symptoms, the diagnosis is more likely than not causally related to the work injury. (PX10).

On September 21, 2021, Petitioner presented to Dr. Troy Karlsson for a Section 12 Examination. Petitioner was a 47-year-old female who reported injuring her left hip on February 17, 2019. Petitioner noted she slipped on ice and fell onto her buttocks. The Doctor reviewed her medical records and examined her. Dr. Karlsson noted Petitioner had no objective findings on exam. She had full range of motion to both hips with complaints only with full abduction and external rotation of the hip, giving some groin pain. Petitioner's subjective complaints were in the gluteal region as well as the groin and lateral hip. There would be some correlation between this and a labral tear. He noted the left hip MRI of August 15, 2019 clearly showed the intact labrum. He did not have the films of April 2021, but this definitely showed a labral tear. It was possible she had a degenerative tear over the ensuing year and a half. Dr. Karlsson opined Petitioner's current diagnosis was a labral tear which could not be caused, aggravated, or accelerated by the alleged work accident as she had an MRI arthrogram which was the gold standard of diagnostics done on August 15, 2019. He also noted Petitioner had symptoms of malingering. (PX3).

On January 17, 2022 Petitioner was seen by Sara Armast, PA at Midwest Orthopaedics at Rush. Petitioner's MRI of the left hip was reviewed which revealed an acetabular labral tear. Petitioner was recommended a cortisone injection and continued physical therapy. Petitioner had tried an injection in the past that worked for 3-4 months. (PX9, p.9).

On April 26, 2022 Dr. Nho authored a second narrative reviewing the Section 12 report of Dr. Troy Karlsson, the April 5, 2021 MRA and the August 15, 2021 MRA. Based on his clinical information, he would opine that the labral tear is or could be causally related to the February 17, 2019 workplace injury given that she denied prior history of left hip pain or treatment and the immediate onset of left hip pain. The two MRIS show a labral tear and impingement. In addition, the intra-articular injection shows

temporary relief suggesting the hip joint as a partial source of pain. On the account of failed conservative treatment, he recommended surgery. (PX11).

On August 1, 2022, Dr. Karlsson authored an addendum report reviewing additional imaging, to include the post-arthrogram MRI study on August 15 ,2019, the April 5, 2021 MRI arthrogram of the left hip and the August 15 2019 X-rays of the pelvis, as well as the narrative repot from Dr. Shane Nho. (RX4). Dr. Karlsson opined that his diagnosis had not changed. He noted the MRI arthrogram by the radiologist's reading had no tears. Her subsequently arthrogram in 2021 showed a possible tear. He noted that surgery was reasonable, however, unrelated. He noted her prognosis was guarded. (RX4).

Evidence Depositions

Dr. McGivney

The parties proceeded with the evidence deposition of Dr. Thomas McGivney on November 2, 2020. Dr. McGivney is a board-certified orthopedic physician who specializes in the spine. (PX12, p.6-7). Dr. McGivney first saw Petitioner on April 16, 2019 for her low back. *Id*. at 10. He previously treated her for the neck issue about five years ago. He never treated her for the back. Petitioner presented with pain the tailbone area in the low back and occasional shooting-type leg pain into the buttock after her slip and all on ice. *Id*. at 12. Petitioner had tenderness to her low back and sacrum. *Id*. at 13. He eventually recommended an MRI which revealed mild degenerative changes and recommendation for an injection. He diagnosed her with coccydynia. *Id*. at 14-15. He continued treating Petitioner with a recommendation of ongoing therapy. *Id*. at 18-20. Petitioner next treated with Dr. McGivney on August 6, 2019. He saw that there was discussion of a labral tear in the hip. He testified that she did not have any clinical indication to him of a labral tear and she never complained of hip pain to him. Dr. McGivney was disheartened as she was worse after he told her that he planned on discharging her. As of August 6, 2019 Petitioner started complaining of a little SI joint pain, groin pain, a lot of that was new. He noted no history of groin pain. He recommended an MRI of the sacrum at her pelvis. *Id.* at 20-21. Dr. McGivney testified that he focused on the hip at the August 6, 2019. He performed a hip and SI joint examination. He was concerned that he missed something. He noted that the SI joint exam was negative. The hip had pretty much full range of motion. *Id.* at 22-23. He referred her to pain, Dr. Bansal, noting he did not provide him any direction. *Id.* at 25. Petitioner was not a surgical candidate. *Id.* at 27.

Dr. McGivney opined Petitioner's fall on ice could have caused the coccydynia. (PX12, p.28). He had no opinion regarding her hip pathology or SI joint pathology. He opined he would defer to Dr. Bansal with respect to his opinions regarding ability to return to work. *Id*. at 29.

On Cross Examination, Dr. McGivney noted he last saw Petitioner on August 6, 2019. (PX12 p.32). He noted he did not notice any disk herniations and did not recommend any injections to any levels. *Id*. at 32. Dr. McGivney had concerns about Petitioner. He testified that her pain complaints could not be confirmed objectively. He testified he was concerned that he was about to release Petitioner to full duty and then she came back complaining of different and more pain. (PX12, p.39). Dr. McGivney testified that the only objective thing he could verify was tenderness over the coccyx. Petitioner had a normal hip exam in his last visit. *Id.* at 40. The only thing he found at his last visit was tenderness in her coccyx area that was not severe. *Id.* at 43.

Dr. Sachin Bansal

The parties proceeded with the evidence deposition of Dr. Sachin Bansal on November 6, 2020. (PX13). Dr. Bansal is a board-certified interventional pain management specialist, with 90% of patients coming to him for spine complaints. *Id*. at 8-10. Dr. Bansal began treatment of Petitioner at referral of Dr. McGivney. *Id*. at 12. Petitioner initially treated with Dr. Bansal on September 9, 2019 with back and hip pain. She noted significant left buttock pain with radiation into her anterior thigh with burning, numbness, and tingling into this region. *Id*. at 13. He noted Petitioner had some weakness L3 and L4 distribution on the left side and also noted discomfort with internal rotation of the left hip. *Id.* at 15. He eventually recommended an MRI because he suspected that there was both spine and hip pathology, so he needed to delineate further. *Id*. at 18.

Dr. Bansal reviewed the MRI hip arthrogram on August 15, 2019 and did not note anything significant. (PX13, p.21). He advised the April 22, 2019 lumbar MRI scan was non diagnostic quality as it was very grainy, so he ordered a new one. *Id.* at 23. He personally reviewed the report, but disagreed with the report to an extent, opining that foraminal narrowing was a bit more significant. *Id.* at 25. He noted compression of nerve on the left exiting at L3-L4 from a lateral disk protrusion. He noted the dermatome distribution for that nerve root is anterior and lateral thigh. He opined the MRI film showed a very small disk herniation at L3-L4, which typically wouldn't cause pain but still could be possible. He later modified this opinion advising that after reviewing the scan, though small, the herniation was sitting the lateral recess and can cause quite of bit of pain. (PX13, p.27-28).

Dr. Bansal also opined there were inflammatory findings in the SI joint which is distinct from the left hip joint. (PX13, p.28). However, he opined that the disc herniation made more sense as to the source of her pain and recommended a transforaminal epidural steroid injection at L3-L4. (PX13, p.29). As far as the source of Petitioner's pain, he believed it was from the L3-4 disc. *Id*. at 32. He further noted the SI join could present also with complaints of pain into the left buttock and radiating into the anterior thigh. The coccyx should not as it would radiate to the front of the thigh. *Id*. at 32-33. A labral tear could mimic an L2-L3 or L3-4-disc herniating, but in her case, Petitioner had good range of motion of the hip and an unremarkable hip MRI. He did not see evidence of a labral hip tear but also qualified that he was more adept at looking at the spine than the hip. *Id*. at 33.

Petitioner underwent a series of injections on October 3, 2019, December 17, 2019, February 20, 2020 at the L3-L4 level (PX13, p. 30-46). Dr. Bansal diagnosed Petitioner with left lumbar radiculopathy from the L3-L4 disk. *Id* at. 47. Based on her history, he opined this was causally related to her work injury. *Id*. at 48.

On Cross Examination, Dr. Bansal noted Dr. McGivney reviewed the April 2019 MRI scan but did not order a new one thereafter. Dr. Bansal never performed an injection to the coccyx or the left SI joint. (PX13, p.50-53). Dr. Bansal testified that stiffness in the coccyx or pain in the tailbone was not typical for a disk herniation, but he could not attest for the clinical efficacy of other providers. *Id.*at 55. He further noted the pain Petitioner initially presented with was not coming from L4-L5. *Id*. at 58-59.

Dr. Shane Nho

The parties proceeded with the deposition of Dr. Shane Nho on February 1, 2023. Dr. Nho is a board-certified orthopedic specializing in hip surgery. (PX14, p.9). Dr. Nho noted Petitioner was a 47-year-old woman with complaints of left hip pain that had been ongoing since the spring of 2019. She denied previous hip pain and noted pain in the SI joint, lateral hip, and groin. *Id*. at 12. The Doctor examined her and diagnosed with ongoing left hip pain consistent with femoral acetabular impingement and an acetabular labral tear and provided her an injection. *Id*. at 13-15. Dr. Nho noted 50% improvement which indicated the labral tear was a significant contributor to her pain. *Id*. at 16. Dr. Nho recommended a left hip arthroscopy labral repair, acetabular rim trimming, femoral osteochondroplasty and capsular plication. *Id*. at 17.

Dr. Nho opined on the account of no prior history of left hip pain and a mechanism of injury, twist, slash fall consistent with injuries sustained the diagnosis is more likely than not causally related to the work injury. (PX14, p.19). Dr. Nho noted Petitioner twisted her hip, landing on her buttocks, so advised the twisting mechanism caused the labrum to be injured. *Id*. at 20. Dr. Nho further indicated he reviewed both MRAs. The first MRA of August 15, 2019 revealed subtle evidence of a labral tear with cam impingement. *Id*. at 23. He explained that Cam impingement was a deformity of the proximal femur or the ball of the hip joint. He noted he would disagree with Dr. Karlsson's interpretation of no labral tear. When Dr. Nho reviewed the April 5, 2021 MRA he indicated it showed similar appearance of labral tear and cam impingement. *Id*. at 23. He testified both images looked more or less the same. *Id*. at 24. He noted that he would attribute 50% of her overall pain to be coming from the hip itself. *Id*. at 25.

On Cross-Examination, Dr. Nho testified he was relying solely on Petitioner's report of her symptoms when making her left hip assessment. He testified he was not aware of treatment she had or did not have to her left hip. *Id*. at 30.

Dr. Steven Mash

On November 12, 2020, the Parties proceeded with the evidence deposition of Dr. Steven Mash (RX1). Dr. Mash is a board-certified orthopedic surgeon with a practice split between 50% general orthopedics and 50% sports medicine. *Id.* at 7. Dr. Mash noted he retired as of January 1, 2020. *Id.*at 7.

Dr. Mash testified he initially conducted a Section 12 examination of Petitioner on April 11, 2019. Petitioner reported that she suffered a slip and fall on the ice landing directly on her buttocks behind her squad car. (RX1, p.13-14). Petitioner initially complained of back pain with some radiating symptomology into the left buttock and left thigh. *Id*. at 15. He also reviewed her medical records. Dr. Mash diagnosed Petitioner with low back syndrome with left sciatica and causally related this diagnosis to the work accident. He recommended treatment with an orthopedic physician and physical therapy. *Id.* at 16-18.

Dr. Mash subsequently testified he prepared an addendum report on May 17, 2019. He reviewed records of Dr. McGivney and the lumbar spine MRI report. He diagnosed Petitioner with low back syndrome and opined the MRI findings were descriptive of arthritis without demonstrating any acute injury. He agreed with Dr. McGivney's treatment recommendations and treatment plan. (RX1, p.21-24).

Dr. Mash performed a second Section 12 examination on July 26, 2019. He noted that her complaints at this examination were stiffness on the left side of the low back with some left buttock discomfort and some discomfort about the left groin on internal rotation. (RX1, p.25). Dr. Mash focused on the left hip as there was some suggestion of left hip pain, but her examination was normal except for the pain complaints. (RX1, p.26). He diagnosed Petitioner with coccydynia, low back discogenic disease and some concerns for hip difficulty. He recommended a left hip arthrogram and MRI study of the sacrum and coccyx. *Id.* at 27.

Dr. Mash next reviewed the reports of the MRI scans. He noted there were no abnormalities of the sacrum or coccyx. As for the MRI of the left hip, he advised that it was a post arthrogram MRI, meaning it was done with contrast to evaluate the labral structures about the hip. He advised that it was found to be normal. (RX1, p. 27-28). He placed Petitioner at MMI and opined she could return to work. *Id*. at 29.

Dr. Mash did not see an indication of a herniation at either L3-L4 and L4-L5. He advised that Petitioner did not have any findings consistent with a herniation on examination. (RX1, p.30).

On Cross-Examination, he testified about ten years ago he occasionally would be a spinal surgery assistant. (RX1, p.34). He noted if Petitioner was his patient, he would probably not send her to a spinal surgery but possibly pain management. *Id*. at 34. He noted he was not a pain management physician. He further noted he did not review the actual low back MRI film from April 22, 2019. *Id*. at 41.

Dr. Troy Karlsson

The parties proceeded with the evidence deposition of Dr. Troy Karlsson on February 27, 2023. (RX2). Dr Karlsson is a board-certified orthopedic surgeon who specializes in knees, hips, and shoulders. *Id.* at 6. Dr. Karlsson performed a Section 12 examination on September 21, 2021 and prepared an addendum report dated August 1, 2022. Dr. Karlsson reported Petitioner slipped and fell directly onto her backside, and she reported that she did not fall onto her left or right side, but directly on her buttocks. *Id.* at 9. Dr. Karlsson reviewed the August 15, 2019 MRI arthrogram of the left hip as well as the April 5, 2021 left hip MRI arthrogram. He testified he did not see any abnormalities of the labrum on the first study in August of 2019. The labrum was well outlined by the dye and there was no tearing and no displaced fragments. *Id.* at 18. As for the April 5, 2021 MRI of the left hip, he noted that there was some minor high signal in the upper or superior aspect of the labrum which would be consistent with some fraying or tearing in that area. *Id.* at 18. He opined the possible tear revealed in the April 2021 MRI scan did not occur from the work injury as the August 2019 MRI arthrogram did not show a tear in the labrum. *Id.* at 15, 19. He noted this reading of the scan was consistent with the radiologist's reading of the scan as well. Dr. Karlsson disagreed with Dr. Nho's opinion that the labral tear was or could be related to the February 17, 2019 workplace injury. *Id.* at 20.

Dr. Karlsson opined Petitioner showed symptom magnification at the time of the Section 12 examination. Her pain levels were 8/10, greater than would be expected even if there was a labral tear present, especially in relation to her having a normal gait and normal motion of the hip. He advised that even if there was a labral tear present that it would not cause pain never getting below 4 and getting as high as 8/10. (RX2, p.20-21). He noted surgery would be reasonable but not related. *Id*. at 21. On Cross-Examination, the Doctor noted he agreed with Dr. Nho who saw subtle evidence of a labral tear and cam impingement with no muscle tendon tears on August 15, 2019 arthrogram. *Id*. at 27.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her 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 finds that any inconsistencies in her testimony are not attributed to an attempt to deceive the finder of fact.

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 her employment was a causative factor in her 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).

It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board,* 318 Ill.App.3d 507, 514-15 (1st Dist. 2000).

In the instant case, the Arbitrator finds Petitioner's current condition of ill-being is causally related to her work accident. The Arbitrator will address both body parts.

Low Back

The Arbitrator will first address the low back. Petitioner testified she never had any prior low back problems prior to the injury. In addition, the chain of events presented in this case show Petitioner's low back/coccyx became symptomatic after her work accident. There is no evidence whatsoever that prior to Petitioner's work accident, she received any medical treatment. The record does not reflect Petitioner had ever taken time off work due to back pain. No evidence was introduced about Petitioner's pre-accident work performance not being satisfactory. There was no mention Petitioner requested any accommodation because of a back condition. There was no evidence presented of intervening or subsequent injuries to the low back that could explain Petitioner's injury and current condition. The Arbitrator finds Petitioner met her burden of proof by a preponderance of the evidence that her condition of ill-being was causally related to her work accident based on the chain of events in addition to the medical opinions contained in the record giving causal connection.

The Arbitrator finds Respondent agreed that Petitioner sustained a compensable accident on February 17, 2019. Respondent agreed that as a result of the work accident, Petitioner required medical treatment. Respondent's expert, Dr. Mash diagnosed Petitioner with low back syndrome with left sciatica and causally related this diagnosis to the work accident. Eventually, Dr. Mash opined Petitioner reached MMI as of September 4, 2019.

The primary issue at Arbitration is whether treatment subsequent to September 4, 2019, consisting of the injections into the back and additional conservative care recommended by Drs. McGiveny and Bansal is related to the accident of date. The Arbitrator finds Petitioner's current condition of ill-being in regards to her back is causally related to her February 17, 2019 work injury. The Arbitrator further finds Petitioner reached maximum medical improvement as of March 17, 2021. On this date, Petitioner noted her low back was fairly good only complaining of low back and sacrum pain. In addition, at trial, Petitioner also stated she was no longer treating for her SI joint or lumbar back. (T.32).

Petitioner's treating physician, Dr. McGivney, opined he never previously treated her for her back. Petitioner initially presented with pain the tailbone area in the low back and occasional shooting-type leg pain into the buttock after her slip and all on ice. Dr. McGivney opined Petitioner's fall on ice could have caused the coccydynia. He specifically had no opinion regarding her hip pathology or SI joint pathology. He opined he would defer to Dr. Bansal with respect to his opinions regarding ability to return to work.

Dr. Sachin Bansal testified that he personally reviewed Petitioner's MRI but believed the foraminal narrowing was a bit more significant. He noted compression of nerve on the left exiting at L3-L4 from a lateral disk protrusion. He noted the dermatome distribution for that nerve root is anterior and lateral thigh. He opined the MRI film showed a very small disk herniation at L3-L4 which could cause pain. Dr. Bansal also opined there were inflammatory findings in the SI joint which is distinct from the left hip joint. He opined the disc herniation made more sense as to the source of her pain and recommended a transforaminal epidural steroid injection at L3-L4. Dr. Bansal diagnosed Petitioner with left lumbar radiculopathy from the L3-L4 disk. Based on her history, he opined this was causally related to her work injury.

The Arbitrator finds this opinion more persuasive than Respondent's Section 12 expert, Dr. Mash. Dr. Mash opined the accident was in part causally related to Petitioner's low back and coccydynia. The Arbitrator notes that on August 2, 2019 Dr. Mash diagnosed Petitioner with low back syndrome with left sciatica and coccydynia and to rule out internal derangement of the left hip. He recommended additional diagnostics, to include a left hip arthrogram and MRI of the sacrum and coccyx. He also noted Petitioner could return to work with restrictions of no bending, stooping, twisting, or climbing and 10 pounds lifting. Without examining Petitioner again, just a few weeks later he opined Petitioner could return back to work full duty. The Arbitrator notes this was inconsistent with Petitioner's examination as Petitioner continued to have the same complaints.

Moreover, the Arbitrator notes Dr. Mash is now retired and also testified that he did not review the initial MRI films. Lastly, Dr. Mash noted if this was his patient, he would likely have sent Petitioner to a pain management physician. Here, the Arbitrator is adopting the opinion of the pain management physician, Dr. Bansal, who opined Petitioner's medical care was causally related to her work injury.

Petitioner testified she completed medical care for her low back and has not seen Dr. Bansal since March 17, 2021. In this case, the Arbitrator finds the pain management physician the most persuasive placing Petitioner at MMI as of March 17, 2021.

Left Hip

The Arbitrator also finds based on Petitioner's testimony and medical records that Petitioner established a causal nexus to her left hip. The Arbitrator notes there were no medical records documenting a preexisting injury. The medical records from the emergency department at Rush Copley Medical Center on the date of the injury, February 17, 2019, and the medical records from the initial visit at Advocate Medical Center, three days later, clearly document complaints of bilateral hip pain, in addition to the other complaints related to her coccyx and lumbar back. In the Employee Injury Report she signed on February 17, 2019, Petitioner indicated the body part injured was "tailbone and hips". (RX9). The Arbitrator notes that the back and the hip can mask each other in symptoms.

Petitioner's initial treatment did document a hip problem. In addition, Dr. Mash noted Petitioner's symptoms may be hip in nature and recommended a hip arthrogram. In reviewing the hip arthrogram, Dr. Nho found a subtle tear with cam impingement visible in the initial MRI arthrogram while Dr. Karlsson did not. The Arbitrator notes that Dr. Nho's interpretation is more credible based on Petitioner's subjective complaints. Petitioner initially complained of hip pain on the date of accident through March 2019. She also complained of hip pain with Advanced Physical Medicine through July 2019.

The Arbitrator finds it reasonable Petitioner believed her symptoms were all from her back as documented by her physicians. The Arbitrator also notes that on August 6, 2019, Dr. McGivney noted Petitioner should see a hip specialist as labral hip problems were not his expertise. He also recommended she return to a pain physician. Petitioner did treat with the pain physician but did not see a hip specialist at that time.

The Arbitrator finds that Dr. Nho testified that the labral pain was likely 50% of her pain which was a significant contributor. He attributed 50 percent of overall pain coming from the hip in itself and the remaining areas of pain could be either lower back, SI joint, neuromuscular, fascial or something outside the hip joint. (PX14, p.25). The Arbitrator notes that Petitioner did obtain some relief from her coccyx/low back symptoms but continued to be symptomatic. Petitioner received improvement from the injection she received which indicated the labral tear was a significant contributor to her pain.

Dr. Nho further indicated he reviewed both MRAs. The first MRA of August 15, 2019 revealed subtle evidence of a labral tear with cam impingement. He explained that Cam impingement was a deformity of the proximal femur or the ball of the hip joint. He noted he would disagree with Dr. Karlsson's interpretation of no labral tear. When Dr. Nho reviewed the April 5, 2021 MRA he indicated it showed a similar appearance of labral tear and cam impingement. He testified both images looked more or less the same. He noted that he would attribute 50% of her overall pain to be coming from the hip itself.

The Arbitrator notes Dr. Nho specializes in the hip. He devotes most of his clinical and surgical practice to disorders of the hip. The fact that earlier clinicians may not have appreciated findings of hip pathology in the 2019 MRI arthrogram is not as persuasive here such as to disregard the opinions of Dr. Nho, particularly given clearly documented complaints of hip pain in the medical records from the date of injury forward. The Arbitrator finds the opinions of Dr. Nho as to causal relationship more persuasive and sufficient to prove that the Petitioner's current condition of ill-being in her left hip is causally related to her work accident of February 17, 2019.

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

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In reviewing the medical services provided to Petitioner, the Arbitrator finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. The Arbitrator finds the medical services provided to Petitioner were partially reasonable and necessary.

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).

The Arbitrator notes Petitioner submitted a medical billing exhibit, PX6. Petitioner testified the exhibit reflects the charges for services received from the various providers, the amounts paid by her employer group health insurance coverage, the amounts she paid out-of-pocket, and the balances claimed

due for services that remain outstanding to Advance Physical Medicine of Yorkville. (T.27-30). Respondent stipulated on the record that the medical bills for physical therapy services would or should be paid per the Fee Schedule. (T.7). The parties have stipulated to an 8(j) credit for the payments made by the group health insurance plan (Arb. Ex.1) and it appears from PX6 that the total of those payments is $37,431.89. The dispute between the parties appears to be as to the reasonableness and necessity of the chiropractic treatment which also had been afforded by Advance Physical Medicine, whose records were admitted as PX2.

In reviewing the testimony, it looks like Dr. McGiveny continued to recommend physical therapy. In addition, as of June 25, 2019, Dr. McGivney advised Petitioner to discontinue therapy. In addition, Respondent's expert, Dr. Mash, noted Petitioner should continue with a formal physical therapy program not chiropractic care. While the Arbitrator notes both chiropractic and physical therapy have distinct benefits, the course of care seems duplicative in nature. Based on Dr. McGivney's notes and Dr. Mash's opinion, the Arbitrator finds the chiropractic treatment in conjunction with the physical therapy to be unreasonable and unnecessary. Pursuant to Section 8.2(e), neither the Petitioner nor the Respondent is responsible for the outstanding chiropractic visits as the charges are unreasonable and unnecessary.

The Arbitrator further finds that the treatment rendered by all the other care providers delineated in PX 6 was reasonable and necessary to address pathology and complaints directly causally related to the injuries sustained in the fall in the course of her employment on February 17, 2019, including the services rendered to address her left hip complaints as well as the lumbar and SI joint complaints. Petitioner paid amounts on account to Rush Copley Medical Center, to Advanced Physical Medicine of Yorkville (therapy only), to Advocate Medical Group/Dreyer Clinic, to Rush Orthopedics, and to Midwest Orthopedic at Rush, for care and treatment rendered to her at these facilities resulting from her injuries arising out of and in the course of her employment on February 17, 2019, all as detailed in PX 6.

The Arbitrator orders Respondent to pay Petitioner all other reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

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 her work accident and has not stabilized or otherwise reached MMI in regards to her left hip. Petitioner seeks prospective care in the form of a left arthroscopy labral repair, acetabular rim trimming, femoral osteochondroplasty and capsular plication.

The Arbitrator finds Petitioner is entitled to prospective medical care as recommended by her treating physician. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule. The Arbitrator finds Petitioner at MMI for the lumbar back/coccyx as detailed above.

With respect to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner claims that she is entitled to penalties and fees. The Arbitrator notes that the imposition of penalties and fees would not be appropriate. In so holding, the Arbitrator notes that the intent of Section 16, 19(k) and 19(l) of the Workers' Compensation Act is to implement the Act's purpose to expedite the compensation of industrially injured workers and to penalize an employer who unreasonably, or in bad faith, delays or withholds compensation to an employee.

The Arbitrator further notes that Section 19(k) penalties may be awarded where there has been any "unreasonable or vexatious delay of payment or intentional underpayment of compensation where proceedings have been instituted or carried on by one liable to pay compensation, which does not present real controversy, but are merely frivolous or for delay." The Arbitrator further notes that Section 19(k) penalties are discretionary, rather than mandatory.

Additional compensation may be allowed pursuant to Section 19(l) "in case the employer or his insurance carrier shall fail, neglect, refuse or unreasonably delay the payment of weekly compensation benefits due to an injured employee during the period of temporary total disability". The award of additional compensation under this Section is "not proper if non-payment is based on a reasonable and good-faith challenge to liability." Similarly, Section 16 provides that attorneys' fees may only be awarded when the employer has engaged in unreasonable or vexatious delays.

The Arbitrator finds that under the above standards, neither penalties nor fees are warranted. The Arbitrator notes that the allegations contained in the petition for fees and penalties are related to the authorization and treatment related to the left hip. The Arbitrator finds that there was a real controversy as to whether Petitioner suffered from a left hip condition and whether it was causally related to the work accident. Respondent credibly and reasonably relied on the opinions of section 12 examiners Dr. Mash and Dr. Karlsson. In addition, Dr. McGivney, treating physician, credibly testified in November of 2019 that he did not appreciate any labral tears or left hip condition. He also expressed concern over Petitioner's changing pain complaints. The MRI arthrogram completed just months after the work accident did not reveal a labral tear per Dr. Karlsson and the radiologist first interpreting the report. Petitioner did not consistently report left hip complaints as Dr. Bansal testified to in November of 2020.

As such Respondent has not engaged in unreasonable or vexatious conduct, delay, or contests of liability. Petitioner's petition for penalties is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000123
Case Name	Perla Aparicio v. Allegis Group
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0462
Number of Pages of Decision	9
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jose Rivero
Respondent Attorney	Erin Fiore

DATE FILED: 9/26/2024

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PERLA APARICIO,

Petitioner,

vs. NO: 21 WC 000123

ALLEGIS GROUP,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b)/§8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary disability, causal connection, medical expenses and prospective medical, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

The Commission affirms the Arbitrator's Decision with respect to casual connection and temporary disability, and with respect to prospective medical, however, with clarification. To clarify, the Commission modifies the last sentence in the Arbitrator's Order beginning with "The Respondent" and ending with "Dr. Rerri," and further modifies the identical last sentence on page two, under the Arbitrator's Conclusions of Law "With respect to issue (O) whether Petitioner is entitled to prospective medical care" so that both sentences read as follows: Respondent shall be liable for the cost of the left L5-S1 hemilaminectomy, discectomy, foraminoplasty, discography and annuloplasty using Joimax techniques recommended by Dr. Rerri.

The Commission further modifies the Arbitrator's Order regarding the medical services award and "[w]ith respect to issue (J), whether the medical services rendered to Petitioner were reasonable and necessary." The Commission reverses the award of $1,067.00 to Lakeshore Surgery Center, noting that there is no supporting medical bill in evidence. The Commission further reverses the award of transportation charges itemized in Petitioner's Exhibit Three, the River North Pain Management/Delaware Physicians S.C. bill for dates of service on June 15, 2021, August 10, 2021, November 17, 2021, March 2, 2022, and June 21, 2022, a total of $1,375.00 as the Commission finds that Petitioner failed to prove the reasonableness of those charges. The Commission affirms the award of transportation costs itemized in Petitioner's Exhibit Six, noting the charges reflect anesthetic was administered to Petitioner on June 25, 2021, when Petitioner underwent a bilateral L5-S1 transforaminal epidural steroid injection (ESI) and selective nerve root blocks (SNB) and on October 15, 2021, when Petitioner underwent a discogram procedure.

Further, the Commission finds that Respondent shall have credit for medical bills paid pursuant to the itemization listed in Respondent's Exhibit Three.

The Commission further modifies the Arbitrator's Decision to correct two scrivener's errors. Under the Findings of Fact on page one, in the first sentence in paragraph three, the Commission strikes "2019" and replaces it with "2020" so the sentence now reads, "Petitioner sought a second opinion with Dr. Alex Vargas of River North Pain Management on November 24, 2020."

Under the Findings of Fact on page one, in the last sentence in paragraph four, the Commission strikes the first word, "Let" and replaces it with the word "Left" so the sentence now reads, "Left hip MRI was unremarkable."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on December 29, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $350.66 per week for a period of 119.00 weeks, commencing August 10, 2021, through November 20, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of $1,067.00 to Lakeshore for costs claimed without a supporting bill in evidence is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of $1,375.00 for transportation charges for dates of service on June 15, 2021, August 10, 2021,

November 17, 2021, March 2, 2022, and June 21, 2022, itemized in Petitioner's Exhibit Three, in the Delaware Physicians bills, is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services of $1,470.00 to Western Touhy Anesthesiology, $20,136.24 to Lakeshore Surgery Center, $10,668.20 to Delaware Physicians, $7,815.00 to New Life Medical Center, $526.00 to Dr. Rerri and $25,000.00 to River North Pain Management, as provided in §8(a) and §8.2 of the Act. Respondent shall have credit for medical bills paid pursuant to the itemization listed in Respondent's Exhibit Three.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical costs for the left L5-S1 hemilaminectomy, discectomy, foraminoplasty, discography and annuloplasty using Joimax techniques, recommended by Dr. Rerri, pursuant to §8(a) and §8.2 of the Act.

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

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

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

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

SEPTEMBER 26, 2024
O073024
KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000123
Case Name	Perla Aparicio v. Allegis Group
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Jose Rivero
Respondent Attorney	Erin Fiore

DATE FILED: 12/29/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/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

Perla Aparicio
Employee/Petitioner

Case # **21WC000123**

v.

Consolidated cases: _____

Allegis Group
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal,** Arbitrator of the Commission, in the city of **Waukegan, Illinois**, on **November 20, 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 **Prospective Medical Care**

FINDINGS

On **10/23/2020,** 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 $**27,330.68**; the average weekly wage was $**525.99**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **2** 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 temporary total disability benefits of $350.66/week for 119 weeks, commencing August 10, 2021 through November 20, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $1067.00 to Lakeshore $1,470.00 to Western Touhy, $20,136.24 to Lakeshore Surgery, $12,043.20 to Delaware Physicians, $$7,815.00 to New Life Medical Center; $526.00 to Dr. Rerri and $25,000.00 to River North Pain Management, as provided in Sections 8(a) and 8.2 of the Act.

The Respondent shall be liable for the cost of the surgery recommended by Dr. Rerri.

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.

DECEMBER 29, 2023

Signature of Arbitrator

Findings of Facts:

Petitioner, Perla Aparicio, worked on a production line, for Respondent, Allegis Group in 2020. (T.12). On October 23, 2020, she sustained in injury to her lower back while working. (T.13).

She was sent by her employer to Advocate Medical Group on October 28, 2020. There, a history was taken of "[i]njury at work form 10/23/20, slipped at work L leg/groin injured without fall to the ground. Apparently also have pain over L buttock as a result of this." (PX. 1, pg. 68). Petitioner treated conservatively with Advocate through November 13, 2020 with medication and physical therapy. (PX. 1).

Petitioner sought a second opinion with Dr. Alex Vargas of River North Pain Management on November 24, 2019. (PX. 3, pg. 13). Dr. Vargas diagnosed Petitioner with lumbar facet pain syndrome, lumbar radiculopathy, and left hip contusion/pain and ordered an MRI of Petitioner's spine and hip. (PX. 3, pg. 16-17). He placed Petitioner with work restrictions. (PX. 3, pg. 11).

An MRI of Petitioner's lumbar spine was performed on December 2, 2020 and revealed "3-4 mm broad-based posterior and slightly right-sided disk herniation which indents the ventral surface of the thecal sac" at L5-S1. (PX. 7, pg. 4). Let hip MRI was unremarkable. (PX. 7, pg. 2).

On December 15, 2020, after having reviewed the MRIs, Dr. Vargas recommended Petitioner undergo a course of physical therapy, transforaminal epidural steroid injection and \nerve root blocks, along with use of medication. (PX 3, pg. 19). Petitioner underwent therapy at New Life Medical Center. (PX. 2). Petitioner underwent a transforaminal epidural steroid injection on June 25, 2021. (PX. 5, pg. 4). On follow-up, Dr. Vargas noted that Petitioner felt no improvement to her back pain or leg pain. (PX. 3, pg. 23). Accordingly, Dr. Vargas felt that a surgical consultation was appropriate. (PX. 3, pg. 24).

Dr. Vargas referred Petitioner to Dr. Bernard Rerri who examined Petitioner on August 25, 2021. (RX. 4, pg. 3). Dr. Rerri reviewed the MRI of Petitioner's spine and noted a disc protrusion at L5-S1 but in addition, identified pain at the left sacroiliac joint. (PX. 4, pg. 3). Dr. Rerri felt it was best that Petitioner undergo a discogram to identify the source of her pain. (PX. 4, pg. 3).

A discogram and post discogram CT was performed by Dr. Vargas on October 15, 2021 which confirmed "unequivocal concordant discogenic pain at the L5-S1 level…" (PX. 3, pg. 31).

After reviewing the discogram, Dr. Rerri recommended Petitioner "left L5-S1 hemilaminectomy, discectomy, foraminoplasty, discography and annuloplasty…" (PX. 3, PX. 4, pg. 7). , Dr. Rerri reexamined Petitioner on June 21, 2022 and October 24, 2022, and reiterated the need for surgery. (PX. 4, pg. 13-19).

Petitioner testified at hearing that she still suffers from back pain going down her left leg. (t. 14-15). She expressed her desire to undergo the surgery Recommended by Dr. Rerri. (T. 14).

Petitioner was examined by Dr. Andrew Zelby at the request of Respondent pursuant to Section 12 of the Act on August 2, 2021 and again on April 3, 2023. (RX. 1 and RX. 2). Dr. Zelby maintained that Petitioner does not need surgery because his spine and neurologic examination of her was normal. (RX. 2). He believed the findings on the MRI were "mild". (RX. 2, pg. 3). He believed none of the treatment provided to Petitioner was reasonable and necessary. (RX. 2, pg. 3). He did not believe the surveillance video provided to him affected his opinion and maintained that Petitioner should have returned to work full duty immediately following her accident and should have been at MMI three months post-accident. (RX. 2, pg. 3).

Conclusions of Law:

With respect to issues (F) whether Petitioner current condition of ill-being is causally related to the accident, the Arbitrator finds as follows:

The Arbitrator credits Petitioner's treating doctors, Dr. Vargas and Dr. Rerri with Petitioner's current condition of ill-being. Both performed several physical examinations of Petitioner, and both found evidence of radiculopathy. The findings on the MRI support the diagnosis of a disc protrusion at L5-S1 identing on the thecal sac. Moreover, the discogram confirmed for Dr. Rerri that the source of Petitioner's pain was the disc located at L5-S1. Despite Dr. Zelby's "normal" examinations of Petitioner and his discounting of the findings on the MRI as "mild" Dr. Zeldy did not comment on the revelations of the discogram and post-discogram CT.

With respect to issue (J), whether the medical services rendered to Petitioner were reasonable and necessary, the Arbitrator finds as follows:

Given the Arbitrator's find regarding causal connection, the Arbitrator credits the treating doctors with the reasonableness and necessity of care given to cure and alleviate the Petitioner's condition. The injections and discogram that were performed by Dr. Axel Vargas diagnostically aided both Dr. Vargas and Dr. Rerri to determine the source of Petitioner's pain. Accordingly, Respondent is liable to Petitioner for medical expenses consisting of $1067.00 to Lakeshore $1,470.00 to Western Touhy, $20,136.24 to Lakeshore Surgery, $12,043.20 to Delaware Physicians, $$7,815.00 to New Life Medical Center; $526.00 to Dr. Rerri and $25,000.00 to River North Pain Management.

With respect to issue (K) whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Given the Arbitrator's finding regarding causal connection, the Arbitrator further credits Petitioner's treating doctors with Petitioner's work capacity and finds that Petitioner was temporarily totally disabled from August 10, 2021, when she was placed off work by Dr. Vargas, through November 20, 2023, the date of hearing. Respondent is liable to Petitioner for temporary total disability benefits for this 119-week period.

With respect to issue (O) whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

Given the Arbitrator's finding regarding causal connection, the Arbitrator further credits Petitioner's treating doctor, Dr. Rerri, with the course of treatment need prospectively to cure and alleviate Petitioner's condition. The Respondent shall be liable for the cost of the surgery recommended by Dr. Rerri.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC022816
Case Name	Jeremiah Mayerak v. Experimental System
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0463
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Catherine Krenz Doan
Respondent Attorney	Daniel J Levato

DATE FILED: 9/27/2024

/s/Amylee Simonovich, 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

JEREMIAH MAYERAK,

Petitioner,

vs. NO: 13 WC 22816

EXPERIMENTAL SYSTEM,

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, temporary total disability, permanent partial disability, credit for temporary total disability and medical, 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 12, 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.

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.

SEPTEMBER 27, 2024

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AHS/ldm
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/s/*Amylee H. Simonovich*
Amylee H. Simonovich

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC022816
Case Name	Jeremiah Mayerak v. Experimental System
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Catherine Krenz Doan
Respondent Attorney	Daniel J Levato

DATE FILED: 6/12/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

/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

Jeremiah Mayerak Case # **13WC022816**
Employee/Petitioner

v.

Experimental System
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **April 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 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. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **4/11/2013** , 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 $**37,432.01** ; the average weekly wage was **$719.84**.

On the date of accident, Petitioner was **31** 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 $**479.89** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**18,810.38 (statutory amputation benefits)** for other benefits, for a total credit of $**19,290.27**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$479.89**/week for **3** weeks, for the period of **4/11/2013** through **5/1/2013**, which is the period of temporary total disability for which compensation is due.
- Respondent shall pay Petitioner the sum of **$431.90**/week for a further period of **175** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained to the right thumb caused a **35%** loss of use to the person as a whole.
- Respondent shall pay Petitioner the compensation accrued from **4/11/2013** through **4/11/2023** and shall pay the remainder of the award, if any in weekly payments.
- See Rider attached hereto and made a part of hereof.

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 Wesley

Signature of Arbitrator

JUNE 12, 2023

Jeremiah Mayerak v. Experimental System
Case Number: 13WC022816
D/A: 4/11/2013

Findings of Fact

Petitioner testified before the Arbitrator on April 11, 2023. The Arbitrator finds that Petitioner's testimony was credible and unrebutted. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing.

A. Work History

Petitioner testified that he was employed by Respondent on April 11, 2013. He was employed as a builder/installer, trainer and inspector. He had three separate job titles. Each job position was paid separately and at a different rate. Petitioner stated that training was paid by the day at $150 per day. Building and inspections were paid by the hour. Petitioner had been employed by Respondent for approximately six years prior to April 11, 2013. At the time of the hearing, Petitioner was 41. He was 31 at the time of the accident. Petitioner is right handed.

Petitioner testified regarding his job duties for Respondent as a builder, trainer and inspector. Petitioner testified that Respondent installed, trained on and inspected adventure parks, military challenge courses, playgrounds, zip lines and pay-to-play activities, such as rope courses. Petitioner testified that as a builder he built rope courses, zip lines, climbing walls and military challenge courses. He operated machinery, climbed trees, climbed poles and installed safety systems, decks, activities, elements and cables. Petitioner performed lifting and carrying. He lifted and carried spools of cable, beams, wood and tools. He lifted and carried spools of cable that weighed between 75 to 150 pounds. He reached for tools, reached to climb, pulled ropes, and attached equipment to other objects. Petitioner performed pushing and pulling. He pushed and pulled ropes and cables. He pushed utility poles into place. Petitioner pushed and pulled utility poles that weighed up to 1,000 pounds.

He operated tools which required pushing and pulling, such as chain pullers, hammers and saws. Petitioner climbed as part of his job duties. He climbed ropes, utility poles that were planted into the ground, trees for access to the course and staple climbs. Staple climbs were access points on a pole that were drilled into the pole to allow a person to climb. Petitioner also climbed over the course. Petitioner climbed over the course traversing from pole to pole via cable or safety ropes. Petitioner climbed between 12 to 55 feet or higher. Petitioner used both hands to climb. He grasped with both hands while climbing. Petitioner performed fine motor skills with his hands. He had to assemble clamps, nuts and bolts and inserted drill bits. Petitioner used tools, including chain saws, hammers, large construction equipment, reaching forklifts and hydraulic tampers.

Petitioner described his job duties as a trainer for Respondent. As a trainer, Petitioner took individuals and trained them on site specific courses, climbing towers or zip lines. He would manually inspect the course, demonstrate take downs, watch take down emergency procedures and show clients how to safely get up or re-ring equipment. To watch a take down, Petitioner would have to be physically present on the course, next to the person who was practicing an emergency take down at height. For an emergency take down, an unconscious individual needed to be brought down from the course from 12 to 50 feet. He watched the group secure safety equipment and stop them if they did something wrong. Petitioner taught them proper safety procedures. He had to be in the course to conduct assessments and show the group how to do emergency take downs. Petitioner had to climb the course to observe the group. Petitioner had to climb utility poles, trees, ladders and ropes to access the course as a trainer. He also had to hook into the access on the ropes course.

Petitioner described his job duties as an inspector for Respondent. As an inspector, Petitioner had to physically inspect the course to make sure it was in proper working order before a client could use the course. When Petitioner arrived at a site for an inspection, he would access the site using a ladder, pole, tree or rope ascension. He would climb to the top of the poles and traverse across the site to the other section of the course and check everything. He would then write a report about his findings. He had to physically be on the course to inspect it. Petitioner climbed utility poles, trees, ropes and ladders.

Petitioner testified that he uses a safety system when climbing. However, the safety system does not assist him with climbing. He has to climb by himself.

Respondent admitted the job description for an installer/inspector and trainer into evidence. (RX 4-5). The job of Challenge Course Inspector/Installer set forth that the person was responsible for coordination, implementation, control and completion of the challenge course inspections, installations and maintenance. (RX 4). Some of the job requirements were to assist in the planning and implementation of the challenge course inspection, installation and maintenance, review the project scope, report unsafe practices and present reports regarding the practice. (RX 4).

Petitioner testified that he reviewed the Inspector/Installer job description. The job description was from 2021. Petitioner was not sure if there was a written job description in place at the time of his accident. He agreed that the job description was accurate; however, it was missing a description of the physical duties. The job description did not list any of the physical job activities required to perform the job of inspector/installer, such as climbing, rope ascension and cable ascension. Petitioner testified that to implement the inspections, he had to climb the entire course from top to bottom and inspect all of the work. He had to climb each pole to the top to look at every connection, traverse across the elements, make sure that they are all installed. With zip lines, he would have to try the zip line to make sure there was no damage during installation.

Respondent admitted a job description for trainer. (RX 5). The job description set forth that a trainer was responsible for content delivery, coordination, implementation, documentation and completion of the training. (RX 5). The trainer had to implement the training, perform quality assurance and report the training progress. (RX 5). How the inspection was implemented was not described in the job description.

Petitioner testified that he reviewed the job description of trainer. He testified that the job description was accurate; however, it did not list the physical duties performed during a training. The job description did not list the physical activities required as part of the job. Petitioner stated that the job description did not include the physical job requirements that he testified that he was required to perform. He had to climb to complete the job

duties. The implementation of training required him to climb the course, traverse it, hook someone up to a rescue system and bring up items required for the training.

Petitioner testified that the job descriptions were under review and would be revised. Specifically, some of the errors and were discussed during a meeting and would be changed.

Petitioner testified that prior to April 11, 2013, he performed all of the job duties that he testified regarding. Petitioner did not have any problems performing his job duties. He performed them easily and enjoyed being outside.

B. Prior Medical Treatment

Petitioner testified regarding prior medical treatment. He testified that prior to April 11, 2013 he had not received any medical treatment for his right hand or thumb. Further, prior to April 11, 2013 he had not sustained any accidents or injuries involving the right hand or thumb.

C. Work-Related Accident of April 11, 2013

Petitioner testified that on April 11, 2013 he was performing his job duties for Respondent. Petitioner was installing a ropes course on a Carnival Cruise ship. He was working 20 feet above the deck of the ship on top of pillars. Petitioner was installing a horizontal stabilization tube. He was working with a crane, rope and safety harness to install the stabilization. Petitioner lost his right thumb installing the pipe. While installing the last pipe, it was not going in smoothly. The pipe suddenly shifted and caught his right thumb. The pipe weighed between 600 and 800 pounds. It shifted and guillotined Petitioner's right thumb causing an amputation.

D. Medical Treatment

Following the work-related accident of April 11, 2013, Petitioner sought medical treatment. Petitioner was initially examined at the Arzienda Osperaliero Universitaria in Italy. (PX 1). The medical records were in Italian. (PX 1). The medical records were admitted with a handwritten English Translation by Petitioner's sister-in-law. (PX 1). The medical records document that Petitioner sustained a work-related accident. (PX 1). They set forth an assessment of amputation of the distal phalanx of the right hand, first finger. (PX 1). Petitioner was released

to return to work with the restrictions of avoiding lifting more than 10 kilograms and keep the hand up when not using it. (PX 1).

Petitioner underwent surgery to amputate the right thumb on April 11, 2013. (PX 2). The operation was performed at the Arzienda Osperaliero Universitaria. (PX 2). The medical records were in Italian. (PX 2). A handwritten English Translation by Petitioner's sister-in-law was admitted into evidence. (PX 2).

Following the treatment in Italy, Petitioner flew home to the United States. He sought medical treatment with Dr. Labana at Illinois Premier Orthopedic and Hand Center. (PX 3). Petitioner was initially examined by Dr. Labana on April 17, 2013. (PX 3). Dr. Labana set forth that Petitioner sustained a right thumb amputation. (PX 3). He set forth that Petitioner could return to work with restrictions of no use of the affected extremity. (PX 3). He discussed options for a reconstruction of the thumb. (PX 3).

Petitioner continued to have follow up appointments with Dr. Labana. (PX 3). On April 23, 2013, Dr. Labana removed Petitioner's sutures. (PX 3). He released Petitioner to return to work with restrictions. (PX 3). Dr. Labana continued to recommend work restrictions on April 9, 2013. (PX 3).

On May 13, 2013, Petitioner was examined by Dr. Labana. (PX 3). Petitioner had some mild redness. (PX 3). Dr. Labana recommended Bactrim. (PX 3). Petitioner continued to follow up with Dr. Labana. (PX 3).

On July 16, 2013, Dr. Labana examined Petitioner. (PX 3). He recommended that Petitioner undergo an FCE. (PX 3). Petitioner underwent the FCE on August 13, 2013 at ATI Physical Therapy. (PX 4). The FCE was valid and set forth that Petitioner could return to work at a medium to heavy physical demand level. (PX 4). Petitioner could lift up to 77.8 pounds from desk to chair and 80 pounds from floor to chair. (PX 4). Petitioner showed decreased ability to perform grasping and fine motor skills on the right side. (PX 4).

Petitioner was examined by Dr. Labana on August 26, 2013. (PX 3). Dr. Labana released Petitioner to return to work with the restrictions of the FCE. (PX 3). Petitioner testified that the FCE did not test climbing. It did test his grip strength.

Petitioner was last examined by Dr. Labana on October 14, 2013. (PX 3). Dr. Labana set forth a diagnosis of right thumb revision amputation performed in Italy. (PX 3). Dr. Labana documented that Petitioner had limitations of the use of his joint and tenderness present in the right thumb. (PX 3). Dr. Labana set forth that Petitioner could return to work with the permanent work restrictions of medium physical demand level per the FCE and no climbing poles, no climbing ladders and no hanging from poles. (PX 3).

Petitioner testified that he did not perform any climbing between August 26, 2013 and October 14, 2013 because it was not safe. He discussed the climbing with Dr. Labana in October 2013 and Dr. Labana added the no climbing restrictions.

Petitioner has not been examined by Dr. Labana since October 14, 2013. He does not have any appointments scheduled with Dr. Labana. Petitioner testified that to his knowledge workers' compensation had paid all his medical bills.

E. Post-Accident Employment

Petitioner testified regarding his post-accident employment. Following the work-related accident of April 11, 2013, Petitioner did not work for three weeks. Petitioner was off work from April 17, 2013 through May 1, 2013. Petitioner testified that he was not offered work within his restrictions until May 1, 2013. He was offered accommodated work on May 1, 2013. Petitioner testified that on May 1, 2013, he returned to work for Respondent in an office position responding to emails and clients. The position was within the restrictions of Dr. Labana. Petitioner testified that the restrictions provided by Dr. Labana were not immediately accommodated.

Petitioner testified that he received pay from April 11, 2013 through May 1, 2013. However, he did not perform any work during that period. Petitioner testified that he had worked a lot of overtime hours from the previous pay period. He did not want to be without a pay check so he requested that the overtime hours be spread out over the next few weeks.

Petitioner confirmed that he received payment of one week of temporary total disability benefits in the amount of $479.84. Petitioner also received payment of statutory amputation benefits in the amount of $18,810.38.

Petitioner confirmed that he was paid from April 11, 2013 through May 1, 2013. However, he testified that he did not perform any work during that period and was being paid for overtime that he had performed prior to April 11, 2013.

After Petitioner was released with permanent restrictions by Dr. Labana in October 2013, he continued to work for Respondent within his restrictions. Petitioner returned to work as a builder with restrictions. He was not able to perform training or inspections because he was not able to access the course. Petitioner did not perform the job of builder the same as he did prior to the work-related accident of April 11, 2013. Petitioner performed work at ground level and inside the machinery. He could not climb and required a machine to get him to height. He could not climb the poles, ropes or trees.

Petitioner testified that some of the objects that he lifts weigh more than 77 pounds. Specifically, a cable or machines could weigh more than 77 pounds. Further, he would have to climb to perform his job duties.

Petitioner confirmed that the job of trainer required climbing poles and other physical activities. He was asked if he could still perform quality assurance. He testified that he could assess whether the training was accredited by the ACT and up to the standard. He acknowledged that there was ground training and instruction. However, Petitioner would not be able to perform the ground training. The ground training involved putting on safety equipment, which Petitioner was not able to perform due to the lack of dexterity in his right hand. He could not put on the safety material in proper manner and did not want to teach trainees the incorrect way to fasten the safety harness. Petitioner testified that usually one trainer is sent out per job. Petitioner would have to perform all parts of the training, which he is not able to do. Further, Petitioner is not able to report on the training progress without performing the training. He is not able to observe the training from ground level and needed to be in the course to properly observe the trainees. At the training sites there are not machines to lift him onto the course.

Petitioner testified that he physically could review the scope of the job or explain the inspections. However, he could not physically conduct the inspection. Petitioner clarified that he could not report or sign off on an inspection he did not conduct himself. He could not conduct an inspection without climbing on the course.

Petitioner testified that he could inspect the base of the pole, which would only be about 5% of the inspection. To do the inspection, he would have to be out on the course.

On cross-examination, Petitioner was asked whether he could perform climbing now that he was used to missing his right thumb. Petitioner testified that he could not and that it would be dangerous for him to climb to heights. Petitioner testified that he is not able to manipulate the safety harness with his right hand. Further, if his hand was injured he would not have a hand to use to get off the course.

Petitioner confirmed that he may have been earning more after he returned to work in May 2013. He testified that he may have received a raise. Further, Respondent's business was expanding, which meant more work and more hours that he was paid to work. Petitioner was being paid hourly. The amount of work he was performing increased so his earnings increased. Petitioner testified that he still missed out on training and inspection employment opportunities.

The wage documentation from April 1, 2012 through July 19, 2016 was admitted into evidence. (RX 1-3). The wage documentation confirms that Petitioner did not miss any pay periods from April 11, 2013 through May 1, 2013. (RX 2). Further, Petitioner earned slightly more following his return to work for Respondent in 2013. (RX 3).

Petitioner is currently working for Respondent. His current job title is Director of Design and Manufacturing. Petitioner has been working in the new position since 2020. He did not receive a pay raise. Petitioner testified that he is responsible for manufacturing of the goods needed for installation from metal through plastic fabrication. He is also in charge of 3D design work. He designs the layout for challenge courses. Petitioner performs some building within his restrictions. He would be able to do inspections and training as part of his job duties; however, he is not physically capable of performing those job duties.

The job description for the Director of Design and Manufacturing was admitted into evidence. (RX 6). Petitioner testified that he prepared the job description. He agreed that it was accurate. During COVID the

company downsized. Some of their employees were asked to create positions for the business. Petitioner helped create the position of Director of Design and Manufacturing.

F. Current Subjective Complaints

Petitioner testified that since April 11, 2013 he has not sustained any new accidents or injuries involving his right hand or thumb.

Petitioner testified that he is missing his right thumb. He has loss of dexterity and strength in the right hand. Petitioner testified that he performs tasks differently than he did prior to April 11, 2013. Petitioner does not have the fine motor skill or ability to use his hand as he did prior to April 11, 2013. Petitioner testified that he has dropped his cell phone on multiple occasions because he could not grip it with his right hand.

Petitioner took photographs of his right hand and thumb in May 2022. The photographers were admitted into evidence as Petitioner's Exhibit 5. The photograph depicts a right hand with a partially amputated thumb.

III. Conclusions of Law

In support of the Arbitrator's decision relating to "K," temporary partial disability and temporary total disability, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from April 11, 2013 through May 1, 2013. The Arbitrator relies on Petitioner's credible and unrebutted testimony and the medical records admitted into evidence. Respondent agreed that Petitioner was entitled to payment of temporary total disability benefits from April 11, 2013 through April 17, 2013.

In *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2001), the court set forth that "a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition.'" (quoting *Manis v. Industrial Commission*, 172 Ill.Dec. 95, 595 N.E.2d 158 (1st Dist. 1992)). The dispositive test for determining whether a claimant is entitled to TTD is whether the condition has stabilized. *Id.* In *Freeman United Coal Mining Company*, the court held that the condition of the claimant's knee had not stabilized and that the petitioner was thus entitled to TTD benefits. *Id.* The court based

its decision on the fact that the claimant had not been released to full-duty work and future medical care was being considered by the claimant's treating physicians. *Id.*

The medical records admitted at hearing established that Petitioner was under active medical care and under work restrictions from April 11, 2013 through May 1, 2013. Petitioner underwent an amputation of his right thumb in Italy on April 11, 2013. He was released from the hospital with work restrictions. Petitioner flew back to the United States and began treatment with Dr. Labana. On April 17, 2013, April 23, 2013 and April 29, 2013, Dr. Labana released Petitioner to return to work with the restrictions of no use of the right hand. Petitioner testified that he was not immediately provided light duty work by Respondent. He returned to work in an office position on May 2, 2013. Accordingly, Petitioner's condition had not stabilized and he was not able to return to his pre-injury position without restrictions. Based on the medical records admitted at hearing, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits from April 11, 2013 through May 1, 2013.

Respondent agreed that Petitioner was entitled to payment of temporary total disability benefits from April 11, 2013 through May 1, 2013. It argued that since Petitioner received payment from April 18, 2013 through May 1, 2013 from Respondent, Petitioner was not entitled to payment of temporary total disability benefits for that period of time. Petitioner's wage statements for the period of April 11, 2012 through August 27, 2013 were admitted into evidence. The statements show that Petitioner received payments from Respondent on April 1, 2013, April 15, 2013 and May 1, 2013, which would include the period that Respondent agreed Petitioner was entitled to payment of temporary total disability benefits.

Petitioner credibly testified and explained the payments. He testified that for the period prior to the accident, he had worked a lot of overtime. He asked Respondent to spread the overtime payments over the period that he was off work so that he would not miss a pay check. He testified that the payments he received were for work performed prior to April 11, 2013 and not for work between April 11, 2013 and May 1, 2013. Petitioner confirmed that he did not return to work for Respondent until May 2, 2013. Respondent did not submit any evidence

rebutting Petitioner's testimony. Further, the wage statement do not show a gap in pay for the period that Respondent agrees that Petitioner was not able to work. Accordingly, the Arbitrator finds that Petitioner did not perform work from April 11, 2013 through May 1, 2013 and was entitled to payment of temporary total disability benefits.

Respondent also argues that Petitioner was released to return to work with restrictions by Dr. Labana on April 17, 2013. Respondent argues that since Dr. Labana released him with restrictions on April 17, 2013, Petitioner would have been able to return to the light duty office work on April 17, 2013. However, Petitioner testified that Respondent did not immediate accommodate the work restrictions of Dr. Labana. The work restrictions were not accommodated until May 1, 2013. Petitioner's testimony was unrebutted. Accordingly, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits through May 1, 2013.

In support of the Arbitrator's decision relating to "L," what is the nature and extent of the injury, the Arbitrator makes the following conclusions:

The Arbitrator concludes that as a result of the work-related accident of April 11, 2013, Petitioner sustained permanent and partial disability to the extent of 35% loss of use of the person as a whole in connection with the injury he sustained to his right thumb. In support of the decision, the Arbitrator relies on the medical records admitted into evidence, the operative report, the FCE and the credible and unrebutted testimony of Petitioner.

A claimant is entitled to an award under Section 8(d)2 of the Illinois Workers' Compensation Act "if, as a result of the accident, the employee sustains serious and permanent injuries" which "partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity." 820 ILCS 305/8(d)2.

The Arbitrator's finding is consistent with the factors and criteria set forth in Section 8.1(b) of the Act. 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 35% loss of use 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 was employed as a builder/installer, inspector and trainer for Respondent. Petitioner was required to climb poles, ropes, ladders and trees, use fine motor skills, fasten safety equipment, lift up to 100 pounds, push and pull and operate tools. Petitioner is right handed and required to use his right hand extensively to perform his pre-injury employment.

The Arbitrator reviewed the job descriptions of installer, inspector and trainer that were admitted into evidence. The Arbitrator finds that the job descriptions were incomplete. The Arbitrator finds that the job descriptions do not include any description of the physical activities required to perform the job of installer, inspector or trainer. The job descriptions set forth that the workers should be able to implement, execute and complete the installation, inspection, maintenance of a challenge course and training. However, they do not explain what is required to implement, execute or complete the installation, inspection, maintenance of a challenge course or training. Petitioner testified that to implement or complete the installation, inspection, maintenance or training, the person would have to climb on the course, lift cables or spools and operate tools. The Arbitrator also

finds it significant that the job descriptions are being revised because they contained errors. Accordingly, the Arbitrator finds that Petitioner's pre-injury employment was physically demanding and required climbing, lifting, fine motor skills and operating tools.

As a result of the work-related accident, Dr. Labana released Petitioner to return to work with the permanent restrictions of lifting at a physical demand level per the FCE and no climbing poles or ladders and no hanging on poles. Based on the work restrictions of Dr. Labana, Petitioner would not be able to perform his pre-injury employment without accommodation. Petitioner testified that he returned to work for Respondent. However, he was not able to conduct trainings or inspections since he was not able to climb. Petitioner testified that without being able to access the course, he could not conduct trainings or inspections. Petitioner returned to work as an installer. However, he worked at ground level or had to use a machine to access the course. It is significant that the ability to climb was unsafe for Petitioner because he could not grip and also because he could not manipulate the safely equipment required for climbing. Accordingly, Petitioner established that he was partially incapacity from performing his pre-injury employment as an installer, inspector and trainer. Significantly, Petitioner was not able to conduct trainings or inspections at all.

The Arbitrator accords this factor great weight. The Arbitrator finds it significant that Petitioner's pre-injury employment required him to use his right hand extensively, climb, lift, carry and perform fine motor tasks with dexterity. The pre-injury employment was physically demanding. Further, Petitioner's work restrictions prevented him from returning to his pre-injury employment. Petitioner was unable to conduct trainings or inspections and could not perform climbing while he was performing installations. It is also significant that the injury was to Petitioner's dominate hand. Accordingly, Petitioner is partially incapacitated from performing his pre-injury employment as a result of the work-related accident of April 11, 2013.

C. Age of Petitioner

At the time of the accident, Petitioner was 31. At the time of the hearing, Petitioner was 41 years old. No evidence was presented as to how Petitioner's age affected his disability. However, the Arbitrator notes that

Petitioner is a younger employee who has a long work life ahead of him. Accordingly, the Arbitrator finds that his age increases Petitioner disability. In support of this finding, the Arbitrator relies on the holding *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability).

D. Future Earning Capacity

Petitioner has established that he is partially incapacitated from performing his job duties for Respondent as an installer, inspector and trainer, as a result of the work-related accident of April 11, 2013. In fact, Petitioner established that he was not able to perform inspectors or training at all and was partially incapacitated from performing his job as an installer. Under Section 8(d)2, Petitioner does not need to establish a loss of earnings. Petitioner's permanent work restrictions prevent him from performing his full pre-injury employment and caused him to miss out on employment opportunities.

As a result of the work-related accident, Dr. Labana released Petitioner to return to work with permanent restrictions of lifting at a medium physical demand level and no climbing poles, ladders or hanging from poles. Respondent did not submit any evidence disputing the restrictions. Petitioner explained that he did not perform any climbing between August 2013 and October 2013 because he was not able to and it was dangerous. He discuss his job with Dr. Labana and Dr. Labana provided the permanent no climbing restriction. No medical evidence was submitted to dispute the restrictions. Accordingly, the Arbitrator finds that Petitioner has permanent restrictions as a result of the work-related accident of April 11, 2013.

As previously set forth in the decision, the Arbitrator found that Petitioner's pre-injury employment required climbing, lifting, fine motor skills and use of tools. It is clear that based on the work restrictions, Petitioner is not able to perform the job duties of inspector or trainer and is partially incapable from performing installation work. Petitioner testified that because he could not perform training and inspection work, he missed out on employment opportunities. Further, since he has permanent restrictions, he would be limited in any future employment.

Accordingly, the Arbitrator finds that Petitioner's future earning capabilities was affected by the work-related accident of April 11, 2013 and permanent restrictions.

Respondent argued that Petitioner earned more following his work-related accident than he did in the year prior to the work related accident. The Arbitrator notes that under 8(d)2, the claimant need only establish that he is partially incapacitated from pursuing his pre-injury employment and does not need to establish an impairment of earnings. Petitioner had established that he is partially incapacitated from performing his pre-injury employment for Respondent. Thus, he is entitled to an award pursuant to Section 8(d)2. Petitioner testified that he may have received a raise following his work-related accident. Petitioner testified that Respondent's business expanded after his accident, which lead to more work and more hours, explaining the increase in his earnings. However, Petitioner testified that he continued to miss out on employment opportunities related to training and inspection, which would have been additional pay for him. Accordingly, the Arbitrator finds that Respondent's argument is inconsequential and does not change the fact that Petitioner is entitled to an award pursuant to Section 8(d)2 due to loss of occupation.

Since approximately 2020, Petitioner has been employed by Respondent as the Director of Design and Manufacturing. Petitioner did not receive a pay raise for the new title. If he was physically able to, Petitioner would be able to conduct inspections and training. Accordingly, Petitioner's new job title did not have any effect on his future earning capacity. Further, he continued to perform some building at ground level and within his restrictions.

Based on the permanent work restrictions and the fact that Petitioner missed out on employment opportunities related to training and inspections, the Arbitrator finds that Petitioner's future income could have been affected by the work-related accident of April 11, 2013. The Arbitrator finds it most significant that Petitioner is partially incapacitated from performing the installation job and unable to perform the training and inspection job based on his permanent work restrictions. Accordingly, the Arbitrator accords this factor great weight. In support of this finding, the Arbitrator relies on the holding *Flexible Staffing Services v. Illinois Workers' Compensation*

Commission, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the factor affects disability).

E. Evidence of Disability Corroborated by the Treating Medical Records

The medical evidence established that Petitioner sustained an amputation of the right thumb, which required permanent work restrictions as a result of the work-related accident of April 11, 2013. The diagnosis was confirmed by the operative report and medical records. The permanent restrictions were confirmed by Dr. Labana and supported by the FCE.

Petitioner's subjective complaints were documented in the medical records and confirmed by Petitioner's testimony. Dr. Labana documented that Petitioner had limitations of the use of his joint and tenderness present in the right thumb. Petitioner testified that he is missing his right thumb. He has loss of dexterity and strength in the right hand. Petitioner testified that he performs tasks differently than he did prior to April 11, 2013. Petitioner does not have the fine motor skill or ability to use his hand as he did prior to April 11, 2013. Petitioner testified that he has dropped his cell phone on multiple occasions because he could not grip it with his right hand. Petitioner was also not able to perform climbing in his job and was not able to return to work as an inspector or trainer.

The medical records documented Petitioner's objective findings. Dr. Labana documented that Petitioner had limitations in motion in his right joint. Further, the FCE set forth that Petitioner could lift at a medium physical demand level. It also set forth that Petitioner had loss of grip strength and use of fine motor skills and dexterity in the right hand.

It is significant that Petitioner had permanent work restrictions of lifting at a medium physical demand level and with no climbing poles or ladders and no hanging on poles. The work restrictions prevented Petitioner from returning to work as an inspector or trainer for Respondent. Further, Petitioner was partially incapacitated from performing work as an installer. He was not able to climb to access the course. Additionally, some of the materials that he had to lift weighed more than 77 pounds. The Arbitrator finds it significant that Petitioner has permanent restrictions preventing him from returning to his full duty work for Respondent.

Petitioner's work restrictions prevent him from conducting training and inspections since he is not able to climb the challenge courses. Further, he can only do ground level work as an installer unless there is a machine to allow him to work at heights and even then he is not able to access the entire challenge course. It is significant that of the three jobs that Petitioner performed prior to the work-related accident, he is only able to partially perform the job of installer and is totally prevented from performing the job of trainer and inspector.

The Arbitrator accords this factor great weight. The Arbitrator finds it significant that Petitioner has ongoing subjective complaints, objective findings and permanent restrictions. Accordingly, based on the medical evidence and considering the above factors, the Arbitrator finds that Petitioner sustained the permanent and partial disability to the extent of 35% loss of use of the person as a whole since he sustained an injury to his right thumb and hand that required permanent restrictions that partially incapacitated him from performing his pre-injury employment and Petitioner sustained a loss of occupation.

The case law supports the Arbitrator's finding that Petitioner was permanently and partially disabled to the extent of 35% loss of use of the person as a whole. In support of his decision, the Arbitrator cites *Anderson v. Oak Lawn Toyota*, 15 IWCC 0122, 2015 WL 1184758 (IWCC Feb. 1, 2015) (awarding claimant 40% loss of use of the person as a whole where claimant sustained injuries to his legs that required permanent restrictions and was provide an accommodated job with the employer); *Castillo v. City of Chicago*, 20 IWCC 0565, 2020 WL 6287176 (IWCC Sept. 25, 2020) (awarding 50% loss of use of the person as a whole where the claimant was unable to return to his employment as a tree trimmer based on his permanent work restrictions); *Drapanes v. Americana Health Care Center*, 03 IIC 0621, 2003 WL 22213673 (Ill. Indus. Com'n Aug. 29, 2003) (awarding 40% loss of use of the person as a whole where the claimant's permanent work restrictions prevented her from returning to work as a registered nurse, but did not prevent her from returning to work in the nursing field); *Boskovich v. Midway Conveyor*, 95 WC 1134 (Indus. Com'n Jan. 20, 1998) (awarding 42.5% loss of use of the person as a whole were the claimant was unable to return to work as an ironworker due to his permanent work restrictions, but return to work as the union president without sustained an loss of earning).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC008973
Case Name	Lizeth Garcia v. Aramark
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0464
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Terrence Donohue

DATE FILED: 9/27/2024

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LIZETH GARCIA,

Petitioner,

vs. NO: 23 WC 008973

ARAMARK,

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 necessity, and prospective medical, 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 modifies the Arbitrator's decision with respect to the order language relating to the award for medical expenses. We therefore modify the order language to read "Respondent shall pay the related and reasonable and necessary medical services, pursuant to Sections 8(a) and 8.2 of the Act, from the following providers: Northwest Physical Therapy, Medicaid or Group Health Lien."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay the related and reasonable and necessary medical services, pursuant to Sections 8(a) and 8.2 of the Act, from the following providers: Northwest Physical Therapy, Medicaid or Group Health Lien

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the right sacroiliac joint arthrogram, aesthetic block and steroid injection and associated care as recommended by Dr. Ross.

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 $18,125.00. 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.

SEPTEMBER 27, 2024
KAD/swj
O 8/13/24
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC008973
Case Name	Lizeth Garcia v. Aramark
Consolidated Cases	23WC008974;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Terrence Donohue

DATE FILED: 3/14/2024

/s/Gerald Napleton, Arbitrator

Signature

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

STATE OF ILLINOIS)	☐ Injured Workers' Benefit Fund (§4(d))
)SS.	☐ Rate Adjustment Fund (§8(g))
COUNTY OF Lake)	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Lizeth Garcia Case # **23** WC **8973**
Employee/Petitioner

v.

Aramark
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 **Gerald Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **October 25, 2023** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☐What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

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

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

On this date, Petitioner 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 $**16,752.32**; the average weekly wage was $**322.16**

On the date of accident, Petitioner was **27** years of age, **single** with **1** dependent children.

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

Respondent shall be given a credit of $**2,057.13** for TTD, $**0** for TPD, $**0** for maintenance, and **$0** for medical, 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 from the following providers: Northwest Physical Therapy, Medicaid or Group Health Lien.

The Arbitrator orders Respondent to authorize the right sacroiliac joint arthrogram, aesthetic block and steroid injection and associated care as recommended by Dr. Ross.

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

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

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

/s/ Gerald W. Napleton
Signature of Arbitrator

March 14, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Lizeth Garcia,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23 WC 8973
Aramark.	)	
	)	
	)	Consolidated Cases: 23 WC 8974
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

The issues in dispute under 23 WC 8973 are causal connection, medical expenses, and prospective medical care. The issues in dispute under consolidated claim 22 WC 8974 are accident, notice, causal connection, medical expenses, temporary total disability, and prospective medical care. AX1.

Petitioner testified that she was last employed by Respondent, Aramark, which is a food service company. Tx7. Petitioner testified that she started working for Respondent in January 2022. Id. Petitioner's job duties when she first started for Respondent were lifting juice boxes, cleaning the ice machine, transporting the juice boxes, and other cleaning duties. Id. Petitioner testified that she was placed at Jacobs High School to provide food service through Respondent. Id. at 8.

January 13, 2022 Accident

Petitioner testified that on January 13, 2022, Petitioner was working for Respondent performing a clean-up of the ice machine with a coworker. Id. at 8. Petitioner testified that she was taking ice out of the machine to place into buckets. Id. Petitioner testified that she had to then lift the buckets filled with ice to dump the ice into the sink. Id. Petitioner testified that as she was lifting a bucket with ice, she felt a pinch in her lower back near her buttocks. Id. at 9-10. Petitioner testified that she continued working her shift and took Tylenol for the pain. Id. at 10. Petitioner testified that this accident occurred on a Thursday. Id. Petitioner testified that she went to work for Respondent the following day but continued to feel pain in her lower back down to her right buttocks. Id. at 11-12. Petitioner testified that she did not work that weekend nor Monday as it was Martin Luther King Day. Id. at 12. Petitioner testified that she reported the

accident to her manager on Tuesday when she returned to work and was sent for medical treatment. Id. at 12.

September 16, 2022 Accident

Petitioner testified that on September 16, 2022, she was at work for Respondent when she picked up a box of juices weighing twenty pounds from the bottom shelf of a fridge. Id. at 16-17. Petitioner testified that when she picked up the boxes, she had to lean to give the box to her manager as there was a waist-level table between her and the manager. Id. at 17-18. Petitioner testified that as she did this, she felt pain in her right lower back and near her buttocks. Id. at 18. Petitioner testified that she reported the accident to her manager, Rebecca, who was also there when the accident occurred. Id. at 18-19. Petitioner testified that she also felt pain down her right leg after the accident. Id. at 19-20. Petitioner testified that she occasionally had pain down her left leg, but her right leg was worse. Id. at 19-20.

Summary of Testimony and Medical Evidence

Following the January 13, 2022 accident, Petitioner presented to Dr. Mohiuddin at Advocate Sherman Occupational Health on January 18, 2022 with lower back pain and a history consistent with the testimony at trial. Px1, at 10-11. On physical examination, Dr. Mohiuddin noted pain with range of motion of the lumbar spine and diagnosed Petitioner with a lumbar strain. Id. Dr. Mohiuddin placed Petitioner on work restrictions. Id. Petitioner followed up with Advocate Sherman Occupational Health on January 26, 2022 and February 9, 2022 with similar subjective complaints and physical examination findings. Id. at 12-15. Petitioner was recommended to undergo physical therapy, which she completed at Northwest Physical Therapy from February 7, 2022 through August 4, 2022. Px2.

On February 23, 2022, Petitioner presented to Dr. Khan at Advocate Sherman Occupational Health with improvement in her back symptoms, but pain with range extension and flexion of the lumbar spine. Id. Px1, at 15-16. Petitioner followed up with Advocate Sherman Occupational Health on March 16, 2022 and March 23, 2022 with continued back pain and similar physical examination findings. Id. at 16-21. During those visits, Petitioner was recommended to undergo an MRI of her lumbar spine. Id.

On April 4, 2022, Petitioner underwent the MRI of her lumbar spine which showed a L5-S1 disk bulge causing right foraminal stenosis and a L3-L4 and L4-L5 disk bulge causing left foraminal stenosis. Px5. Petitioner followed up with Dr. Thompson at Advocate Sherman Occupational Health on April 6, 2022 with a "buzzing" sensation over her right-posterior-lateral buttock. Px1, at 21-23. Dr. Thompson reviewed the MRI and noted a disc bulge on the right with foramen impingement and referred Petitioner for an orthopedic consultation. Id.

On April 22, 2022, Petitioner presented to Dr. Ross at Midwest Neurosurgery and Spine with right lower back pain, right leg radicular pain, and a history consistent with the testimony at trial. Px4, at 3. On physical examination, Dr. Ross noted toe and heel walk and deep knee bending aggravating the right lower back pain; tenderness at L5-S1; and sensation diminished over the right anterior thigh. Id. Dr. Ross reviewed the lumbar MRI and noted it showed a right-

sided disc bulge at L5-S1 causing foraminal stenosis. Id. Dr. Ross diagnosed Petitioner with lumbar radiculopathy most likely caused by her foraminal L5-S1 disc bulge/herniation and recommended a right L5 selective nerve root block and transforaminal cortisone injection. Id.

On June 1, 2022, Petitioner presented for pain management with Dr. Hanna at Northwestern Medicine with low back pain and right radicular leg pain. Px6, at 74-78. On physical examination, Dr. Hanna noted tenderness of the lumbar spine and side bending to the right causing right-sided low back pain. Id. Dr. Hanna reviewed the MRI report noting a right sided disc bulge with right foraminal narrowing. Id. Petitioner then underwent the lumbar selective nerve root block and epidural steroid injection at L5 on the right side with Dr. Hanna on June 20, 2022. Id. at 49.

On June 10, 2022, Petitioner underwent an independent medical examination (IME) with Dr. Graf at the request of Respondent. Rx1. Dr. Graf noted a history consistent with the testimony at trial regarding Petitioner's January 13, 2022 accident. Id. At the IME, Petitioner had subjective complaints of low back pain into the bilateral buttocks to the posterior thigh on the right greater than the left. Id. Dr. Graf noted no non-organic pain signs and diagnosed Petitioner with low back pain and right radiating leg pain with a disc bulge at L5-S1. Id. Dr. Graf found Petitioner's condition to be causally related to the work accident and found more physical therapy; an injection; and light duty work restrictions to be reasonable. Id.

Petitioner followed up after the injection with Dr. Ross on June 28, 2022 and demonstrated ninety percent improvement but still with discomfort into the lower back and upper buttock area. Px4, at 2. Dr. Ross recommended continued physical therapy and to increase Petitioner's functionality at work. Id. On August 16, 2022, Petitioner presented o Dr. Ross with continued improvement and tolerating activities well. Id. at 1. Dr. Ross noted that if Petitioner's pain levels increase, she may be a candidate for continued injections. Id.

Petitioner then claims a second accident on September 16, 2022. On September 27, 2022, Petitioner presented to Dr. Ross with low back pain and radiating pain into her legs. Px3, at 10. Dr. Ross noted that Petitioner's pain was almost completely gone until one and a half weeks prior to the visit when Petitioner had the second accident. Id. Dr. Ross noted that Petitioner reaggravated her back injury with lifting at work and discussed potential injections. Id. Petitioner followed up with Dr. Ross on October 27, 2022 with back pain and less radiating pain into her legs. Id. at 9. Dr. Ross noted tenderness on the right at L5-S1, indicated Petitioner's back was not improving from the accident, and recommended a right L5 selective nerve root block injection. Id.

On December 9, 2022 Petitioner underwent the nerve root block and epidural steroid injection on the right with Dr. Hanna. Px6, at 14-15. Petitioner followed up with Dr. Ross on December 15, 2022 with one day improvement from the injection. Px3, at 8. Dr. Ross noted that the lack of improvement following the injection suggested Petitioner's pain may not be caused by the L5-S1 disc bulge/herniation. Id. Petitioner started a second course of physical therapy at Northwest Physical Therapy on January 9, 2023. Px2.

On January 10, 2023, Petitioner presented for a second IME with Dr. Graf. Id. At the IME, Petitioner gave a history consistent with her September 16, 2022 accident testimony. Rx2. Petitioner had subjective complaints of low back pain on the right side and sometimes right leg pain. Id. Dr. Graf opined that Petitioner was at maximum medical improvement and required no further treatment and could return to work full duty. Id.

Petitioner followed up with Dr. Ross on April 27, 2023 with no improvement in low back pain and occasional discomfort into Petitioner's legs. Id. at 7. On physical examination, Dr. Ross noted tenderness over the SI joints and indicated that Petitioner was localizing pain to the SI joint region. Id. Dr. Ross recommended bilateral sacroiliac joint arthrograms, diagnostic blocks, and steroid injections. Id.

On July 21, 2023, Petitioner presented for a third IME with Dr. Graf. Rx3. Petitioner's subjective complaints were right lower back pain to the right buttock and posterior thigh. Id. On physical examination, Dr. Graf noted SI joint pain with range of motion exercises. Id. Dr. Graf opined that Petitioner's SI joint diagnosis was not causally related to the work accident as Dr. Graf indicated these were new complaints. Id. Dr. Graf opined that treatment could be indicated for the SI joint, but that it was unrelated to the work accidents. Id. Dr. Graf found no symptom magnification and placed Petitioner at maximum medical improvement. Id.

Petitioner last presented to Dr. Ross on September 28, 2023 with continued low back pain with some radiation to the right buttock and similar physical examination findings. Id. at 6. Dr. Ross reviewed Dr. Graf's IME report and disagreed with Dr. Graf's opinions. Id. Dr Ross noted that Petitioner's pain has consistently been in the general area of the SI joints and found that Petitioner's condition as a result of the work accidents required the additional treatment of a SI joint injection on the right side. Id. Throughout Petitioner's treatment with Dr. Ross, Petitioner was placed on work restrictions. Px3.

Petitioner testified that her last date worked for Respondent was on June 9, 2023 as she was told there was no work available, but Petitioner was still on call. Id. at 23. Petitioner testified that she has not worked for Respondent nor any other employer since June 9, 2023. Id. at 24. Petitioner testified that her condition has affected her daily life and activities such as mopping, sweeping, laundry, and performing activities with her son. Id. at 24-25. Petitioner testified that she did not have any issues with her back prior to the work accidents. Id. at 25.

On cross-examination, Petitioner testified that pain mostly went down her right leg during the beginning of her treatment. Id. at 26-27. She acknowledged that she later reported pain along her left lower lumbar area without radiation. She explained that the pain was on both sides sometimes, but mostly on the right. Tx. 27. Petitioner acknowledged that she advised Dr. Graf during her IME that she had pain in her low back and both legs on June 10, 2022. Petitioner disagreed with Dr. Ross's note that she did not experience immediate pain after her injury and insisted she had pain right away. Tx. 35-36. Petitioner insisted that she advised her manager of her second accident. Tx.36. Petitioner acknowledged the five month gap between seeing Dr. Ross in April of 2023 and September of 2023.

Further, on cross-examination, Petitioner testified that she did not look for work after Respondent indicated it could not accommodate her work restrictions on June 9, 2023. Id. at 38. Petitioner testified that her current activities include assisting her mom around the house with activities she can perform such as washing the dishes. Id. at 39. Petitioner testified that she does have right-sided SI joint pain and that it's always been around that general area. Id. at 40. Petitioner stated that her pain is not radiating down her leg anymore. Tx. 40.

On redirect examination, Petitioner testified that for the September 16, 2022 accident, the juices were away from her body as she was handing the juice to her manager. Id. at 42. Petitioner testified that being "on call" meant that she would fill in for other workers who had vacations or sick days. Id. at 43. Petitioner testified that she never received a call after June 9, 2023. Id. at 43. On recross examination, Petitioner testified that the contract with Jacobs High School and Respondent ended on July 27, 2023. Id. at 45.

CONCLUSIONS OF LAW

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

The Arbitrator had the opportunity to personally observe the Petitioner's testimony. The Arbitrator finds the Petitioner testified credibly in this matter.

Regarding the 23 WC 8974 claim from September 16, 2022, as to 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:

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent. Petitioner credibly testified that on September 16, 2022, Petitioner was working for Respondent when she reinjured her low back by lifting a box of juices. The first medical note after the accident on September 27, 2022 by Dr. Ross indicates "[h]er pain was almost completely gone until 1-½ weeks ago when manager told her to lift a case of juices. Case weighed less than 20 pounds and felt discomfort immediately." Px3, at 10. This

history corresponds directly with Petitioner's accident date of September 16, 2022 and is consistent with Petitioner history regarding the mechanism of injury.

The Arbitrator notes that Petitioner was able to explain how her accident occurred on September 16, 2022. The Arbitrator notes that Petitioner's medical records corroborate Petitioner's testimony in how the accident occurred. The Arbitrator notes that Respondent offered no evidence or witness testimony to rebut Petitioner's testimony at trial. The Arbitrator is not swayed by Petitioner's inconsistent history as to the timing of when her pain began, whether it was immediately or soon thereafter as she sought medical treatment and gave a consistent history of accident.

Based on Petitioner's testimony and the medical records in evidence, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of Petitioner's employment.

Regarding the 23 WC 8974 claim from September 16, 2022 as to Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Petitioner testified that during her accident of lifting the box of juice, she was handing the juice to her manager, Rebecca. Further, Petitioner testified that she notified Rebecca of the accident. The Arbitrator notes that Petitioner was able to provide a specific name of her manager and her accident was corroborated by her treating medical records. No testimony was offered to rebut Petitioner's assertion. Accordingly, the Arbitrator finds that the Petitioner gave timely notice of the September 16, 2022 accident to Respondent.

Regarding the 23 WC 8973 claim from January 13, 2022, and 23 WC 8974 claim from September 16, 2022 as to Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator notes that Petitioner had two accidents involving the same body parts. Therefore, causation for both accidents will be addressed below.

The Arbitrator finds Dr. Thompson, Dr. Ross, and Dr. Hanna to have been credible in their opinions in the medical records regarding the nature of her injuries and their causal relationship to the claimed injury at work for the Respondent. The Arbitrator specifically finds Dr. Ross credible in his medical records regarding the nature of her injuries and their causal relationship to the claimed injury at work for the Respondent. The Arbitrator does not find the opinions of Dr. Graf as credible or persuasive on this issue.

As noted above, Petitioner had two accidents, a lifting accident involving ice buckets and a reaggravation injury involving lifting a box of juices. After the January 13, 2022 accident, Petitioner presented to Advocate Sherman Occupational Health from January 18, 2022 through April 6, 2022 with consistent low back pain and positive physical examination findings. Petitioner then underwent an MRI on April 4, 2022, which showed a L5-S1 disk bulge causing right foraminal stenosis and a disk bulge at L3-L4 and L4-L5 causing left foraminal stenosis which gave rise to Dr. Thompson referring Petitioner to Dr. Ross for an orthopedic consultation.

Petitioner treated with Dr. Ross after her first accident from April 22, 2022 through August 16, 2022. Dr. Ross reviewed the MRI and noted the disk bulge on the right at L4-L5. As Petitioner had consistent complaints of low back pain on the right and right leg radicular pain, Dr. Ross referred Petitioner for pain management where Petitioner underwent an injection with Dr. Hanna on June 20, 2022.

As Petitioner's testimony and the medical records indicate, Petitioner's right leg radicular pain was resolving following the injection. Further, Petitioner's low back pain was steadily improving during her treatment with Dr. Ross, Dr. Hanna, and physical therapy. In Dr. Graf's June 10, 2022 IME report, he agrees that Petitioner's condition is causally related to the January 13, 2022 work accident and opined that an injection would be reasonable. Thus, there is no dispute between the physicians that Petitioner's January 13, 2022 work accident caused Petitioner's lumbar condition.

As Petitioner was improving, Petitioner then had the second accident on September 16, 2022, reaggravating her condition requiring additional treatment. After the second accident, Petitioner presented to Dr. Ross on September 27, 2022 with continued low back pain and radiating pain. Dr. Ross noted in his medical records:

> "Reaggravated her back injury with lifting at work. We discussed the fact that it is not the absolute weight of the object being lifted that matters. It is the way the lift is performed. Lifting 20-pounds close to one's torso places much less stress on the back than lifting the same amount of weight with the arms outstretched." Px3, at 10.

This explanation of Petitioner's mechanism of injury is consistent with Petitioner's testimony of lifting the box of juices away from her body to deliver to her manager. Dr. Ross recommended Petitioner undergo a second lumbar injection which Petitioner underwent with Dr. Hanna on December 9, 2022. Following the injection, Petitioner treated with Dr. Ross from December 5, 2022 through September 28, 2023 with little to no improvement from the second injection. Throughout Petitioner's treatment after the second accident with Dr. Ross, Petitioner consistently complained of predominantly right lower back pain with some pain down into her right buttocks. As Dr. Ross noted that Petitioner's pain may be coming from the SI joint on the right side; he recommended an SI injection for diagnostic and therapeutic purposes.

Respondent understandably relies upon Dr. Graf's opinions in his January 10, 2023 and July 21, 2023 IME reports. In the January 10, 2023 IME report, Dr. Graf opined that Petitioner had reached maximum medical improvement as her leg pain was infrequent. In the July 21, 2023 IME report, Dr. Graf opined that Petitioner's SI joint pain was unrelated to the work accident as Petitioner had never demonstrated pain at the SI joint region until his July 21, 2023 IME. Thus, Dr. Graf did not find that Petitioner's SI joint pain was causally related to the work accident.

Dr. Ross specifically noted that Petitioner's pain has predominantly always been in the area around her right lower back and SI joint area. This opinion is consistent with Petitioner's testimony that her pain has mostly been on the right side of her lower back. Dr. Ross recommended the second lumbar injection for diagnostic and therapeutic purposes. Petitioner did

not sustain improvement from the second lumbar injection despite having improvement from the first injection, Dr. Ross believed that Petitioner's SI joint was the primary pain generator. Anatomically, the right lower back and the SI joint area are adjacent to one another. Petitioner had predominantly right sided lower back pain/SI joint pain throughout the majority of her treatment with Dr. Ross, e.g. April 22, 2022, September 27, 2022; October 27, 2022; December 5, 2022; April 27, 2023; September 28, 2023. Therefore, Dr. Ross' opinions and Petitioner's testimony are consistent in that Petitioner had pain in her right lower back near the SI joint area; and Dr. Ross recommended additional treatment for the SI joint for diagnostic and therapeutic purposes.

Further, during Dr. Graf's IMEs, he specifically did not note symptom magnification or malingering. None of Petitioner's treating physicians noted symptom magnification or malingering. Therefore, all of the physicians Petitioner presented to found Petitioner honest in her presentation of symptoms. Additionally, Petitioner testified, and the medical records corroborate that she never had issues with her low back or SI joint prior to the work accidents. Respondent offered no evidence to indicate Petitioner had any prior issues. Therefore, Petitioner's lack of prior issues with her low back/SI joint coupled with Petitioner's honest presentation of symptoms solidifies that the onset of Petitioner's back/SI joint pain complaints were as a result of the work accidents.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the work accidents.

Regarding 23 WC 8973 and 23 WC 8974 as to 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 in favor of Petitioner on the issues previously discussed, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the January 13, 2022 and September 16, 2022 accidents. This is supported by Petitioner's medical records from Advocate Sherman Occupational Health, Dr. Ross, and Dr. Hanna. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Dr. Hanna and Dr. Ross are both credible and appropriate for her work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and their own objective findings.

The Arbitrator orders Respondent to pay Petitioner for the following outstanding medical services which are listed in gross without adjustments pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Northwest Physical Therapy, $18,025.00; Group Health or Medicaid Lien; and Midwest Neurosurgery & Spine Specialists.

The parties stipulate that Respondent is entitled to credit for any medical payments made as listed in Respondent's Exhibit 5. The parties further stipulate that Respondent will reimburse

any payments made by Group Health or Medicaid for treatment that is deemed reasonable, necessary, and causally related to Petitioner's work accidents.

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

The Arbitrator finds that Petitioner is entitled to the right sacroiliac joint arthrogram, aesthetic block, and steroid injection as recommended by Dr. Ross. Petitioner attempted all conservative treatment available to her including medication, physical therapy, and injections. Petitioner's pain was improving following the January of 2022 accident with the initial lumbar injection and physical therapy. However, after the September of 2022 accident, Petitioner's condition progressively worsened and did not improve following the second lumbar injection. As such, Dr. Ross noted that Petitioner's pain generator may be the right SI joint, so he recommended a SI joint injection for diagnostic and therapeutic purposes.

Dr. Graf opined that Petitioner's pain complaints regarding the SI joint were new complaints not related to the work accidents. However, as noted above, Dr. Ross clearly indicated that Petitioner's pain complaints had consistently been in the same general area around the right-side low back near the SI joint. Dr. Ross is the treating physician who saw Petitioner on multiple occasions, lending credence to Dr. Ross's ability to determine that Petitioner's pain complaints have been consistent throughout her treatment.

Accordingly, the Arbitrator finds the need for right sacroiliac joint arthrogram, aesthetic block, and steroid injection for Petitioner as reasonable, necessary, and causally related to her work accident for the Respondent. The Arbitrator relies on the medical records and Petitioner's testimony regarding the necessity of the surgery at this time. The Arbitrator does not find Dr. Graf's IME report and testimony to have been credible or persuasive on this issue.

Respondent shall approve and pay for the right sacroiliac joint arthrogram, aesthetic block, and steroid injection and necessary post-operative care as prescribed by Dr. Ross as provided in Section 8(a) and 8.2 of the Act.

Regarding the 23 WC 8974 claim dated September 16, 2022 as to Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner is entitled to TTD benefits from June 10, 2023 through October 25, 2023. Throughout Petitioner's treatment, Petitioner was placed on work restrictions by her treating physicians. As Petitioner testified to, Petitioner's work restrictions were accommodated by Respondent until June 9, 2023 when she was placed "on call" as there was no work available for Petitioner. After June 9, 2023, Petitioner was never asked to return to work for Respondent. Eventually, Respondent's contract with Jacobs High School was terminated on July 27, 2023. Petitioner testified that she did not work for Respondent nor any other employer since June 9, 2023. Respondent offered no witnesses or evidence to refute Petitioner's testimony.

In *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission,* 236 Ill.2d 132, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010), the Illinois Supreme Court held that the determinative factor in TTD entitlement is not "the voluntariness of their departure from the workforce, . . . [but rather] whether the claimants' conditions had stabilized to the extent that they were able to reenter the work force. 923 N.E.2d at 275.

As noted above, Petitioner was on work restrictions when Respondent no longer had work for her on June 9, 2023. Further, Petitioner was on work restrictions when Respondent's contract with Jacobs High School was terminated on July 27, 2023. As the Court noted in *Interstate Scaffolding*, Petitioner's TTD benefits are not determined on whether she was removed from the workforce, but rather whether Petitioner was at maximum medical improvement at the time Respondent was unable to accommodate her restrictions or effectively terminated her employment. Petitioner has no affirmative obligation to seek other employment while on work restrictions to receive TTD benefits.

Having previously found that Petitioner's injury arose in and out of the course of her employment and that Petitioner's current condition of ill-being was causally related to her work injuries, and based on the foregoing paragraphs, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 10, 2023 through October 25, 2023. This amounts to 19 and 4/7 weeks of temporary total disability benefits at a minimum weekly rate with one dependent (per testimony and AX1) of $368.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC008974
Case Name	Lizeth Garcia v. Aramark
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0465
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Terrence Donohue

DATE FILED: 9/27/2024

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LIZETH GARCIA,

Petitioner,

vs. NO: 23 WC 008974

ARAMARK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causation, TTD, correct rate, medical necessity, and prospective medical, 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 modifies the Arbitrator's decision with respect to the order language relating to the award for medical expenses. We therefore modify the order language to read "Respondent shall pay the related and reasonable and necessary medical services, pursuant to Sections 8(a) and 8.2 of the Act, for medical expenses from Midwest Neurosurgery & Spine Specialists, and Medicaid or Group Health Lien."

Pursuant to Section 8(b) of the Act (820 ILCS 305/8(b)), which provides that the TTD rate shall be the average weekly wage when the average weekly wage is less than the applicable minimum TTD rate, and the parties' stipulation on review as to Petitioner's correct TTD rate, the Commission corrects the TTD rate to $322.16.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $322.16 per week for a period of 19-4/7 weeks, that being the period of temporary total incapacity for work under §8(b), and as provided in §19(b) of the Act this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the related and reasonable and necessary medical services, pursuant to Sections 8(a) and 8.2 of the Act, for medical expenses from Midwest Neurosurgery & Spine Specialists, and Medicaid or Group Health Lien

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the right sacroiliac joint arthrogram, aesthetic block and steroid injection and associated care as recommended by Dr. Ross.

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 $6,774.99. 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.

SEPTEMBER 27, 2024
KAD/swj
O 8/13/24
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC008974
Case Name	Lizeth Garcia v. Aramark
Consolidated Cases	23WC008973;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision Remand Arbitration
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Terrence Donohue

DATE FILED: 3/14/2024

/s/Gerald Napleton, Arbitrator

Signature

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

STATE OF ILLINOIS)	☐ Injured Workers' Benefit Fund (§4(d))
)SS.	☐ Rate Adjustment Fund (§8(g))
COUNTY OF Lake)	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Lizeth Garcia Case # **23** WC **8974**
Employee/Petitioner

v.

Aramark
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 **Gerald Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **October 25, 2023** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☒What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the accident date, **September 16, 2022,** Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner 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 $**16,752.32**; the average weekly wage was $**322.16**

On the date of accident, Petitioner was **27** years of age, **single** with **1** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and **$0** for medical, 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 temporary total disability benefits of $368.00/week for 19 and 4/7 weeks, commencing June 10, 2023 through October 25, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for medical expenses from Midwest Neurosurgery & Spine Specialists, and the Medicaid or Group Health Lien.

The Arbitrator orders Respondent to authorize the right sacroiliac joint arthrogram, aesthetic block and steroid injection and associated care as recommended by Dr. Ross.

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

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

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

/s/ Gerald W. Napleton

Signature of Arbitrator

March 14, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Lizeth Garcia,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23 WC 8973
Aramark.	)	
	)	
	)	Consolidated Cases: 23 WC 8974
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

The issues in dispute under 23 WC 8973 are causal connection, medical expenses, and prospective medical care. The issues in dispute under consolidated claim 22 WC 8974 are accident, notice, causal connection, medical expenses, temporary total disability, and prospective medical care. AX1.

Petitioner testified that she was last employed by Respondent, Aramark, which is a food service company. Tx7. Petitioner testified that she started working for Respondent in January 2022. Id. Petitioner's job duties when she first started for Respondent were lifting juice boxes, cleaning the ice machine, transporting the juice boxes, and other cleaning duties. Id. Petitioner testified that she was placed at Jacobs High School to provide food service through Respondent. Id. at 8.

January 13, 2022 Accident

Petitioner testified that on January 13, 2022, Petitioner was working for Respondent performing a clean-up of the ice machine with a coworker. Id. at 8. Petitioner testified that she was taking ice out of the machine to place into buckets. Id. Petitioner testified that she had to then lift the buckets filled with ice to dump the ice into the sink. Id. Petitioner testified that as she was lifting a bucket with ice, she felt a pinch in her lower back near her buttocks. Id. at 9-10. Petitioner testified that she continued working her shift and took Tylenol for the pain. Id. at 10. Petitioner testified that this accident occurred on a Thursday. Id. Petitioner testified that she went to work for Respondent the following day but continued to feel pain in her lower back down to her right buttocks. Id. at 11-12. Petitioner testified that she did not work that weekend nor Monday as it was Martin Luther King Day. Id. at 12. Petitioner testified that she reported the

accident to her manager on Tuesday when she returned to work and was sent for medical treatment. Id. at 12.

September 16, 2022 Accident

Petitioner testified that on September 16, 2022, she was at work for Respondent when she picked up a box of juices weighing twenty pounds from the bottom shelf of a fridge. Id. at 16-17. Petitioner testified that when she picked up the boxes, she had to lean to give the box to her manager as there was a waist-level table between her and the manager. Id. at 17-18. Petitioner testified that as she did this, she felt pain in her right lower back and near her buttocks. Id. at 18. Petitioner testified that she reported the accident to her manager, Rebecca, who was also there when the accident occurred. Id. at 18-19. Petitioner testified that she also felt pain down her right leg after the accident. Id. at 19-20. Petitioner testified that she occasionally had pain down her left leg, but her right leg was worse. Id. at 19-20.

Summary of Testimony and Medical Evidence

Following the January 13, 2022 accident, Petitioner presented to Dr. Mohiuddin at Advocate Sherman Occupational Health on January 18, 2022 with lower back pain and a history consistent with the testimony at trial. Px1, at 10-11. On physical examination, Dr. Mohiuddin noted pain with range of motion of the lumbar spine and diagnosed Petitioner with a lumbar strain. Id. Dr. Mohiuddin placed Petitioner on work restrictions. Id. Petitioner followed up with Advocate Sherman Occupational Health on January 26, 2022 and February 9, 2022 with similar subjective complaints and physical examination findings. Id. at 12-15. Petitioner was recommended to undergo physical therapy, which she completed at Northwest Physical Therapy from February 7, 2022 through August 4, 2022. Px2.

On February 23, 2022, Petitioner presented to Dr. Khan at Advocate Sherman Occupational Health with improvement in her back symptoms, but pain with range extension and flexion of the lumbar spine. Id. Px1, at 15-16. Petitioner followed up with Advocate Sherman Occupational Health on March 16, 2022 and March 23, 2022 with continued back pain and similar physical examination findings. Id. at 16-21. During those visits, Petitioner was recommended to undergo an MRI of her lumbar spine. Id.

On April 4, 2022, Petitioner underwent the MRI of her lumbar spine which showed a L5-S1 disk bulge causing right foraminal stenosis and a L3-L4 and L4-L5 disk bulge causing left foraminal stenosis. Px5. Petitioner followed up with Dr. Thompson at Advocate Sherman Occupational Health on April 6, 2022 with a "buzzing" sensation over her right-posterior-lateral buttock. Px1, at 21-23. Dr. Thompson reviewed the MRI and noted a disc bulge on the right with foramen impingement and referred Petitioner for an orthopedic consultation. Id.

On April 22, 2022, Petitioner presented to Dr. Ross at Midwest Neurosurgery and Spine with right lower back pain, right leg radicular pain, and a history consistent with the testimony at trial. Px4, at 3. On physical examination, Dr. Ross noted toe and heel walk and deep knee bending aggravating the right lower back pain; tenderness at L5-S1; and sensation diminished over the right anterior thigh. Id. Dr. Ross reviewed the lumbar MRI and noted it showed a right-

sided disc bulge at L5-S1 causing foraminal stenosis. Id. Dr. Ross diagnosed Petitioner with lumbar radiculopathy most likely caused by her foraminal L5-S1 disc bulge/herniation and recommended a right L5 selective nerve root block and transforaminal cortisone injection. Id.

On June 1, 2022, Petitioner presented for pain management with Dr. Hanna at Northwestern Medicine with low back pain and right radicular leg pain. Px6, at 74-78. On physical examination, Dr. Hanna noted tenderness of the lumbar spine and side bending to the right causing right-sided low back pain. Id. Dr. Hanna reviewed the MRI report noting a right sided disc bulge with right foraminal narrowing. Id. Petitioner then underwent the lumbar selective nerve root block and epidural steroid injection at L5 on the right side with Dr. Hanna on June 20, 2022. Id. at 49.

On June 10, 2022, Petitioner underwent an independent medical examination (IME) with Dr. Graf at the request of Respondent. Rx1. Dr. Graf noted a history consistent with the testimony at trial regarding Petitioner's January 13, 2022 accident. Id. At the IME, Petitioner had subjective complaints of low back pain into the bilateral buttocks to the posterior thigh on the right greater than the left. Id. Dr. Graf noted no non-organic pain signs and diagnosed Petitioner with low back pain and right radiating leg pain with a disc bulge at L5-S1. Id. Dr. Graf found Petitioner's condition to be causally related to the work accident and found more physical therapy; an injection; and light duty work restrictions to be reasonable. Id.

Petitioner followed up after the injection with Dr. Ross on June 28, 2022 and demonstrated ninety percent improvement but still with discomfort into the lower back and upper buttock area. Px4, at 2. Dr. Ross recommended continued physical therapy and to increase Petitioner's functionality at work. Id. On August 16, 2022, Petitioner presented o Dr. Ross with continued improvement and tolerating activities well. Id. at 1. Dr. Ross noted that if Petitioner's pain levels increase, she may be a candidate for continued injections. Id.

Petitioner then claims a second accident on September 16, 2022. On September 27, 2022, Petitioner presented to Dr. Ross with low back pain and radiating pain into her legs. Px3, at 10. Dr. Ross noted that Petitioner's pain was almost completely gone until one and a half weeks prior to the visit when Petitioner had the second accident. Id. Dr. Ross noted that Petitioner reaggravated her back injury with lifting at work and discussed potential injections. Id. Petitioner followed up with Dr. Ross on October 27, 2022 with back pain and less radiating pain into her legs. Id. at 9. Dr. Ross noted tenderness on the right at L5-S1, indicated Petitioner's back was not improving from the accident, and recommended a right L5 selective nerve root block injection. Id.

On December 9, 2022 Petitioner underwent the nerve root block and epidural steroid injection on the right with Dr. Hanna. Px6, at 14-15. Petitioner followed up with Dr. Ross on December 15, 2022 with one day improvement from the injection. Px3, at 8. Dr. Ross noted that the lack of improvement following the injection suggested Petitioner's pain may not be caused by the L5-S1 disc bulge/herniation. Id. Petitioner started a second course of physical therapy at Northwest Physical Therapy on January 9, 2023. Px2.

On January 10, 2023, Petitioner presented for a second IME with Dr. Graf. Id. At the IME, Petitioner gave a history consistent with her September 16, 2022 accident testimony. Rx2. Petitioner had subjective complaints of low back pain on the right side and sometimes right leg pain. Id. Dr. Graf opined that Petitioner was at maximum medical improvement and required no further treatment and could return to work full duty. Id.

Petitioner followed up with Dr. Ross on April 27, 2023 with no improvement in low back pain and occasional discomfort into Petitioner's legs. Id. at 7. On physical examination, Dr. Ross noted tenderness over the SI joints and indicated that Petitioner was localizing pain to the SI joint region. Id. Dr. Ross recommended bilateral sacroiliac joint arthrograms, diagnostic blocks, and steroid injections. Id.

On July 21, 2023, Petitioner presented for a third IME with Dr. Graf. Rx3. Petitioner's subjective complaints were right lower back pain to the right buttock and posterior thigh. Id. On physical examination, Dr. Graf noted SI joint pain with range of motion exercises. Id. Dr. Graf opined that Petitioner's SI joint diagnosis was not causally related to the work accident as Dr. Graf indicated these were new complaints. Id. Dr. Graf opined that treatment could be indicated for the SI joint, but that it was unrelated to the work accidents. Id. Dr. Graf found no symptom magnification and placed Petitioner at maximum medical improvement. Id.

Petitioner last presented to Dr. Ross on September 28, 2023 with continued low back pain with some radiation to the right buttock and similar physical examination findings. Id. at 6. Dr. Ross reviewed Dr. Graf's IME report and disagreed with Dr. Graf's opinions. Id. Dr Ross noted that Petitioner's pain has consistently been in the general area of the SI joints and found that Petitioner's condition as a result of the work accidents required the additional treatment of a SI joint injection on the right side. Id. Throughout Petitioner's treatment with Dr. Ross, Petitioner was placed on work restrictions. Px3.

Petitioner testified that her last date worked for Respondent was on June 9, 2023 as she was told there was no work available, but Petitioner was still on call. Id. at 23. Petitioner testified that she has not worked for Respondent nor any other employer since June 9, 2023. Id. at 24. Petitioner testified that her condition has affected her daily life and activities such as mopping, sweeping, laundry, and performing activities with her son. Id. at 24-25. Petitioner testified that she did not have any issues with her back prior to the work accidents. Id. at 25.

On cross-examination, Petitioner testified that pain mostly went down her right leg during the beginning of her treatment. Id. at 26-27. She acknowledged that she later reported pain along her left lower lumbar area without radiation. She explained that the pain was on both sides sometimes, but mostly on the right. Tx. 27. Petitioner acknowledged that she advised Dr. Graf during her IME that she had pain in her low back and both legs on June 10, 2022. Petitioner disagreed with Dr. Ross's note that she did not experience immediate pain after her injury and insisted she had pain right away. Tx. 35-36. Petitioner insisted that she advised her manager of her second accident. Tx.36. Petitioner acknowledged the five month gap between seeing Dr. Ross in April of 2023 and September of 2023.

Further, on cross-examination, Petitioner testified that she did not look for work after Respondent indicated it could not accommodate her work restrictions on June 9, 2023. Id. at 38. Petitioner testified that her current activities include assisting her mom around the house with activities she can perform such as washing the dishes. Id. at 39. Petitioner testified that she does have right-sided SI joint pain and that it's always been around that general area. Id. at 40. Petitioner stated that her pain is not radiating down her leg anymore. Tx. 40.

On redirect examination, Petitioner testified that for the September 16, 2022 accident, the juices were away from her body as she was handing the juice to her manager. Id. at 42. Petitioner testified that being "on call" meant that she would fill in for other workers who had vacations or sick days. Id. at 43. Petitioner testified that she never received a call after June 9, 2023. Id. at 43. On recross examination, Petitioner testified that the contract with Jacobs High School and Respondent ended on July 27, 2023. Id. at 45.

CONCLUSIONS OF LAW

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

The Arbitrator had the opportunity to personally observe the Petitioner's testimony. The Arbitrator finds the Petitioner testified credibly in this matter.

Regarding the 23 WC 8974 claim from September 16, 2022, as to 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:

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent. Petitioner credibly testified that on September 16, 2022, Petitioner was working for Respondent when she reinjured her low back by lifting a box of juices. The first medical note after the accident on September 27, 2022 by Dr. Ross indicates "[h]er pain was almost completely gone until 1-½ weeks ago when manager told her to lift a case of juices. Case weighed less than 20 pounds and felt discomfort immediately." Px3, at 10. This

history corresponds directly with Petitioner's accident date of September 16, 2022 and is consistent with Petitioner history regarding the mechanism of injury.

The Arbitrator notes that Petitioner was able to explain how her accident occurred on September 16, 2022. The Arbitrator notes that Petitioner's medical records corroborate Petitioner's testimony in how the accident occurred. The Arbitrator notes that Respondent offered no evidence or witness testimony to rebut Petitioner's testimony at trial. The Arbitrator is not swayed by Petitioner's inconsistent history as to the timing of when her pain began, whether it was immediately or soon thereafter as she sought medical treatment and gave a consistent history of accident.

Based on Petitioner's testimony and the medical records in evidence, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of Petitioner's employment.

Regarding the 23 WC 8974 claim from September 16, 2022 as to Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Petitioner testified that during her accident of lifting the box of juice, she was handing the juice to her manager, Rebecca. Further, Petitioner testified that she notified Rebecca of the accident. The Arbitrator notes that Petitioner was able to provide a specific name of her manager and her accident was corroborated by her treating medical records. No testimony was offered to rebut Petitioner's assertion. Accordingly, the Arbitrator finds that the Petitioner gave timely notice of the September 16, 2022 accident to Respondent.

Regarding the 23 WC 8973 claim from January 13, 2022, and 23 WC 8974 claim from September 16, 2022 as to Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator notes that Petitioner had two accidents involving the same body parts. Therefore, causation for both accidents will be addressed below.

The Arbitrator finds Dr. Thompson, Dr. Ross, and Dr. Hanna to have been credible in their opinions in the medical records regarding the nature of her injuries and their causal relationship to the claimed injury at work for the Respondent. The Arbitrator specifically finds Dr. Ross credible in his medical records regarding the nature of her injuries and their causal relationship to the claimed injury at work for the Respondent. The Arbitrator does not find the opinions of Dr. Graf as credible or persuasive on this issue.

As noted above, Petitioner had two accidents, a lifting accident involving ice buckets and a reaggravation injury involving lifting a box of juices. After the January 13, 2022 accident, Petitioner presented to Advocate Sherman Occupational Health from January 18, 2022 through April 6, 2022 with consistent low back pain and positive physical examination findings. Petitioner then underwent an MRI on April 4, 2022, which showed a L5-S1 disk bulge causing right foraminal stenosis and a disk bulge at L3-L4 and L4-L5 causing left foraminal stenosis which gave rise to Dr. Thompson referring Petitioner to Dr. Ross for an orthopedic consultation.

Petitioner treated with Dr. Ross after her first accident from April 22, 2022 through August 16, 2022. Dr. Ross reviewed the MRI and noted the disk bulge on the right at L4-L5. As Petitioner had consistent complaints of low back pain on the right and right leg radicular pain, Dr. Ross referred Petitioner for pain management where Petitioner underwent an injection with Dr. Hanna on June 20, 2022.

As Petitioner's testimony and the medical records indicate, Petitioner's right leg radicular pain was resolving following the injection. Further, Petitioner's low back pain was steadily improving during her treatment with Dr. Ross, Dr. Hanna, and physical therapy. In Dr. Graf's June 10, 2022 IME report, he agrees that Petitioner's condition is causally related to the January 13, 2022 work accident and opined that an injection would be reasonable. Thus, there is no dispute between the physicians that Petitioner's January 13, 2022 work accident caused Petitioner's lumbar condition.

As Petitioner was improving, Petitioner then had the second accident on September 16, 2022, reaggravating her condition requiring additional treatment. After the second accident, Petitioner presented to Dr. Ross on September 27, 2022 with continued low back pain and radiating pain. Dr. Ross noted in his medical records:

> "Reaggravated her back injury with lifting at work. We discussed the fact that it is not the absolute weight of the object being lifted that matters. It is the way the lift is performed. Lifting 20-pounds close to one's torso places much less stress on the back than lifting the same amount of weight with the arms outstretched." Px3, at 10.

This explanation of Petitioner's mechanism of injury is consistent with Petitioner's testimony of lifting the box of juices away from her body to deliver to her manager. Dr. Ross recommended Petitioner undergo a second lumbar injection which Petitioner underwent with Dr. Hanna on December 9, 2022. Following the injection, Petitioner treated with Dr. Ross from December 5, 2022 through September 28, 2023 with little to no improvement from the second injection. Throughout Petitioner's treatment after the second accident with Dr. Ross, Petitioner consistently complained of predominantly right lower back pain with some pain down into her right buttocks. As Dr. Ross noted that Petitioner's pain may be coming from the SI joint on the right side; he recommended an SI injection for diagnostic and therapeutic purposes.

Respondent understandably relies upon Dr. Graf's opinions in his January 10, 2023 and July 21, 2023 IME reports. In the January 10, 2023 IME report, Dr. Graf opined that Petitioner had reached maximum medical improvement as her leg pain was infrequent. In the July 21, 2023 IME report, Dr. Graf opined that Petitioner's SI joint pain was unrelated to the work accident as Petitioner had never demonstrated pain at the SI joint region until his July 21, 2023 IME. Thus, Dr. Graf did not find that Petitioner's SI joint pain was causally related to the work accident.

Dr. Ross specifically noted that Petitioner's pain has predominantly always been in the area around her right lower back and SI joint area. This opinion is consistent with Petitioner's testimony that her pain has mostly been on the right side of her lower back. Dr. Ross recommended the second lumbar injection for diagnostic and therapeutic purposes. Petitioner did

not sustain improvement from the second lumbar injection despite having improvement from the first injection, Dr. Ross believed that Petitioner's SI joint was the primary pain generator. Anatomically, the right lower back and the SI joint area are adjacent to one another. Petitioner had predominantly right sided lower back pain/SI joint pain throughout the majority of her treatment with Dr. Ross, e.g. April 22, 2022, September 27, 2022; October 27, 2022; December 5, 2022; April 27, 2023; September 28, 2023. Therefore, Dr. Ross' opinions and Petitioner's testimony are consistent in that Petitioner had pain in her right lower back near the SI joint area; and Dr. Ross recommended additional treatment for the SI joint for diagnostic and therapeutic purposes.

Further, during Dr. Graf's IMEs, he specifically did not note symptom magnification or malingering. None of Petitioner's treating physicians noted symptom magnification or malingering. Therefore, all of the physicians Petitioner presented to found Petitioner honest in her presentation of symptoms. Additionally, Petitioner testified, and the medical records corroborate that she never had issues with her low back or SI joint prior to the work accidents. Respondent offered no evidence to indicate Petitioner had any prior issues. Therefore, Petitioner's lack of prior issues with her low back/SI joint coupled with Petitioner's honest presentation of symptoms solidifies that the onset of Petitioner's back/SI joint pain complaints were as a result of the work accidents.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the work accidents.

Regarding 23 WC 8973 and 23 WC 8974 as to 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 in favor of Petitioner on the issues previously discussed, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the January 13, 2022 and September 16, 2022 accidents. This is supported by Petitioner's medical records from Advocate Sherman Occupational Health, Dr. Ross, and Dr. Hanna. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Dr. Hanna and Dr. Ross are both credible and appropriate for her work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and their own objective findings.

The Arbitrator orders Respondent to pay Petitioner for the following outstanding medical services which are listed in gross without adjustments pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Northwest Physical Therapy, $18,025.00; Group Health or Medicaid Lien; and Midwest Neurosurgery & Spine Specialists.

The parties stipulate that Respondent is entitled to credit for any medical payments made as listed in Respondent's Exhibit 5. The parties further stipulate that Respondent will reimburse

any payments made by Group Health or Medicaid for treatment that is deemed reasonable, necessary, and causally related to Petitioner's work accidents.

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

The Arbitrator finds that Petitioner is entitled to the right sacroiliac joint arthrogram, aesthetic block, and steroid injection as recommended by Dr. Ross. Petitioner attempted all conservative treatment available to her including medication, physical therapy, and injections. Petitioner's pain was improving following the January of 2022 accident with the initial lumbar injection and physical therapy. However, after the September of 2022 accident, Petitioner's condition progressively worsened and did not improve following the second lumbar injection. As such, Dr. Ross noted that Petitioner's pain generator may be the right SI joint, so he recommended a SI joint injection for diagnostic and therapeutic purposes.

Dr. Graf opined that Petitioner's pain complaints regarding the SI joint were new complaints not related to the work accidents. However, as noted above, Dr. Ross clearly indicated that Petitioner's pain complaints had consistently been in the same general area around the right-side low back near the SI joint. Dr. Ross is the treating physician who saw Petitioner on multiple occasions, lending credence to Dr. Ross's ability to determine that Petitioner's pain complaints have been consistent throughout her treatment.

Accordingly, the Arbitrator finds the need for right sacroiliac joint arthrogram, aesthetic block, and steroid injection for Petitioner as reasonable, necessary, and causally related to her work accident for the Respondent. The Arbitrator relies on the medical records and Petitioner's testimony regarding the necessity of the surgery at this time. The Arbitrator does not find Dr. Graf's IME report and testimony to have been credible or persuasive on this issue.

Respondent shall approve and pay for the right sacroiliac joint arthrogram, aesthetic block, and steroid injection and necessary post-operative care as prescribed by Dr. Ross as provided in Section 8(a) and 8.2 of the Act.

Regarding the 23 WC 8974 claim dated September 16, 2022 as to Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner is entitled to TTD benefits from June 10, 2023 through October 25, 2023. Throughout Petitioner's treatment, Petitioner was placed on work restrictions by her treating physicians. As Petitioner testified to, Petitioner's work restrictions were accommodated by Respondent until June 9, 2023 when she was placed "on call" as there was no work available for Petitioner. After June 9, 2023, Petitioner was never asked to return to work for Respondent. Eventually, Respondent's contract with Jacobs High School was terminated on July 27, 2023. Petitioner testified that she did not work for Respondent nor any other employer since June 9, 2023. Respondent offered no witnesses or evidence to refute Petitioner's testimony.

In *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission,* 236 Ill.2d 132, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010), the Illinois Supreme Court held that the determinative factor in TTD entitlement is not "the voluntariness of their departure from the workforce, . . . [but rather] whether the claimants' conditions had stabilized to the extent that they were able to reenter the work force. 923 N.E.2d at 275.

As noted above, Petitioner was on work restrictions when Respondent no longer had work for her on June 9, 2023. Further, Petitioner was on work restrictions when Respondent's contract with Jacobs High School was terminated on July 27, 2023. As the Court noted in *Interstate Scaffolding*, Petitioner's TTD benefits are not determined on whether she was removed from the workforce, but rather whether Petitioner was at maximum medical improvement at the time Respondent was unable to accommodate her restrictions or effectively terminated her employment. Petitioner has no affirmative obligation to seek other employment while on work restrictions to receive TTD benefits.

Having previously found that Petitioner's injury arose in and out of the course of her employment and that Petitioner's current condition of ill-being was causally related to her work injuries, and based on the foregoing paragraphs, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 10, 2023 through October 25, 2023. This amounts to 19 and 4/7 weeks of temporary total disability benefits at a minimum weekly rate with one dependent (per testimony and AX1) of $368.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003910
Case Name	Mercedes Hernandez v. Multi-Temps, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0466
Number of Pages of Decision	13
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jose Rivero
Respondent Attorney	Timothy Furman

DATE FILED: 9/27/2024

DISSENT

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0466

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mercedes Hernandez,

Petitioner,

vs. NO: 21 WC 3910

Multi-Temps, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical treatment, and temporary total disability (TTD) benefits, and being advised of the facts and law, reverses the Corrected Decision of the Arbitrator. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Findings of Fact

Petitioner began working for Respondent in early August 2020.[1] Her job duties included packing gasoline bottles. On August 17, 2020, Petitioner tripped over a metal bar and fell. She testified that she fell forward with her arms extended outward and hit her hands, wrists, and feet. Petitioner testified that she felt pain in her knees, ankles, hands, and arms after her fall. Petitioner denied having any problems regarding her knees, shoulders, or hands prior to this work accident.

Petitioner testified her supervisor sent her to Concentra. She testified that Dr. Simon, the clinic doctor, only focused on her hands, knees, and feet despite her complaints of right shoulder pain. Petitioner did not return to work for Respondent after Dr. Simon discharged her from his care on August 27, 2020. She testified that she continued to feel pain in her joints and shoulder and eventually sought treatment with Dr. Poepping. Petitioner would like to proceed with the right shoulder surgery recommended by Dr. Poepping.

[1] Petitioner testified with the aid of a Spanish language interpreter.

Petitioner testified that her visit with Dr. Neal, Respondent's Section 12 examiner, lasted approximately 40 minutes to an hour. She testified that Dr. Neal was not present during her entire visit. She further testified that Dr. Neal did not speak Spanish and no interpreter was present. She testified that she has remained off work since the work accident. Under further questioning, Petitioner agreed that she speaks some English and communicated with Dr. Neal in English.

Under cross-examination, Petitioner testified that she stepped on a metal bar and fell forward when the bar slid backward. She testified that her hands and knees hit the floor simultaneously. She testified that no one at Concentra examined her right shoulder or her legs. Petitioner testified, "They looked at the legs and saw that they were bruised, et cetera, but they never touched them or anything." (Tr. at 17). She testified that Dr. Simon did not manipulate any part of her body. Petitioner testified that someone from Respondent contacted her regarding a return to work after her discharge from Concentra; however, she told them that she was unable to work because her shoulder hurt.

After her discharge from Concentra, Petitioner did not seek additional treatment until February 2021, when she began treatment with Dr. Poepping.

Medical Treatment

Petitioner visited Concentra on August 17, 2020, the date of accident. Dr. Simon recorded the following history: "[Petitioner]…tripped and fell forward, landing on her knees and hand and hitting her left lower leg while falling." (PX 1). Petitioner complained of pain in both hands and knees as well as the lower left leg. Petitioner complained of limping as well as bilateral knee bruising and stiffness; however, she denied clicking, instability, locking, or swelling. Dr. Simon recorded detailed findings regarding his examination of Petitioner's hands, knees, cervical spine, and left leg. He observed that Petitioner walked with a slight limp. Dr. Simon's examination of the knees revealed bruising, diffuse tenderness, and full range of motion with pain. His examination of the lower left leg revealed bruising, tenderness, full range of motion with pain, and normal strength. X-rays of both knees revealed mild osteoarthritic changes with no acute fracture or dislocation. X-rays of the right hand and left tibia-fibula were normal. Dr. Simon diagnosed contusions of the bilateral knees, left leg, and bilateral hands. He prescribed medication and cleared Petitioner to return to work with restrictions.

Petitioner returned to Dr. Simon two days later with continued complaints of bilateral knee and left leg pain. She also complained of right arm pain and left ankle pain. Petitioner reported her knee and hand pain were improving. Examination of the bilateral shoulders revealed full range of motion and strength with no deformity, tenderness, or signs of impingement. Dr. Simon's examination of the knees revealed continued bruising, diffuse tenderness, and full range of motion with pain. The left ankle was normal and the lower left leg examination revealed continued bruising, tenderness, and swelling with full range of motion and normal strength. Petitioner was to continue working with restrictions.

On August 27, 2020, Petitioner reported her symptoms had improved. The knee bruising was resolving. Dr. Simon noted mild bilateral knee tenderness as well as full range of motion and normal strength. Additionally, the bilateral anterior and posterior drawer signs were negative.

Petitioner continued to deny any clicking, locking, or swelling of the knees. Dr. Simon's examination revealed no muscle weakness. There was mild anterior tenderness of the lower left leg, with normal strength. Dr. Simon noted that Petitioner was able to squat and had a normal gait. He determined Petitioner was at functional goal and ready for discharge. Dr. Simon also cleared Petitioner to return to work without restrictions that day. Petitioner was to return to the clinic as needed.

Dr. Poepping first examined Petitioner on February 10, 2021. Petitioner reported that she fell on her hands and knees, with her left leg and knee landing on some nuts and bolts. Petitioner complained of right shoulder, right elbow, bilateral knee (left worse than right), and left ankle pain since the work accident. The examination of the left knee revealed a positive medial McMurray's with a palpable pop which recreated pain along the medial knee. The doctor also noted some lateral joint line and retropatellar tenderness. The examination of the right knee also revealed a positive medial McMurray's, as well as tenderness along the medial and lateral joint line and retropatellar region. There was tenderness in the anterolateral gutter of the left ankle with no obvious swelling. The examination of the right shoulder revealed tenderness over the greater tuberosity, markedly positive Neer's and Hawkins tests, and full passive range of motion. Dr. Poepping diagnosed bilateral knee pain, left ankle pain, right shoulder pain, and right elbow lateral epicondylitis. He prescribed MRIs of both knees and the right shoulder as well as physical therapy. He also took Petitioner off work.

The February 15, 2021, left knee MRI revealed: 1) a medial meniscal tear involving the midbody and posterior horn; 2) lateral meniscus demonstrating a free edge tear with blunting of the apical free edge; 3) joint effusion, presumably posttraumatic in nature, with some peripatellar soft tissue bruising; 4) subchondral bone marrow edema involving the medial patellar facet, presumably posttraumatic bone bruising; and 5) intact collateral and cruciate ligaments. The right knee MRI revealed: 1) medial and lateral meniscal tears; 2) joint effusion with some peripatellar soft tissue swelling, presumably posttraumatic in nature; and 3) intact collateral and cruciate ligaments. The right shoulder MRI revealed: 1) a full-thickness tear of the anterior most aspect of the distal supraspinatus tendon with retraction measuring approximately 3-4 cm, with posttraumatic concomitant rotator cuff tendonitis and/or bursitis seen; 2) small glenohumeral effusion, presumably posttraumatic; 3) AC inferior hypertrophic spurring probably with some impingement; and 4) a small subchondral cyst involving the superolateral aspect of the humeral head. Petitioner began physical therapy on February 17, 2021, and reported that her pain had remained constant since the work accident.

On February 26, 2021, Dr. Poepping interpreted the MRIs of Petitioner's knees as showing evidence of chondromalacia of the patella and medial compartment as well as degenerative meniscal tears. He interpreted the right shoulder MRI as showing evidence of a full-thickness tear of the anterior supraspinatus, AC arthrosis, and subacromial bursitis. Dr. Poepping diagnosed right shoulder AC arthritis and a full-thickness rotator cuff tear, as well as bilateral knee chondromalacia and meniscal tears. He wrote that Petitioner had a competent mechanism of injury for a rotator cuff tear, and recommended a right shoulder arthroscopy, rotator cuff repair, SA decompression, distal clavicle excision, and debridement and evaluation of the biceps. He further opined that Petitioner suffered an exacerbation of her underlying bilateral degenerative knee condition. Petitioner was to continue physical therapy and undergo injections in the knees.

In mid-March 2021, Dr. Poepping continued to wait for approval for the recommended shoulder surgery. He administered a right knee injection. On April 9, 2021, Dr. Poepping noted some tenderness in the retropatellar region of both knees. He also noted continued tenderness over the right greater tuberosity and AC joint as well as positive Neer's, Hawkins, and cross-body adduction tests. The doctor administered bilateral knee injections.

On May 18, 2021, Petitioner reported the knee injections provided some relief; however, she continued to complain of right shoulder pain. Dr. Poepping reviewed Dr. Neal's May 19, 2021, narrative report and wrote that Petitioner had undergone bilateral knee injections shortly before the examination and opined, "…so certainly I think at a minimum there was a flare-up of her underlying chondromalacia in the knee. She does not really have a twisting mechanism to account for the medial meniscal tear, but certainly a traumatic contusion that could cause increasing pain in bilateral knees…" (PX 2). Dr. Poepping wrote that Dr. Neal denied there was a causal relationship between the work accident and Petitioner's right shoulder condition due to a lack of documented complaints soon after the accident. The doctor wrote:

> I did discuss this with [Petitioner] with a translator. She does report near immediate pain in the right shoulder and states that she reported this to both the occupational health physician as well as a physical therapist but was not recorded. Obviously, I do not have access to these records and I do not have any of this information available to me but certainly, if that is the case, she does have a mechanism of injury that would fit with her diagnosis of rotator cuff tear and minimum exacerbation of this tear. Certainly, if there were any x-rays or documentation of the shoulder, this would confirm that…"

(PX 2). Petitioner was to remain off work as the doctor continued to wait for surgery authorization.

Petitioner returned to Dr. Poepping in August 2021. Her symptoms were unchanged and the doctor continued to wait for approval for the recommended right shoulder surgery. Petitioner was to remain off work. She continued to follow up with Dr. Poepping approximately every three months while the doctor waited for authorization for the recommended right shoulder surgery. Petitioner's symptoms remained unchanged. On April 8, 2022, Dr. Poepping continued to wait for surgery authorization and wrote that Petitioner was to remain off work. However, the work status cleared Petitioner to return to work without restrictions that day.

Expert Opinions and Testimony

Dr. Bryan Neal—Respondent's Section 12 Examiner

Dr. Neal examined Petitioner at Respondent's request on May 10, 2021, and authored a report dated May 19, 2021. (RX 1 at Exh. 2). His examination addressed Petitioner's knees and right shoulder/arm. Dr. Neal reviewed medical records including the August 2020 Concentra records. Dr. Neal wrote that Petitioner spoke and understood English and there was no communication barrier.

Petitioner explained her job duties as a packer. She identified her knees, ankles, left leg,

and hands as the body parts injured on August 17, 2020. Dr. Neal wrote:

> …She admitted that she did not initially realize she injured her right shoulder. I asked when she realized she injured her right shoulder. She responded, "Weeks later." I asked how many weeks later given her response to which she stated she did not remember…

Id. Petitioner complained of pain primarily in the superior right shoulder. Petitioner stated she first felt right shoulder pain in mid to late September 2020. She denied discussing any right shoulder complaints with the Dr. Simon. After further discussion, Petitioner reported that she first felt right shoulder pain around the second week of September 2020.

Dr. Neal diagnosed a full thickness retracted right rotator cuff tear, a currently asymptomatic left knee, a minimally intermittently symptomatic right knee pain, and obesity. He opined that Petitioner's bilateral knee condition is not causally related to Petitioner's work accident. He further opined that Petitioner only sustained bilateral knee contusions that had resolved. He wrote that Petitioner's knee condition improved during her treatment at Concentra and that she had only mild knee symptoms with no mechanical symptomatology when Dr. Simon discharged her from his care on August 27, 2020. Dr. Neal opined that any medical treatment for Petitioner's knees after August 27, 2020, was not related to the work accident.

Dr. Neal also opined that Petitioner's right shoulder condition is not causally related to the work accident. He wrote that during his examination, Petitioner volunteered that she initially did not realize her right shoulder was injured. Furthermore, Petitioner indicated that she first felt symptoms in mid to late September 2020. Dr. Neal wrote: "One would not expect initial shoulder symptoms to manifest, or declare themselves, in mid-to-late September 2020, if she had an acute fall at work on August 17, 2020 and suffered a full-thickness rotator cuff tear." *Id*.

He wrote:

> …[Petitioner] has three different medical evaluations within the first ten days of the event but all three failed to document shoulder symptoms, failed to document shoulder examination abnormalities, and failed to offer a diagnosis pertaining to the shoulder. One would not expect a medical provider to not document some shoulder symptoms, not document some shoulder examination findings, or to not document a shoulder diagnosis if she had a perfectly normal and asymptomatic shoulder prior to the fall…fell on this day, was seen by this provider for symptoms specifically related to the fall of August 17, 2020, and for which a full-thickness rotator cuff tear (with retraction) resulted from the fall. It is not plausible, given these medical records, she had a retracted full-thickness rotator cuff tear during anytime of August 2020.

Id. Dr. Neal opined that neither Petitioner's right shoulder treatment nor any related work restrictions were related to the work accident.

Dr. Neal testified via evidence deposition on Respondent's behalf on July 6, 2021. (RX 1).

He testified that his causation opinions regarding Petitioner's right shoulder and bilateral knee conditions are based on his extensive experience as a surgeon who operates on knees and shoulders. Regarding the right shoulder, he testified:

> …You would not expect someone who had a perfectly asymptomatic shoulder who did manual labor to suffer a rotator cuff tear—not any rotator cuff but a large retracted rotator cuff tear—from an acute instantaneous fall without presenting with significant pain, significant range of motion limitation and significant weakness for which it really would not be plausible that they could have been not appreciated early on. There was an extensive period of time where she just was not noted to have shoulder symptomatology, and, indeed, her history was not of shoulder symptoms to as much as more than one month after the event if her history was accurate.

Id. at 15-16. He testified that someone who had an acute traumatic episode where they fell and had a large, retracted rotator cuff tear would have undoubtedly exhibited symptoms within 24 hours of the fall.

Under cross-examination, Dr. Neal agreed that he had no knowledge of any pre-accident treatment or complaints regarding Petitioner's knees or right shoulder. He testified that most doctors consider the arm to encompass between the shoulder and the elbow, and the forearm to encompass between the elbow and the wrist. The doctor testified that laypeople generally refer the entire upper extremity as the arm. He testified that when a patient complains of arm pain, he has the patient point to the location of their pain.

Conclusions of Law

After carefully considering the totality of the evidence, the Commission reverses the Arbitrator's finding that Petitioner's right shoulder condition is causally related to the August 17, 2020, work accident. The Commission also reverses the Arbitrator's award of medical expenses for treatment provided after August 27, 2020, and reverses the Arbitrator's award of prospective medical treatment. Finally, the Commission modifies the award of TTD benefits.

Causal Connection

The Arbitrator concluded that Petitioner's current condition of ill-being regarding her right shoulder and bilateral knees is causally related to the August 17, 2020, work accident. The Commission views the evidence quite differently. After considering the evidence, the Commission finds Petitioner's right shoulder condition is not causally related to the work accident. The Commission further finds Petitioner reached maximum medical improvement (MMI) for her work-related injuries on August 27, 2020.

After considering the totality of the evidence, the Commission finds Petitioner is at best a very poor historian regarding the onset and progression of her symptoms. Particularly, the record is rife with conflicts between Petitioner's testimony, reports to her doctors, and reports to Dr. Neal regarding the onset of her right shoulder complaints. Additionally, Petitioner's testimony regarding

her treatment at Concentra is contradicted by the relevant medical records. These inconsistencies are not the result of a language barrier. For example, Petitioner testified that she immediately felt pain in her knees, ankles, hands, and arm. Yet, she told Dr. Neal, Respondent's Section 12 examiner, that only her knees, ankles, left leg, and hands were injured on the date of accident. She told Dr. Neal that initially, she did not even realize she injured her right shoulder and that her shoulder pain began weeks after her fall in mid to late September 2020.

Petitioner testified that she reported right shoulder pain throughout her treatment with Dr. Simon at Concentra. Petitioner further testified that Dr. Simon repeatedly ignored her right shoulder complaints and instead focused only on complaints regarding her hands, knees, and feet. She testified that Dr. Simon never touched her right shoulder or her legs, and never manipulated any part of her body during his examinations. However, the credible evidence contradicts Petitioner's testimony. Dr. Simon examined Petitioner on the date of accident, August 19, 2020, and August 27, 2020. During each visit, the doctor dutifully recorded Petitioner's subjective complaints. Dr. Simon also performed extensive physical examinations each visit. Most importantly, Dr. Simon carefully recorded the results of his physical examinations. Dr. Simon's notes are not generic and the extent of his physical examinations directly reflect Petitioner's complaints during each visit.

Dr. Simon's records reveal that on August 19, 2020—two days after the work accident—Petitioner first complained of right arm pain. Petitioner did not complain of right shoulder pain; however, Dr. Simon thoroughly examined both shoulders. Dr. Simon's bilateral shoulder examination was completely normal. There was full range of motion, normal strength, no tenderness, and no signs of impingement. On August 27, 2020, Petitioner did not complain of right arm or shoulder pain. Thus, Dr. Simon did not examine the shoulders. Notably, Dr. Simon never made any diagnosis or treatment recommendations regarding Petitioner's right arm or shoulder.

After Dr. Simon placed her at MMI on August 27, 2020, Petitioner did not receive additional treatment related to this work accident until her February 10, 2021, visit with Dr. Poepping. On that day, Petitioner reported right shoulder pain since the work accident and had significant difficulty elevating her right shoulder. In stark contrast to Dr. Simon's normal bilateral shoulder examination almost six months earlier, Dr. Poepping's right shoulder examination revealed several significant objective findings. Dr. Poepping noted tenderness over the greater tuberosity, and markedly positive Neer's and Hawkins tests. Two weeks later, Dr. Poepping's right shoulder examination also revealed AC joint tenderness and a positive cross-body adduction test. Dr. Poepping diagnosed Petitioner with a full thickness right rotator cuff tear and AC arthritis and recommended surgery.

Dr. Poepping opined that if Petitioner reported feeling right shoulder pain almost immediately after her fall to her medical providers, then her mechanism of injury would be consistent with at least an exacerbation of her rotator cuff tear. Unfortunately, Dr. Poepping's opinions are only as sound as the history Petitioner provided. The credible evidence shows that Petitioner's right shoulder pain did not begin immediately after the work accident. The credible evidence also shows that Petitioner's right shoulder was pain free and fully functional during her treatment with Dr. Simon. There is no evidence that Dr. Poepping reviewed the Concentra treatment records. Thus, the Commission is not persuaded by Dr. Poepping's causation opinion

regarding Petitioner's right shoulder condition.

In contrast to Dr. Poepping, Dr. Neal reviewed Dr. Simon's office visit notes. Dr. Neal's interview of Petitioner regarding the onset of Petitioner's right shoulder symptoms was very thorough. While Dr. Neal denied a language barrier during his examination, he did document a few instances when there was apparent confusion or difficulty communicating during the interview. However, the doctor extensively questioned Petitioner regarding the onset of her right shoulder complaints and Petitioner's responses were clear. Furthermore, Dr. Neal credibly opined that Petitioner's failure to report shoulder pain within the first 24 hours after the work accident was inconsistent with either an acute full thickness, retracted rotator cuff tear or an aggravation of such a tear.

The credible evidence overwhelmingly supports a finding that Petitioner did not sustain a right shoulder injury due to the August 17, 2020, work accident. Therefore, the Commission finds Petitioner's right shoulder condition is not causally related to the work accident.

The Commission also finds Petitioner failed to prove her current bilateral knee condition is causally related to the work accident. Immediately after her fall, Petitioner complained of severe knee pain and bruising, but denied any clicking, instability, locking, or swelling. Dr. Simon's examinations of Petitioner's knees revealed only bruising, diffuse tenderness, and full range of motion with pain. Petitioner reported continued improvement during her follow up appointments with Dr. Simon. On August 27, 2020, Dr. Simon noted that the bruising over the knees was resolving and his examination revealed only mild tenderness. Petitioner also had full range of motion and normal strength without any evidence of pain. However, six months later, Dr. Poepping noted drastically different objective findings during his examination. Petitioner denied any clicking, instability, locking, or swelling in August 2020, and Dr. Simon's examinations were negative for any knee testing. Yet in February 2021, Dr. Poepping's examination was positive for medial McMurray's and pain bilaterally.

Dr. Poepping opined that the work accident exacerbated Petitioner's underlying bilateral degenerative knee condition. Unfortunately, his opinion is once again significantly undermined by the inaccurate history Petitioner reported. Thus, the Commission finds the doctor's opinion unpersuasive. Contrary to Dr. Poepping, Dr. Neal's opinion that Petitioner sustained bilateral knee contusions that resolved prior to his May 2021 examination relies on an accurate history of Petitioner's knee complaints and Dr. Simon's objective findings following the work accident. Furthermore, Dr. Neal's opinions are supported by the medical evidence regarding Petitioner's condition closest to the date of accident.

After considering the totality of the evidence, the Commission finds Petitioner sustained bilateral knee, bilateral hand, and left leg contusions due to the August 17, 2020, work accident. The Commission further finds Petitioner reached maximum medical improvement (MMI) for her work-related injuries on August 27, 2020.

Medical Expenses

The Commission has found that Petitioner's right shoulder condition is not causally related

to the August 17, 2020, work accident. The Commission has also found that Petitioner reached MMI for her work-related injuries on August 27, 2020. After considering the evidence, the Commission finds Dr. Neal's opinion that Petitioner's treatment after August 27, 2020, is not reasonable, necessary, or causally related to the work accident most credible. Thus, the Commission must reverse the Arbitrator's award of medical expenses in its entirety. The Commission finds Respondent is not liable for any medical expenses incurred after August 27, 2020.

Temporary Disability Benefits

The Commission has found that Petitioner reached MMI for her work-related injuries on August 27, 2020. Thus, the Commission must modify the Arbitrator's award of TTD benefits.

When determining whether a claimant is entitled to TTD benefits, "…the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010) (internal citation omitted). To prove an entitlement to TTD benefits, a claimant must prove that they did not work and that they were unable to work. *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170, 177 (2000). A claimant is temporarily and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶ 45. Once a claimant reaches MMI, their condition is permanent and they are no longer entitled to TTD benefits.

After considering the evidence, the Commission finds Petitioner proved she was temporarily and totally disabled from August 18, 2020, through August 26, 2020. Pursuant to Section 8(b) of the Act, if a claimant is temporarily and totally disabled for more than three working days, but less than 14 total days, "…weekly compensation…shall be paid beginning on the 4th day of such temporary total incapacity…" As Petitioner's period of temporary total disability is more than three working days, but less than 14 total days, the Commission finds she is entitled to TTD benefits from August 21, 2020, through August 26, 2020—a period of 6/7 weeks—totaling $351.37. The parties stipulated that Respondent has paid $400.02 in TTD benefits. Thus, Respondent has paid an overage of $48.65 in TTD benefits.

Prospective Treatment

The Commission has found Petitioner's right shoulder condition is not causally related to the August 17, 2020, work accident. Thus, the Commission reverses the Arbitrator's award of prospective treatment in the form of the right shoulder surgery recommended by Dr. Poepping.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed on January 19, 2024, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner reached MMI regarding her work-related injuries on August 27, 2020. Petitioner's right shoulder condition is not causally related to the August 17, 2020, work accident.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $410.00/week for 6/7 weeks commencing August 21, 2020, through August 26, 2020, as provided in Section 8(b) of the Act. Per stipulation by the parties, Respondent shall receive credit for $400.02 in TTD benefits it previously paid. The $48.65 overage in TTD benefits paid by Respondent shall be applied to a future award of permanency, if any.

IT IS FURTHER ORDERED that the Arbitrator's award of medical expenses is reversed. Respondent is not liable for medical expenses incurred after August 27, 2020.

IT IS FURTHER ORDERED that the Arbitrator's award of prospective medical treatment is reversed. Petitioner is not entitled to any prospective medical treatment.

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

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

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

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.

SEPTEMBER 27, 2024

o: 7/30/24
AHS/jds
51

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the well-reasoned Decision of the Arbitrator. After carefully considering the evidence, I believe Petitioner met her burden of proving her current condition of ill-being is causally related to the August 17, 2020, work accident.

Contrary to the majority, I believe the Arbitrator's conclusion that Petitioner's right shoulder is causally related to the work accident is thoroughly supported by the credible evidence. Much of the evidence on which the majority relies regarding the onset of Petitioner's right shoulder complaints is tainted by the language barrier between Dr. Neal and Petitioner. Petitioner testified that she speaks a little English; however, it is clear that she is most comfortable conversing in Spanish. She testified with the aid of an interpreter during the arbitration hearing and Dr. Poepping also used a translator when questioning Petitioner regarding the onset of her complaints. Yet Dr. Neal conducted his entire examination in English. Dr. Neal even admitted in his report that he encountered difficulties when interviewing Petitioner due to the language barrier. He also admitted that Petitioner seemed confused when responding to certain questions. Yet the majority ignores the fact that Dr. Neal's interpretation of Petitioner's responses might be inaccurate. The majority also ignores the vast differences between Petitioner's responses regarding the onset of her right shoulder pain when a translator was used and her apparent responses to Dr. Neal. A review of the evidence shows that Petitioner's responses to Dr. Neal's questions are an outlier.

Most importantly, the majority places great emphasis on Petitioner's responses to Dr. Neal's questioning but essentially ignores the clear evidence that Petitioner did complain of right shoulder pain to Dr. Simon. On August 19, 2020, Petitioner complained of right arm pain. While Dr. Simon did not note that Petitioner complained specifically of right shoulder pain, I believe his notes show that Petitioner at least referenced pain in her shoulder that day. After all, the complaint of right arm pain correlates with the only time Dr. Simon examined Petitioner's shoulders. Furthermore, on the date of accident, Dr. Simon significantly restricted Petitioner's use of her right arm. For example, Petitioner could only lift up to 10 lbs. occasionally, could only push and pull up to 20 lbs. occasionally, and was restricted from using any vibratory or power tools with the right arm. This is credible evidence that Petitioner injured her right shoulder on the date of accident.

Given the clear evidence that Petitioner complained of and exhibited right shoulder symptoms within two days of the work accident, I believe Dr. Poepping's causation opinion is most credible. After reviewing Dr. Neal's report, Dr. Poepping specifically questioned Petitioner regarding the onset of her right shoulder pain with the aid of a translator. This eliminated any possible confusion or misinterpretation. Petitioner told Dr. Poepping that she felt pain in her right shoulder almost immediately and reported this pain to Dr. Simon. Dr. Simon's records corroborate this. Thus, Dr. Poepping's opinion that Petitioner's fall is consistent with her right shoulder rotator cuff tear is fully supported by the evidence. Additionally, Dr. Poepping credibly opined that Petitioner's fall at a minimum exacerbated the right shoulder pathology seen on the MRI.

For the forgoing reasons, I would affirm the Decision of the Arbitrator in its entirety.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004257
Case Name	Charles Austin v. Cook County Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0467
Number of Pages of Decision	22
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Randall Manoyan
Respondent Attorney	Michael Rusin, Katrina Robinson

DATE FILED: 9/30/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0467

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 (Causation, medical expenses, TTD, prospective treatment)	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Austin,

Petitioner,

vs. NO: 22 WC 4257

Cook County Dept. of Corrections,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, except as stated below. The Commission affirms the Arbitrator's conclusion that Petitioner's condition of ill-being regarding his low back condition is not causally related to the February 10, 2022, work accident. The Commission also affirms the Arbitrator's denial of penalties and fees. However, the Commission reverses the Arbitrator's conclusions regarding causation of Petitioner's right knee condition, medical expenses, TTD, and prospective medical treatment. The Commission also makes certain corrections to the Decision.

Corrections to the Arbitration Decision

In the Findings section of the Arbitration Decision Form, the Arbitrator wrote that Respondent is entitled to a credit of $59,653.40 pursuant to Section 8(j) of the Act. The Commission strikes this sentence in its entirety. Respondent did not claim any credit pursuant to Section 8(j) and the parties did not stipulate to such a credit. Furthermore, the medical bills

Respondent paid were paid through its workers' compensation benefits, not group insurance. Similarly, in the second full paragraph on page 11 of the Decision, the Arbitrator wrote that Petitioner "…is entitled to credit under 8(j) of the Act." The Commission strikes this reference to a Section 8(j) credit. Also in the Findings section, the Arbitrator mistakenly wrote that Petitioner received a credit of $24, 300.91 in other benefits for a total credit of $59,653.40. The Commission modifies this sentence to read as follows:

> Respondent shall be given a credit of $35,352.49 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $35,352.49.

In the final paragraph on page 10 of the Decision, the Arbitrator mistakenly wrote that Petitioner received TTD benefits beginning February 19, 2021. The Commission strikes "February 19, 2021" and replaces it with "February 24, 2022." Finally, the Commission strikes the subsection "Conclusion" on page 12 of the Decision in its entirety.

Causal Connection

The Commission affirms the Arbitrator's conclusion that Petitioner failed to prove his low back condition is causally related to the February 10, 2022, work accident. However, the Commission finds Petitioner's right knee condition is causally related to the work accident.

In reaching the conclusion that Petitioner's right knee condition is not causally related to the work accident, the Arbitrator primarily relied on the opinions of Dr. Forsythe, Respondent's Section 12 examiner. The Commission views the evidence quite differently. After considering the totality of the evidence, the Commission finds Petitioner's right knee condition is causally related to the February 10, 2022, work accident. The Commission also finds Petitioner has not yet reached maximum medical improvement (MMI) regarding his right knee injury.

The Commission does not find Dr. Forsythe's opinions regarding the continued causal connection of Petitioner's right knee condition and his MMI status credible. Dr. Forsythe opined that Petitioner's continued right knee complaints following the May 2022 knee surgery relate only to Petitioner's underlying patellofemoral arthritis. He further opined that the work accident did not aggravate, accelerate, or worsen Petitioner's preexisting right knee arthritis. However, these opinions are not supported by the credible evidence. There is absolutely no evidence that Petitioner complained of or sought treatment for any symptoms related to his right knee prior to the work accident. Petitioner was also able to fully perform all the job duties associated with his physically demanding job as a correctional officer before the work accident. Despite any preexisting right knee arthritis, Petitioner's right knee was asymptomatic and fully functional before this work accident.

Petitioner heard a pop and felt immediate right knee pain following his injury. Despite the relative success of the right knee surgery, Petitioner continues to suffer from residual complaints. Additionally, Petitioner has been unable to return to his regular job since the work accident. Thus, the credible evidence overwhelmingly shows the work accident at least aggravated Petitioner's underlying right knee arthritis. Likewise, contrary to Dr. Forsythe's opinion, Petitioner's right knee has clearly not returned to its pre-accident baseline condition. Notably, Dr. Forsythe's opinion

predates the October 10, 2022, right knee MRI. Thus, he was unaware of the new findings that were not present in March 2022. One such finding was thickening and interstitial tearing of the proximal tibial collateral ligament with mild adjacent edema consistent with a subacute injury. The radiologist interpreted the study as showing a subacute grade 2 proximal tibial collateral ligament sprain. This is clear evidence that Petitioner's right knee condition has continued to progress. The MRI findings also corroborate Petitioner's continued complaints, and objectively contradict Dr. Forsythe's opinion that Petitioner has reached MMI.

Dr. Forsythe opined that post-surgery physical therapy failed to improve Petitioner's right knee condition. However, the credible evidence directly contradicts his assessment. A review of Petitioner's post-surgery physical therapy records reveals that Petitioner's right knee condition continued to improve while he attended therapy. The therapist authored periodic functional status reports throughout Petitioner's course of therapy and documented the slow, but steady progress Petitioner made toward achieving the long term goals identified by the therapist. For example, on September 1, 2022, Petitioner was finally able to lift and carry 30 lb. for 10 feet. He also demonstrated improved range of motion and right knee flexion of at least 120 degrees. On September 16, 2022, the therapist wrote that Petitioner's right leg range of motion and strength had increased since he began physical therapy. Petitioner's lifting and carrying capabilities also continued to slowly improve. In the November 15, 2022, discharge summary, the therapist identified the long term goals Petitioner achieved. Both the therapist and Dr. Watson, Petitioner's treating physician, believed Petitioner would benefit from attending work conditioning to improve his remaining deficits. The credible evidence shows that Petitioner's condition has not plateaued and he would benefit from additional treatment.

For the foregoing reasons, the Commission finds Petitioner's right knee condition remains causally related to the February 10, 2022, work accident. The Commission further finds Petitioner has not reached MMI regarding his work-related right knee injury.

Medical Expenses

The Commission has found that Petitioner's right knee condition is causally related to the work accident. The Commission has also found that Petitioner has not yet reached MMI for his work-related right knee injury. On October 14, 2022, Respondent terminated Petitioner's medical benefits pursuant to Dr. Forsythe's opinions. (PX 4). After considering the totality of the evidence, the Commission finds the treatment Petitioner has received for his right knee injury has been reasonable, necessary, and related to the work accident. The physical therapy records as well as Dr. Watson's office visit notes prove Petitioner continued to slowly achieve results during physical therapy. Furthermore, the October 2022 right knee MRI revealed additional findings that Dr. Watson determined correlated with Petitioner's ongoing right knee complaints. Similarly, Dr. Watson continued to note objective findings during his examinations of Petitioner's right knee that corroborated his persistent complaints.

Thus, the Commission reverses the Arbitrator's denial of medical expenses incurred after October 14, 2022, regarding Petitioner's right knee condition. The Commission finds Respondent is liable for the charges submitted by Petitioner related to his right knee injury that remain outstanding. Respondent is not liable for any expenses related to Petitioner's low back condition.

Prospective Medical Treatment

As the Commission has found that Petitioner has not achieved MMI regarding his right knee injury, the Commission must reverse the Arbitrator's denial of prospective medical treatment. On January 17, 2023, Dr. Watson prescribed work conditioning to address Petitioner's continued deficits and complaints regarding his right knee. Dr. Watson's recommendation is supported by Petitioner's persistent complaints of pain which are corroborated by the doctor's physical examinations and October 2022 right knee MRI findings. Furthermore, Petitioner made steady progress in physical therapy and the therapist wrote that Petitioner would benefit from work conditioning. Thus, the Commission finds Petitioner is entitled to the recommended course of work conditioning. The Commission further finds Respondent shall authorize and pay for the recommended course of work conditioning.

Temporary Total Disability Benefits

The Commission has found that Petitioner has not reached MMI regarding his right knee condition. Thus, the Commission must modify the Arbitrator's award of TTD benefits.

It is undisputed that Petitioner received his full salary from February 11, 2022, through February 23, 2022. Respondent then paid Petitioner TTD benefits from February 23, 2022, through October 13, 2022. (RX 10). Respondent terminated Petitioner's TTD benefits effective October 14, 2022, pursuant to Dr. Forsythe's opinions. On January 17, 2023, Dr. Watson continued to keep Petitioner completely off work due to his right knee condition. After considering the credible evidence, the Commission finds Petitioner is entitled to TTD benefits from February 24, 2022, through February 21, 2023, the date of hearing—a period of 51-6/7 weeks—totaling $55,314.31. Petitioner shall receive credit for the $35,352.49 in TTD benefits it previously paid to Petitioner.

Penalties and Fees

The Arbitrator denied Petitioner's request for penalties and fees in this matter; however, the Arbitrator failed to explain the reasoning for this denial. After considering the evidence, the Commission affirms the Arbitrator's denial of penalties and fees.

Penalties pursuant to Section 19(l) of the Act are applicable when an employer "…shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits." However, an award of penalties and attorney fees pursuant to Sections 16 and 19(k) of the Act requires a much higher burden. Section 19(k) of the Act addresses "…situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. This is apparent in the statute's use of the terms 'vexatious,' 'intentional' and 'merely frivolous.'" *McMahan v. Indus. Comm'n.*, 183 Ill. 2d 499, 515 (1998). Section 16 of the Act uses the same language and applies to the same situations as Section 19(k) penalties.

Petitioner seeks an award of penalties and fees due to Respondent's termination of medical and TTD benefits pursuant to Dr. Forsythe's opinions, Respondent's denial of additional physical therapy pursuant to utilization reviews (URs), and Respondent's underpayment of TTD benefits. However, none of these actions were unreasonable, vexatious, or frivolous.

The evidence shows that Respondent timely paid Petitioner TTD benefits through October 13, 2022. Petitioner did not raise the issue of a potential underpayment due to Respondent's failure to include overtime wages in its average weekly wage (AWW) calculation until September 2022. (PX 17). Petitioner's evidence shows that the parties then engaged in discussions and negotiations regarding the accurate AWW and TTD. Respondent worked to determine what amount overtime Petitioner worked was mandatory and offered possible terms to resolve the issue. Respondent then promptly sent the outstanding TTD owed due to the underpayment to Petitioner once the parties reached the agreement. Petitioner has failed to prove that Respondent's underpayment of TTD benefits was unreasonable, let alone vexatious or frivolous under these circumstances.

Similarly, Petitioner has failed to prove Respondent's failure to authorize additional treatment and its decision to terminate all benefits effective October 14, 2022, were unreasonable. Petitioner's exhibits included several URs either denying requests for additional physical therapy or only partially certifying the requests. (PX 15). Tellingly, Petitioner submitted no evidence that Respondent failed to comply with the procedures established in Section 8.3 of the Act in obtaining and relying upon the UR process to address requests for additional treatment. There is absolutely no evidence that Respondent's reliance on the results of URs that apparently complied with the Act was unreasonable. Furthermore, Respondent relied on the opinions of Dr. Forsythe, its Section 12 examiner, when it decided to terminate medical and TTD benefits in October 2022. While the Commission ultimately did not agree with Dr. Forsythe's opinions, this does not mean Respondent's reliance upon his expert opinion was unreasonable or vexatious.

The threshold for an award of penalties and fees pursuant to Sections 16 and 19(k) of the Act is not whether the Commission finds Respondent's reasoning persuasive. Instead, Illinois courts have determined the test is whether Respondent's reasoning is objectively reasonable. *See e.g., Zitzka v. Indus. Comm'n,* 328 Ill. App. 3d 844, 849 (2002). After considering the totality of the evidence, the Commission finds Respondent's denial of benefits based on its URs and the expert opinions of Dr. Forsythe was objectively reasonable. As such, the Commission affirms the Arbitrator's conclusion that Petitioner failed to meet his burden of proving an entitlement to penalties and fees pursuant to Sections 19(l), 19(k) and 16 of the Act.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 27, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner's current condition of ill-being regarding his right knee is causally related to the work accident. Petitioner's low back condition is not causally related to the work accident.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $1,066.67/week for 51-6/7 weeks commencing February 24, 2022, through February 21, 2023, as provided in Section 8(b) of the Act. Respondent shall receive credit for TTD

benefits previously paid to Petitioner in the amount of $35,352.49.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services regarding Petitioner's right knee condition included in Petitioner's Exhibit 12 as provided in Sections 8(a) and 8.2 of the Act. Respondent is not liable for any medical services regarding his low back condition.

IT IS FURTHER ORDERED that Respondent shall authorize and pay for prospective medical treatment in the form of the course of work conditioning regarding Petitioner's right knee condition recommended by Dr. Watson.

IT IS FURTHER ORDERED that Petitioner's request for penalties and fees is denied.

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

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

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

Pursuant to Section 19(f)(2) of the Act, no "county, city, town township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 30, 2024

o: 7/30/24
AHS/jds
51

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

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004257
Case Name	Charles Austin v. Cook County Depart. of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Randall Manoyan
Respondent Attorney	James Lumene

DATE FILED: 4/27/2023

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

/s/Charles Watts, 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

Charles Austin
Employee/Petitioner

v.

Cook County Dept. of Corrections
Employer/Respondent

Case # **22** WC **004257**

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 **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **February 21, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 10, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**80,865.16**; the average weekly wage was $**1,600.00**.

On the date of accident, Petitioner was **60** 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 $**35,352.49** for TTD, $**0** for TPD, $**0** for maintenance, and $**24,300.91** for other benefits, for a total credit of $**59,653.40**.

Respondent is entitled to a credit of $**59,653.40** under Section 8(j) of the Act.

ORDER

Because Petitioner received a salary continuation from **02/11/2022** until **02/23/2022**, Petitioner's request that Respondent pay temporary total disability benefits of $**1,066.67**/week for **1 6/7 weeks,** commencing **02/11/2022** through **02/23/2022** as provided in Section 8(b) of the Act is denied.

Because Respondent paid Petitioner temporary total disability benefits of $**1,066.67**/week for **33 1/7** weeks, commencing **02/24/2022** through **10/13/2022**, Petitioner's request that Respondent pay temporary total disability benefits of $**1,066.67**/week for **18 5/7** weeks, commencing **10/14/2022** through **02/21/2023** as provided in Section 8(b) of the Act is denied.

Because Respondent paid Petitioner all temporary total disability benefits and medical benefits, Petitioner's request for an award of penalties under Section 16 of the Act or under Section 19 of the Act is denied.

Prospective medical care 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.

APRIL 27, 2023

Signature of Arbitrator

IN THE WORKERS' COMPENSATION COMMISSION

OF THE STATE OF ILLINOIS

Charles Austin,	)	
	)	
Petitioner,	)	
	)	No. 22 WC 04257
v.	)	
	)	Chicago, IL
Cook County Sheriff's Office	)	
	)	Arbitrator Charles Watts
Respondent.	)	

This matter proceeded to hearing on February 21, 2023, in Chicago, Illinois, under Sections 19(b) and 8(a) of the Act. The issues in dispute are current condition of ill-being, entitlement to Temporary Total Disability ("TTD") benefits from February 15, 2022 through February 21, 2023, the date of trial, unpaid medical bills, and prospective medical treatment. Proofs were closed at the end of testimony on February 21, 2023.

FACTS

Petitioner works as a Correctional Officer with the Cook County Sheriff's Office. On February 10, 2022, Petitioner was at work performing in-service training class. Petitioner performed a take down move when he felt a pop and pain in his right knee. (Tr. 9). Petitioner continued the class, but the pain in his right knee continued and he reported an injury to his employer. (*Id.*). Petitioner completed an injury on duty ("IOD") report for the incident where he described an injury to his right knee. (R. Ex. 1). Petitioner testified at trial that he also reported an injury to his lower back. (Tr. 36). Petitioner did not return to work after completing the report. Petitioner continued to receive his regular salary after he did not return to work. (R. Ex. 2).

Petitioner then went to see his primary care physician ("PCP") Dr. Marwan Baghdan ("Dr. Baghdan") at Advocate Medical Group ("Advocate Medical").

On February 10, 2022, Petitioner was examined by Dr. Ahmed Ebraheem ("Dr. Ebraheem") for an injury to his right knee. (P. Ex. 5 at 261). Petitioner testified that Dr. Baghdan was not there, so he treated with Dr. Ebraheem who is a partner or associate of Dr. Baghdan. (Tr. 12). On February 11, 2022, Petitioner followed-up with Dr. Ebraheem for his right knee. (P. Ex. 5 at 261.). Petitioner did not report an injury to his lower back during his first two visits with Dr. Ebraheem. (*Id*. at 262-275). Dr. Ebraheem diagnosed Petitioner with acute pain in his right knee, prescribed medication, and advised him to rest for a few days. (*Id*. at 274). On February 17, 2022, Petitioner followed-up with Dr. Ebraheem who diagnosed him with chronic right knee pain, and chronic bilateral low back pain without sciatica. (P. Ex. 5 at 256). Petitioner testified that Dr. Ebraheem referred him to orthopedist for treatment of his right knee. (Tr. 14). On February 24, 2022, Petitioner's claim was accepted for his right knee and began to receive TTD benefits. (R. Ex. 3, 10).

On February 28, 2022, Petitioner was examined by orthopedist Dr. Jonathan Watson ("Dr. Watson) at Skyline Orthopedics. (P. Ex. 7). Dr. Watson performed an x-ray of Petitioner's right knee which revealed normal alignment and no fracture. (Id. at 6). Dr. Watson recommended Petitioner for an MRI of his right knee. (*Id*.). On March 7, 2022, Petitioner underwent an MRI of his right knee at American Diagnostic MRI which revealed a horizontal tear of the body lateral meniscus. (P. Ex. 9). On March 8, 2022, Petitioner followed-up with Dr. Watson to review the MRI of his right knee. Dr. Watson administered a cortisone injection to Petitioner's right knee, recommended physical therapy ("PT"), and advised him to follow-up in six weeks. (P. Ex. 9 at 12). Dr. Watson advised Petitioner that he could return to work on March 9, 2022 with restrictions,

working only in a sedentary duty capacity. (*Id*. at 11). Petitioner testified that Dr. Watson kept him off work at that time. (Tr. 18). Petitioner did not return to work. On April 18, 2022, Petitioner followed-up with Dr. Watson who recommended him for surgery of his right knee. (P. Ex. 9 at 16).

On May 25, 2022, Petitioner followed-up with Dr. Watson who performed a right knee surgery. Petitioner testified that the surgery took place at Christ Medical Center. (Tr. 19). Dr. Watson performed a right knee arthroscopy, partial lateral meniscectomy, chondroplasty of the lateral femoral condyle. (P. Ex. 7 at 23). Petitioner testified that he began PT for his right knee on June 1, 2022 at Athletico Physical Therapy ("Athletico"). (Tr. at 19). On November 15, 2022, Petitioner received a discharge summary from PT at Athletico. Petitioner's discharge summary confirmed that Petitioner achieved improved range of motion in his right leg muscles on July 7, 2022, improved range of motion in his right knee on September 1, 2022, and the ability to carry thirty pounds in ten feet on September 1, 2022. (P. Ex. 6 at 8). Petitioner's discharge summary confirmed that Petitioner had partially recovered and could transition to self-management to address any remaining deficits. (*Id*.). Petitioner testified that he did not receive any PT for his lower back while he was treating at Athletico. (Tr. at 38-39).

On August 15, 2022, Petitioner followed-up with Dr. Watson who advised him to remain off work and continue PT. (P. Ex. 7 at 39). Petitioner testified that he attended a follow-up appointment with Dr. Watson on September 29, 2022 where he was recommended for an MRI of his right knee and lumbar spine. (Tr. 26). Petitioner testified that he underwent an MRI of both the lumbar spine and the right knee on October 10, 2022. (*Id.*). Petitioner's MRI of the lumbar spine revealed low to moderate grade spondylosis. (P. Ex. 9 at 9). Petitioner's MRI of the right knee revealed a subacute grade 2 sprain of the proximal tibial collateral ligament. (*Id.* at 10).

Petitioner followed-up with Dr. Watson on October 17, 2022. Dr. Watson opined that the findings of Petitioner's right knee were relatively stable. (P. Ex. 7 at 46). Dr. Watson referred Petitioner to a spine specialist for his lumbar spine. (*Id*.). On November 16, 2022, Petitioner was examined by Dr. Richard Lim ("Dr. Lim") at Midwest Orthopaedic Consultants ("MOC"). Dr. Lim recommended Petitioner for PT of his lumbar spine, and opined that Petitioner had preexisting lumbar problems and evidence of preexisting degenerative disc disease. (P. Ex. 10 at 17). On December 8, 2022, Petitioner underwent a PT evaluation for his lumbar spine at Christ Tinley Rehab Services. Petitioner informed his physical therapist Stacey Wadas that he has always had back pain. (*Id*. at 6). Petitioner testified that he was not suffering any lower back pain prior to February 10, 2022. (Tr. 7). Petitioner was last examined by Dr. Lim on December 21, 2022 and advised to focus on weight reduction core exercise. (*Id*. at 21).

Section 12 Examination

On September 27, 2022, Petitioner presented for an independent medical examination ("IME") with orthopedic surgeon Dr. Brian Forsythe. Dr. Forsythe's report and credentials were entered into evidence without objection. (R. Ex. 7-8). Prior to the examination, Dr. Forsythe reviewed the following items: Petitioner's job description as a Correctional Officer, Petitioner's February 17, 2022 and February 24, 2022 office visits with Dr. Ebraheem, Petitioner's February 28, 2022 office visit with Dr. Watson, Petitioner's March 7, 2022 right knee MRI at American Diagnostic, Petitioner's April 18, 2022 follow-up visit with Dr. Watson, Petitioner's May 25, 2022 surgical operative report with Dr. Watson, and Petitioner's July 7, 2022 and August 15, 2022 office visits with Dr. Watson. (R. Ex. 7 at 6-7).

Dr. Forsythe observed that Petitioner was able to squat to 70 degrees, and able to toe and heel walk without difficulty. (R. Ex. 7 at 8). Dr. Forsythe opined that Petitioner was right knee

status post lateral meniscus debridement, with severe preexisting patellofemoral arthritis, but that the arthritis was not causally related to the work accident on February 10, 2022. (*Id*.). Dr. Forsythe noted that Petitioner's subjective complaints were not supported by objective findings, and that he had reached his pre-injury baseline status. (*Id*.). Dr. Forsythe opined that Petitioner was at maximum medical improvement ("MMI") for the work accident on February 10, 2022, and able to return to full duty work without restrictions. (*Id*.).

On January 19, 2023, Dr. Forsythe testified in a sworn deposition to the findings of his IME report from September 27, 2022. The transcript of the deposition was entered into evidence without objection. (R. Ex. 9). At the deposition, Dr. Forsythe testified that Petitioner likely suffered a right knee strain, and not a lateral meniscus tear given that Petitioner stated there was no significant improvement following his right knee surgery. (*Id*. at 22). Dr. Forsythe also testified that at minimum Petitioner had completed twenty-five sessions of PT for his right knee. (*Id*. at 28). Dr. Forsythe testified that the examination took approximately 15-20 minutes, and that there were inconsistencies with Petitioner's range of motion consistent with his moderate symptom magnification. (*Id*. at 37). Dr. Forsythe confirmed in his testimony that Petitioner had reached a clinical plateau with physical therapy of his right knee, and that any ongoing symptoms would be related to his severe patellofemoral arthritis and obesity. (*Id*. at 43).

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

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 the accidental injury both arose out of and occurred in the course of his employment (*Horvath v. Industrial Commission*, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. *Caterpillar Tractor Co. v. Industrial Commission*, I29 Ill. 2d 52, 63 (1998). 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 her 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 her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. *Smith v. Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evidence it might be that his story is a fabricated afterthought.

U.S. Steel v. Industrial Commission, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v. Industrial Commission*, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" *Shell Petroleum Corp. v. Industrial Commission,* 10 N.E.2d 352 (1937). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. *Revere Paint & Varnish Corp. v. Industrial Commission*, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. *Spankroy v. Alesky*, 45 Ill. App.3d 432 (1st Dist. 1977).

The Arbitrator observed Petitioner's demeanor at trial. Petitioner gave quick answers in an easy manner which indicated sincerity. His body language also mostly appeared natural. There was a bit of change in demeanor and tone when cross-examined which specifically led the Arbitrator to question Petitioner's testimony that he reported a back injury despite the initial report and medical records not supporting this assertion. Examination of the course of treatment also gave the Arbitrator pause. The physical therapy records and medical records – except for a single note – were exclusively treatment of the knee injury until three days after the Section 12 exam when a full examination of the low back was made with an MRI ordered. The extensive findings of degenerative conditions in Petitioner's spine with a very short physical therapy course thereafter

leads the Arbitrator to question whether there was any injury to the low back when Petitioner suffered a work injury.

The credibility of Respondent's Section 12 examiner and the treating physicians is discussed below.

The Petitioner sustained a work-related injury on February 10, 2022. That Petitioner's accident occurred out of and in the course of employment is not in dispute. Respondent disputes that Petitioner's current condition of ill-being is causally connected to the work injury on February 10, 2022. Respondent disputes that Petitioner is entitled to TTD benefits related to the accident on February 10,2022. Respondent also disputes that it is liable for payment of medical bills for the accident on February 10, 2022. Lastly, Respondent disputes that Petitioner is entitled to prospective medical treatment for the accident on February 10, 2022.

THERE IS NO CAUSAL CONNECTION BETWEEN PETITIONER'S INJURY AND CURRENT CONDITION OF ILL-BEING

Petitioner is alleging a causal connection between the February 10, 2022 workplace injury and his current condition of ill-being; however, Petitioner's current condition of ill-being is not causally related to the workplace injury in question. Petitioner alleges that he is currently treating for injuries to his right knee and lower back. Petitioner underwent surgery for the right knee on May 25, 2022. (P. Ex. 7). Since then, he has undergone at least twenty-five sessions of PT for his right knee. (R. Ex. 9). On November 15, 2022, Petitioner received a discharge summary from PT of his right knee at Athletico. Petitioner's discharge summary confirmed that Petitioner achieved improved range of motion in his right leg muscles on July 7, 2022, improved range of motion in his right knee on September 1, 2022, and the ability to carry thirty pounds in ten feet on September 1, 2022. (P. Ex. 6 at 8). Petitioner's discharge summary confirmed that Petitioner was partially recovered, and could transition to self-management to address any remaining deficits. (*Id.*).

On September 27, 2022, Dr. Forsythe established at the Section 12 examination that Petitioner was suffering from severe preexisting patellofemoral arthritis that was not related to the work accident on February 10, 2022. (R. Ex. 7 at 8). Dr. Forsythe also established that Petitioner likely suffered a right knee strain and not a lateral meniscus tear given that Petitioner stated there were no significant improvements following his right knee surgery on May 25, 2022. (R. Ex. 9 at 22). Lastly, Dr. Forsythe confirmed that in relation to the workplace injury on February 10, 2022, that Petitioner was at MMI and able to work full duty. (R. Ex. 7 at 8.). Petitioner suffered a severe knee strain for which he underwent a surgery Dr. Forsythe considered to be the wrong treatment. Dr. Forsythe's opinion is preferred over that of Dr. Watson because Petitioner's condition did not improve after the surgery, Dr. Forsythe has a more impressive resume, and Dr. Watson has not treated the severe patellofemoral arthritis Petitioner continues to suffer.

Therefore, the Arbitrator finds no causal connection between Petitioner's current knee complaints and the workplace accident.

Petitioner alleges he suffered an injury to his lower back from the work accident on February 10, 2022. At trial, Petitioner testified that he reported injuring his lower back to his employer. (Tr. 36). However, on February 10, 2022, Petitioner completed an IOD report. In the IOD report, Petitioner only reports injuring his right knee. (R. Ex. 1). Petitioner testified that while undergoing PT for the right knee, that he did not receive any treatment for his lower back. (Tr. 38-39). Petitioner also testified that he did not undergo a PT evaluation for his lower back until December 8, 2022. (Tr. 30). Petitioner's first PT evaluation for his lower back occurred almost ten months after the date of accident on February 10, 2022. Petitioner's own provider confirmed that prior to the work accident on February 10, 2022, Petitioner had a long history of lower back pain, and possibly advanced disc disease as far back as January 2020. (P. Ex. 5 at 10).

Petitioner testified that he has not seen a provider for his lower back since December of 2022, and that he attended his last session of PT for the lower back on January 24, 2023. (Tr. 31-32). Finally, and most importantly, Petitioner offers the opinion of Dr. Watson, given three days after the Section 12 exam, that Petitioner suffered a low back injury during the work accident. Interestingly, the records of Dr. Lim, the spine specialist Dr. Watson referred Petitioner to, are not offered on the issue of causation.

The Arbitrator found Petitioner to be somewhat credible but needs more than an assertion that Petitioner reported a low back injury that went untreated for ten months to find Petitioner's current low back complaints causally related to the injury. Petitioner had pre-existing degenerative changes to his low back, previous treatment to his low back, and there is no allegation that the physical therapy Petitioner underwent for his knee caused the low back condition.

The Arbitrator finds that Petitioner failed to prove, by a preponderance of the evidence, that his low back condition is causally related to the accident.

PETTIONER IS NOT ENTITLED TO TTD BENEFITS

Petitioner is alleging that he is entitled to TTD benefits in relation to the work accident on February 10, 2022. Petitioner alleges he is entitled to TTD benefits from February 11, 2022 until February 21, 2023, the date of trial. Petitioner initially received a salary continuation following the February 10, 2022 work accident. (Tr. 37; R. Ex. 2). Petitioner began to receive TTD benefits on February 24, 2022. (R. Ex. 10). Petitioner was paid TTD benefits from February 19, 2021 through October 13, 2022 in the amount of $35,352.49. (*Id.*). Petitioner also received a PPD advance, but this is not included in the total amount of TTD received. Due to Petitioner working mandatory overtime, Petitioner and Respondent stipulated to an average weekly wage of $1,600.00

with a TTD rate of $1,066.66. (R. Ex. 13). A TTD payment of $2,837.37 for underpayment due to overtime was issued to Petitioner on February 14, 2023. (R. Ex. 10).

Petitioner's TTD benefits were terminated on October 13, 2022 when he was determined to be at MMI and cleared for full duty work by Dr. Forsythe's IME. (R. Ex. 7 at 10). However, Petitioner remained off work and did not receive any TTD benefits. If an independent medical examiner determines that an employee is no longer temporarily disabled, TTD benefits may be terminated. *Woehnker v. Cooper Tire & Rubber Co.*, 764 N.E.2d 688 (2002). Petitioner testified that he did not return to work after his TTD benefits were terminated. (Tr. 41). Dr. Forsythe's IME established that Petitioner was at MMI, and that any additional symptoms were not related to the work accident. (R. Ex. 7 at 9-10).

RESPONDENT IS NOT LIABLE FOR ANY UNPAID MEDICAL BILLS

Respondent has paid all reasonable and necessary medical services related to the workplace injury and is entitled to credit under 8(j) of the Act. Petitioner submitted medical bills from Skyline Orthopaedics for treatment that occurred on the dates of November 16, 2022, as well as January 17, 2023. These dates of service occurred after Petitioner was found to be at MMI and cleared to work full duty by Dr. Forsythe's IME. Respondent is not liable for any medical bills that occurred after Petitioner was found to be at MMI. Respondent has paid $24,300.91 toward medical expenses in this case. (R. Ex. 11). Respondent Exhibit 11 purports to be a medical expenses paid by Respondent in this case.

PETITIONER IS NOT ENTITLED TO PROSPECTIVE TREATMENT

Petitioner is seeking prospective medical treatment for his right knee. Respondent's IME expert, Dr. Forsythe, determined that Petitioner reached MMI for his right knee with respect to the

work injury on September 27, 2022. (R. Ex. 7). Dr. Forsythe established that Petitioner's ongoing symptoms for the right knee are related to severe preexisting patellofemoral arthritis, but that the arthritis is not causally related to the work accident on February 10, 2022. (*Id*. at 7). Dr. Forsythe found Petitioner to be at MMI for his right knee, and released him to full duty work. (*Id*. at 8).

Petitioner is seeking prospective medical treatment for his lower back. Petitioner's IOD report on February 10, 2022 confirms that Petitioner did not report any injury to his lower back, even though he testified to doing so. (R. Ex. 1; Tr. 36). Petitioner's testimony also confirms that he did not treat for any lower back injury while he was undergoing PT for his right knee. (Tr. 38-39). Petitioner's work accident occurred on February 10, 2022, and yet he did not undergo a PT evaluation for his lower back until December 8, 2022. Petitioner is not entitled to any prospective treatment for his lower back as it pertains to the work accident on February 10, 2022.

Conclusion

Petitioner has failed to prove that his current condition of ill-being is causally related to his work accident on February 10, 2022. Petitioner has also failed to prove that he is entitled to Temporary Total Disability benefits under the Act. Respondent has paid all reasonable and necessary medical benefits in this case and is entitled to credit under 8(j) of the Act. Thus, Petitioner has not proven that he is entitled to TTD, payment of any medical bills, penalties, or prospective medical treatment in this case.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031631
Case Name	Tom Schlesinger v. Town of Cicero
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0468
Number of Pages of Decision	24
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	Robert Luedke

DATE FILED: 9/30/2024

/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

THOMAS SCHLESINGER,

Petitioner,

vs. NO: 21 WC 31631

TOWN OF CICERO,

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 and medical expenses, and being advised of the facts and law, amends the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission vacates a portion of the Decision of the Arbitrator which states: "But for the Petitioner turning to answer his supervisor's question, it is likely the accident may not have occurred." *Decision of the Arbitrator, p.11*. We find this statement to be speculative and unnecessary, a foundation upon which a finding cannot be based.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 9, 2024, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical expenses pursuant to the medical fee schedule, of $2,597.30 to West Suburban Medical Center, $2,100.00 to Bucktown Foot & Ankle Clinic, $2,160.00 to Active Rehab Clinic, $1,750.00 to Advantage MRI, $996.00 to Alteon Health IL, and $193.00 to

Specialists in Medical Imaging, as provided in §8(a) and subject to §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 pay to Petitioner the sum of $1,251.20 per week for a period of 5 & 2/7ths weeks, representing June 7, 2021 through June 10, 2021; and June 25, 2021 through July 27, 2021, those being the periods 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 $871.73 per week for a period of 8.35 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 5% loss of use of the 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.

Under §19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 30, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 8/7/24

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031631
Case Name	Tom Schlesinger v. Town of Cicero
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	Robert Luedke

DATE FILED: 2/9/2024

/s/James Byrnes, 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

THOMAS SCHLESINGER
Employee/Petitioner

v.

TOWN OF CICERO
Employer/Respondent

Case # **21** WC **031631**

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 **James Byrnes**, Arbitrator of the Commission, in the city of **Chicago**, on **December 29, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 7, 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 $**50,460.41**; the average weekly wage was $**1,876.80**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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, pursuant to the medical fee schedule, of $2,597.30 to West Suburban Medical Center, $2,100.00 to Bucktown Foot & Ankle Clinic, $2,160.00 to Active Rehab Clinic, $1,750.00 to Advantage MRI, $996.00 to Alteon Health IL, and $193.00 to Specialists in Medical Imaging, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,251.20 per week for 5-2/7 weeks, commencing June 7, 2021, through June 10, 2021, and June 25, 2021 through July 27, 2021, as provided in Section 8(b) of the Act.

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 firefighter-paramedic at the time of the accident and that he returned to work in his prior capacity following said injury. Based on Petitioner's return to full duty as a firefighter-paramedic, the Arbitrator gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 28 years old at the time of the accident. Because of the Petitioner's relatively young age, the Arbitrator gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no evidence was submitted to show any loss of future earning 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 Petitioner was diagnosed with a right ankle sprain and bursal cyst in the right ankle. These conditions were treated conservatively through ankle bracing, medications, and physical therapy. Petitioner returned to full duty work after seven weeks of treatment. The Arbitrator 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 right foot pursuant to §8(e)11 of the Act, which corresponds to 8.35 weeks of permanent partial disability benefits at a weekly rate of $871.73.

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 9, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS SCHLESINGER,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC031631
TOWN OF CICERO,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

This matter proceeded to hearing on December 29, 2023, in Chicago, Illinois before Arbitrator James Byrnes on Petitioner's Request for Hearing. Issues in dispute include accident, causation, average weekly wage, medical treatment, temporary total disability benefits, credit to Respondent and nature and extent of the injury. (Arbitrator's Exhibit "Arb.Ex" 1)

FINDINGS OF FACT

Job Duties

The Petitioner is currently employed as a firefighter-paramedic for the Village of Berwyn. (T. 9) As a firefighter-paramedic, he works 24-hour shifts, with 48 hours off. In the morning, he checks out the ambulance and if on an engine, checks out the apparatus. (*Id.*) He also responds to 911 calls and trains. (*Id.*) He was hired by the Village of Berwyn on April 20, 2020, and has had no interruptions in his employment or service for the Village of Berwyn. (T. 10)

Regarding the physical requirements of being a firefighter-paramedic, Petitioner testified the job includes carrying people downstairs and if fighting a fire, wearing 70-plus pounds on his back while going into the fire. (T. 9-10) In his words, the job involves "a lot of movement" and "takes a lot of physical ability to do." (T. 10)

Petitioner also submitted an email from the Cicero Fire Department, dated July 6, 2021, concerning the need to "properly inspect and clean the ambulances at the start of shift and after each call" as further evidence of his job duties as a firefighter-paramedic for Respondent. (PX 10)

On the alleged accident of June 7, 2021, and during the year prior, Petitioner earned $25.92 per hour from his job with the Village of Berwyn and averaged working 40 hours per week. (T. 11) He confirmed that PX 8 and PX 9 were true and accurate copies of W-2's from the Village of Berwyn for the years 2020 and 2021. (*Id.*)

The Petitioner was hired by the Town of Cicero on May 1, 2021. (T. 14) According to Petitioner, the Town of Cicero previously used a private ambulance service and was in the process of "getting rid of" the private ambulances and taking over control of ambulance services through what was known as the "Silver Spanner" program. (T. 12) Under this program, the Town of Cicero would hire union firefighters to work as paramedics until they could hire enough people to properly staff their own ambulance. (T. 12-13) An applicant would have to be a union firefighter to apply for a position. (T. 13) There was an open schedule which a firefighter could access online and sign up for as many shifts as desired and, if approved, the person would thereafter work as a paramedic for the Town of Cicero. (*Id.*)

As part of the application process with the Town of Cicero, the Petitioner had to put on his application that he was currently employed with the Village of Berwyn. (T. 13) During the time he worked for the Town of Cicero as part of the Silver Spanner program, his employment with the Village of Berwyn remained his primary source of income. (*Id.*)

During his employment with the Town of Cicero, there was no set schedule; he signed up for shifts and "pick[ed] up what's open." (T. 14) His hourly rate with the Town of Cicero was $20.00 per hour and he averaged 36 to 48 hours per week. (T. 14-15)

Prior Medical Condition

Prior to June 7, 2021, the Petitioner's right ankle was "perfectly fine," and he had never injured his right foot or ankle "in any way, shape or form" prior to that date. (T. 15) He was not taking any medications regarding his right ankle. (*Id.*) He was able to perform all functions of daily living without any restrictions or pain prior to June 7, 2021, and was able to perform all work duties for the Village of Berwyn and the Town of Cicero prior to that date. (T. 15-16)

Accident

On June 7, 2021, Petitioner was working in his capacity as a paramedic for the Town of Cicero. (T. 16) He testified he had only been working there "for a little bit," and as he worked in Berwyn, this was not his main firehouse. (*Id.*)

On that date, he was going out to the ambulance, onto the bay floor, which is one step down. (T. 16) While walking out to the bay floor, his lieutenant asked him something, he turned to answer him, missed the step and came down on his right ankle. (T. 17) As described by Petitioner, the bay floor is where the apparatuses are stored, including an engine, a truck and an ambulance. (*Id.*)

At the time of the incident, the Petitioner was going to the ambulance to check on something supply-related. (T. 18) The ambulances were new to the Town of Cicero, so it was

common for the paramedics to be asked to check on supplies, especially over the summer, since IDPH comes in and does a full inspection of the ambulance. (*Id.*) According to Petitioner, there is a "lot of stuff" that doesn't get used on a day-to-day basis that they need to make sure they have. (*Id.*) The task of checking on supplies in the ambulance was part of his assigned duties while working for the Town of Cicero. (*Id.*) There was also prior communication from the Respondent regarding the need to keep the ambulances clean. (PX 10)

Petitioner identified Lieutenant Sammon as the person who asked him the question on the way to the bay floor. (T. 18) Lieutenant Sammon was walking behind Petitioner at the time of the incident and was the person who asked him the question. (T. 19) Petitioner testified that as part of his duties, he is required to answer questions when called upon to do so by a direct supervisor, such as Lieutenant Sammon. (*Id.*) According to Petitioner, the reason he missed the step to the bay floor was the need to turn toward Lieutenant Sammon to answer his question ("I had to turn, and I just couldn't see where I was going"). (*Id.*)

The Petitioner reviewed RX 11 through 13 and agreed these exhibits are incident reports and fairly and accurately depict the circumstances of his injury on June 7, 2021. (T. 19-20) He agreed RX 11 is an accident report that he filled out and signed. (T. 34) On this report, he wrote "I'm walking to the E3 bay floor" when the accident occurred. (*Id.*) He was working on ambulance F14. (*Id.*) He agreed that when the accident occurred, he was simply walking to the bay floor, was not hurrying or rushing to a fire or an emergency, and was not carrying anything. (T. 35) He was walking normally at the time. (T. 36)

The Petitioner reviewed RX 12 and confirmed it is another accident report that he filled out and signed. (T. 36) He agrees the description of the accident set forth on that document is accurate. (*Id.*) He also reviewed RX 13 and agreed it is a report he filled out in his handwriting and signed by him. (T. 37) He agrees all three accident reports all say the same thing, which is he was walking normally and mis-stepped off the curb [step]. (T. 38)

The Petitioner agreed that in the accident reports he completed, he didn't mention any defects on the walking surface. (T. 38) As he walked out the door from the hallway onto the cement surface, that surface was flat and in good repair. (T. 39) He didn't trip on any crumbling pieces or cracks and didn't trip on any uneven spots. (*Id.*) When the incident occurred, the cement landing was clean, flat, level and in good repair, as shown in the photographs [RX 1-10]. (*Id.*)

As for the step in question, the Petitioner agreed the step is not unusually high. (T. 39-40) The step was normal and in good repair. (T. 40) The cement floor that he was attempting to negotiate down to walk on was clean and flat and didn't have any areas of disrepair close to the step. (*Id.*) He agreed the condition of the landing near the door, the step between the landing and the garage floor, and the garage floor itself were all free of defects and didn't contribute to the accident. (T. 41)

The Petitioner reviewed RX 1 through 10 and confirmed these exhibits are photographs which fairly and accurately depict the location of the accident in question. (T. 17; 33)

Immediately following the accident, the Petitioner noticed pain in his right ankle. (T. 21) He attempted to put pressure on it and could not and the swelling began to increase. (*Id.*) After about 15 to 20 minutes, he notified his supervisors. (*Id.*) He was transported by the Cicero Fire Department paramedics to the emergency room at West Suburban Medical Center. (*Id.*)

Photographs (RX 1-10)

The Respondent submitted a series of photographs into evidence (RX 1-10). The parties agree these photographs accurately depict the scene of Petitioner's alleged accident on June 7, 2021.

The first three photographs (RX 1-3) depict a forward-facing view of the step leading to the bay floor, taken from the aspect of the bay floor, facing the step and a door set back several feet from the step. The Arbitrator acknowledges the photographs do not show any cracks or other defects in the concrete between the doorway and the step, in the step itself, or on the concrete of the bay floor directly adjacent to the step.

The second three photographs (RX 4-6) also depict the step and concrete area of the bay floor adjacent to the step, taken from diagonal views (from the right and left of the step). These photos likewise show no defects in the step or concrete floor.

The final four photographs (RX 7-10) depict the concrete floor of the hallway (with the door open), leading to the step and the bay floor. These photos likewise show no defects in the concrete floor of the hallway leading to the step.

Accident Reports (RX 11-13)

The Respondent submitted three documents purporting to be accident reports concerning the incident on June 7, 2021 (RX 11-13).

The first report is entitled "Ergo Insight – WC Employee Injury Report (to be completed by injured employee)." (RX 11) The report states in relevant part:

- "What were you doing when the accident occurred?"
  - "I was walking to E3 bay floor."
- "Reason for being in the area."
  - "I was working on F14 and walking to the ambulance."
- "How did the accident occur? (use second sheet if necessary):"
  - "I was walking to E3 bay floor when I got asked a question. I turned to answer and misstepped down onto the bay floor. I came down awkwardly on my R ankle."
- "Who else saw the incident?"
  - "Lt. Sammon."
- "To whom did you report the incident?"
  - "Lt. Sammon & Chief Penzkofer."

The report contains additional information concerning first aid and medical treatment, as well as the fact the Petitioner's doctor has taken him off work. The report is signed by Petitioner and dated June 10, 2021. (RX 11)

The second report is entitled "Cicero Fire Department – Injury Report." (RX 12) The report indicates the injury occurred in "E3 Quarters," on June 7, 2021, the body part involved was Petitioner's right outer ankle and Petitioner's supervisors were notified of the injury the same day it occurred. (*Id.*) The report also states:

- "How did the injury occur?"
    - "I was walking to E3 bay floor, when I got asked a question. I turned to answer and misstepped on the step down to the bay floor. I came down awkwardly on my R ankle and stumbled into E3. I felt pain in my ankle which did not go away, and noticed an increase in swelling about 15 minutes later. I notified my Lt. and Chief."

The report is handwritten but not signed. (RX 12)

The third report is entitled "Cicero Fire Department – Incident Report." (RX 13) The report sets forth the type of incident ("(Spanner) Paramedic Injury"), name of the person filing the report ("Tom Schlesinger"), date of incident ("6/7/21"), time of incident ("1630-1645ish"), supervisor notified ("Chief Penzkofer"), date ("6/7/21") and time ("1730"). It also provides a narrative of the incident:

- "Description of Incident"
    - "At about 1630 I was walking down the hallway to the bay floor. I was talking to Lt. Salmon, and he asked me a question. I took a misstep off the step down onto the bay floor, came down awkward on my ankle, and stumbled into Engine 3. I felt pain when putting pressure on it but did not think it was serious. About 15-20 minutes later the pain did not go away and I noticed the swelling increased. I notified Lt. Salmon who notified Chief Penzkofer." (RX 13)

The report is signed by Petitioner ("Signature of Person Filing Report") as well as a "Signature of Supervisor Accepting Report." (RX 13)

Summary of Medical Records

The Petitioner was taken by ambulance to West Suburban Medical Center on the date of the accident. According to the Patient Care Report of the Cicero Fire Department, dated June 7, 2021, Petitioner:

> "was walking out to Engine 3 bay floor when I got asked a question. I turned around to answer and misstepped on the step down to the bay floor. I landed awkwardly on my R ankle, and stumbled into Engine 3. I felt pain in my ankle, and noticed an increase in pain when I put pressure on it. About 15-20 minutes later, I noticed an increase in swelling in the outer R ankle. I notified my Lieutenant and Deputy Chief. West Suburban Hospital

notified, no orders given. I was transported to West Suburban Hospital without incident." (PX 1, p. 22)

The Petitioner was seen at the emergency department of West Suburban Medical Center on June 7, 2021. The physical examination revealed moderate right lateral ankle soft tissue swelling and mild right lateral ankle tenderness to palpation. (PX 2, p. 26) Right ankle pain was elicited with plantar flexion and dorsiflexion and the Petitioner's gait favored the left leg. (*Id.*) He was diagnosed with a right ankle sprain, provided with an elastic bandage and stirrup ankle brace, and prescribed medications (cyclobenzaprine and ibuprofen). (*Id.*, p. 27) He was advised he could return to work after June 10, 2021. (*Id*., p. 24)

The Petitioner followed up his treatment with Dr. Paras Parekh of Bucktown Foot & Ankle Clinic on June 25, 2021. He presented with symptoms of pain in the right ankle, weakness, restricted motion and difficulty with stairs. (PX 5, p. 9) The examination of the right ankle by Dr. Parekh revealed pain to palpation, decreased range of motion, bruising and swelling below the ankle, moderate tenderness and substantial instability. (*Id.*) The doctor also noted a palpable firm cyst in the ankle. (*Id.*) The doctor diagnosed a sprain of the right ankle and bursal cyst in the right ankle and foot. (*Id.,* p. 10) He prescribed an MRI scan of the right ankle and gave the Petitioner a walking boot. (*Id.*)

The MRI scan of the right ankle was performed at Advantage MRI on June 25, 2021. The results showed post-stress images/contusion of the anteromedial half of the talus with no occult fracture, as well as a moderate partial tear of the anterior and posterior talofibular ligaments. (PX 6, p. 9)

The Petitioner returned to see Dr. Parekh on June 30, 2021, who reviewed the results of the MRI scan of the right ankle and discussed treatment options with the Petitioner (conservative vs. surgical). (PX 5, p. 12) The Petitioner agreed to consider surgery and in the meantime Dr. Parekh prescribed nonsteroidal medications and a brace to allow for minor ambulation, due to no fracture in the ankle. (*Id.*)

The Petitioner saw Dr. Parekh again on July 1, 2021, at which time it was noted there was reduced inflammation in the right ankle due to immobilization through bracing. (PX 5, p. 13) The Petitioner was still considering conservative versus surgical options and the doctor prescribed physical therapy. (*Id.*)

The Petitioner commenced physical therapy at Active Rehab Clinic on July 1, 2021. On that date, he presented with sharp pain in the right ankle and right lateral foot, which he measured as an 8 on a scale of 1 to 10. (PX 7, p. 35) He noticed the pain throughout the day, worse in the mornings and with activities. (*Id.*) The examination showed severe swelling in the right lateral malleolus extending into the lateral foot, decreased range of motion in the ankle with sharp pain and pulling in the right lateral foot, difficulty ambulating without the boot and failure of one leg stance due to sharp pain and instability. (*Id.*) It was recommended that he undergo conservative treatment, including therapeutic ankle exercises, neuromuscular reeducation, therapeutic activities, ultrasound and manual therapy, in order to decrease pain, decrease

intersegmental joint dysfunction, reduce muscle tension, decrease inflammation, increase strength, restore range of motion, improve posture and help promote healing. (*Id.*, p. 36)

The Petitioner participated in physical therapy at Active Rehab Clinic through July and August 2021, and was last seen at that facility on September 3, 2021. On that date, he rated pain in his right ankle at a level of 3-4 on a 1 to 10 scale. (PX 7, p. 22) He noted pain during 40% of the day, worse with activities, and aggravated with prolonged running, going up/down stairs and quick body movement. (*Id.*) The Petitioner stated he felt better with treatment. (*Id.*)

The examination on that date, still showed swelling in the right ankle extending into the lateral foot, as well as pain with range of motion. (PX 7, p. 22) One leg stance on the right had improved by 30%. (*Id.*) It was noted that his prognosis was good and his condition had improved since the last visit. (*Id.*) His ability to perform activities of daily living was still limited but myofascial trigger points were reduced in size and tenderness and swelling was reduced by 60%. (*Id.*) It was recommended he continue therapy 2-3 times per week over the next 4 weeks. (*Id.*, p. 23) There is no record of any physical therapy or treatment of any kind after that date.

The Petitioner was last seen by Dr. Parekh at Bucktown Foot & Ankle Clinic on July 27, 2021. At that time, it was noted the Petitioner was very capable in single leg stand and balance beam proprioception, ankle inversion was to nearly 20 degrees and pain-free, there was no effusion and no pain along the PT or PB tendons or PF hallux against resistance, with no muscle atrophy. (PX 5, p. 22) He was advised to continue with physical therapy and to return to work "per hr approval." (*Id.*)

Attempt to Return to Work

The Petitioner was restricted from working from the date of accident until June 11, 2021. (T. 21) He did not work for either the Village of Berwyn or the Town of Cicero during this period and was not offered accommodations for light duty by either employer. (T. 21-22)

He returned to work on June 11, 2021, and attempted to perform his regular work duties. (T. 22) His right ankle was still swollen and he had to get a different pair of shoes because he couldn't fit into his normal shoes. (T. 23) It hurt to walk and he was having trouble carrying people downstairs in the stair chair. (*Id.*) In his words, "[t]here was still a problem." (*Id.*)

On June 25, 2021, he reported to Bucktown Foot & Ankle Clinic for an evaluation with Dr. Paras Parekh and was fitted with a walking boot. (T. 23) He discussed his injury and walking boot limitations with the Village of Berwyn. (*Id.*) They did not allow him to work with a walking boot and did not offer any sort of light-duty assignment. (*Id.*) He was told by Berwyn that he needed a doctor's note clearing him to full firefighter duty before he could return to work. (T. 24)

Petitioner identified PX 9 as a series of eight emails sent to him from the Berwyn Fire Department concerning his scheduling and off-work status. (T. 24-25) These emails, dated from June 11, 2021, through July 16, 2021, note his "Sick Time" (June 12 to 13 and July 3 to July 13)

and "Vacation Day Move" (July 15 to 19) designations, because of "Injured ankle working in Cicero (Silver Spanner) on June 7th." (PX 9)

Petitioner testified that he was not paid any benefits pursuant to the Public Employee Disability Act or any workers' compensation benefits during the time he was assigned off by the Village of Berwyn. (T. 25-26)

After receiving work restrictions from Dr. Parekh, Petitioner told representatives from the Town of Cicero that he needed to be taken off the schedule and he was told to let them know when he could come back. (T. 30) It was not suggested by the Town of Cicero that he would be capable of working with an ankle brace, and Petitioner testified the job requirements were similar to those of the Village of Berwyn: responding to emergency calls and carrying people downstairs, lifting and moving them from a cot, and having to do it all safely. (T. 31)

As a part-time employee with the Town of Cicero, he was not provided with any benefits, and did not have sick or vacation days or health insurance. (T. 31-32) His health insurance was through the Village of Berwyn. (T. 32)

Petitioner's Current Condition

The Petitioner was last seen for medical treatment (other than physical therapy) related to his right ankle on July 27, 2021. (T. 28) At the time of his discharge, his ankle still had a little pain but was better and he "could definitely use it." (T. 29) He was able to transition back to his normal and unrestricted duties at that time.

Currently, there is sometimes pain in the ankle, "but no problems with it." (T. 29) Running and inclined walking, as well as using weights at the gym, can cause pain, "but nothing debilitating." (*Id.*) Petitioner is able to perform all work activities without limitation and has no plans to return to the doctor concerning his right ankle. (T. 29-30)

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). A decision by the Commission cannot be based upon imagination, speculation or conjecture, but must arise out of facts established by a preponderance of the evidence. *Deere and Company v. Industrial Comm'n,* 47 Ill. 2d 144, 149 (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim, particularly the prerequisite that the injury complained of arose out of and in the course of his employment. *Illinois Institute of Technology v. Industrial Comm'n,* 68 Ill. 2d 236, 246 (1977).

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 Comm'n,* 39 Ill. 2d 396, 405 (1968). It is the primary responsibility of the Commission to determine questions of fact, to judge the credibility of the witnesses and to draw reasonable inferences from the testimony. *Swift v. Industrial Comm'n,* 52 Ill. 2d 490, 496 (1972).

In the case at hand, the Arbitrator observed Petitioner 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.

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

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)

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.

A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848. "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Id*. A compensable injury occurs "in the course of" employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment. *Id.* Injuries sustained at a

place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. *Id.*; *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52, 57 (1989).

In this case, there is no dispute the Petitioner was "in the course of" his employment with Respondent when the June 7, 2021, incident took place. He was working a shift as a firefighter-paramedic for the Town of Cicero as part of the "Silver Spanner" program, the incident took place in a Town of Cicero firehouse, as he was walking down a hallway leading to the bay floor where the apparatuses are parked. Based on these factors, the Petitioner was "in the course" of his employment for Respondent on June 7, 2021.

The larger question is whether the Petitioner's stumble down the step from the hallway to the bay floor, while engaged in a conversation with his supervisor (specifically turning to answer his supervisor's question), constitutes an incident "arising out of" his employment.

By itself, the act of traversing stairs does not expose a claimant to a greater risk of harm than that faced by the general public. See *Baldwin v. Illinois Workers' Compensation Comm'n,* 409 Ill. App. 3d 472, 478 (4th Dist. 2011). It is also true the act of walking down stairs at employer's place of business by itself does not establish a risk greater than those faced outside the work place. (See *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d, 238, 244 (1st Dist. 1987)) *Nabisco Brands, Inc. v. Industrial Comm'n,* 266 Ill.App.3d 1103, 1107 (1st Dist. 1994).

In this case, the Petitioner's testimony and the photographs submitted by Respondent which depict the scene of the accident (RX 1-10) establish that there were no defects in the area of the fall, no broken or cracked concrete and nothing which would have caused Petitioner to slip or stumble. Indeed, Petitioner admitted the condition of the concrete and the step in question did not contribute to his stumbling and missing the step.

He did testify, however, that as he approached the step, he turned to answer a question put to him by his direct supervisor, Lieutenant Sammon, who was walking directly behind him down the hallway toward the bay floor. Petitioner testified that as part of his duties, he is required to answer questions when called upon to do so by a direct supervisor, such as Lieutenant Sammon. According to Petitioner, the reason he missed the step to the bay floor was the need to turn toward Lieutenant Sammon to answer his question ("I had to turn, and I just couldn't see where I was going"). (T. 19) This testimony was unrebutted by Respondent.

The accident reports submitted by Respondent (RX 11-13) corroborate the Petitioner's testimony regarding the circumstances of the accident. Petitioner was walking toward the bay floor to service an ambulance, he turned to answer a question put to him by his supervisor (Lt. Sammon) as he was walking toward the bay floor, and as a result stumbled down the step leading to the bay floor.

As noted supra, the Supreme Court set forth the definition of an employment-related risk in the case of *McAllister v. Illinois Workers' Compensation Commission*:

> "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*." (emphasis added) 2020 IL 124848 at ¶ 46.

At the time of the incident, the Petitioner was in the process of walking toward the bay floor to service the ambulance and was engaged in a conversation with his supervisor. The supervisor, who was walking behind him, asked him a question and he turned to answer the question just as he came upon the step from the hallway to the bay floor. The Petitioner credibly testified that answering a question put to him by a direct supervisor is within his duties as a firefighter-paramedic. This testimony was not rebutted by Respondent. But for the Petitioner turning to answer his supervisor's question, it is likely the accident would not have occurred.

The Arbitrator finds that the circumstances indicate the Petitioner was performing an act he might "reasonably be expected to perform incident to his assigned duties" (i.e., responding to a question from his supervisor) at the time he stumbled down the step and landed awkwardly on his right ankle. The act of responding to his supervisor's question may also be viewed as an act he "was instructed to perform by the employer," as the asking of a question implicitly calls for a response. In either event, the question from Lt. Sammon and the Petitioner's obligation to respond to that question constituted an employment-related risk.

For the reasons set forth above, the Arbitrator finds Petitioner sustained an accident arising out of and in the course of his employment with Respondent on June 7, 2021.

Regarding Issue F, whether Petitioner's current condition of ill-being is 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. *Horath v. Industrial Comm'n*, 96 Ill. 2d 349, 356 (1983), citing *Rosenbaum v. Industrial Comm'n.*, 93 Ill. 2d 381, 386 (1982). 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 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's accident and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982). 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. *Id. at 63-64; Martin Young Enterprises, Inc. v. Industrial Comm'n*., 51 Ill. 2d 149, 155 (1972). "In *Union Starch & Refining Co. v. Industrial Com*. (1967), 37 Ill. 2d 139, 144, this court said, 'We know of no case requiring a doctor's testimony to establish causation and the extent of disability, especially where, as here, the record contains the company doctor's report and hospital records showing findings of the employee's personal physician which are consistent with the employee's testimony.'" *International Harvester,* 93 Ill. 2d at 64 (1982).

The Petitioner testified that prior to the accident on June 7, 2021, he never sustained an injury to his right foot or ankle. He also testified that prior to that date, he was capable of performing all activities of daily living and was capable of performing all his regular job duties as a firefighter-paramedic.

The Respondent offered no evidence to rebut Petitioner's testimony concerning his pre-accident medical condition or his ability to perform his regular work activities. Respondent offered no evidence to show the injury to the Petitioner's right ankle was unrelated to the accident of June 7, 2021.

The medical records show that Petitioner sought treatment to his right ankle on the date of accident at the emergency department of West Suburban Medical Center. He thereafter sought treatment for the ankle at Bucktown Foot & Ankle Center and physical therapy at Active Rehab Clinic. These records establish a causal relationship between the treatment and the accident on June 7, 2021.

Based on the above, the Arbitrator finds Petitioner sustained his burden of proving his current condition of ill-being regarding his right foot and ankle is causally related to the work accident of June 7, 2021.

Regarding Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Section 10 provides four different methods for calculating 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." 820 ILCS 305/10 (West 1996). *Sylvester v. Industrial Comm'n (Acme Roofing & Sheet Metal Co.)*, 197 Ill. 2d 225, 230 (2001)

Section 10 also states: "When 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 1996).

The appellate court has held: "in cases of concurrent employment, the better practice is to determine the average weekly wage of each job separately, by the method appropriate to that job, then add the averages together to determine the average weekly wage." *Mason Mfg. v. Industrial Comm'n*, 331 Ill.App.3d 575, 579 (4th Dist. 2002).

In this case, Petitioner testified that he has been employed as a firefighter-paramedic with the Village of Berwyn since April 20, 2020, with no interruptions in his employment. He became employed with the Town of Cicero on May 1, 2021, through the "Silver Spanner" program, and was therefore concurrently employed with both the Berwyn and Cicero fire departments at the time of his accident on June 7, 2021.

Petitioner testified that when he applied with Respondent for the position of firefighter-paramedic, he notified Respondent that he was currently employed in the same position with the Village of Berwyn. In fact, the "Silver Spanner" program was set up by Respondent to solicit firefighter-paramedics from other departments to work for them until the Town of Cicero could hire a sufficient number of full-time firefighters to staff its own department. The Respondent offered no testimony or evidence to rebut Petitioner's testimony in this regard. As such, the Arbitrator finds Petitioner was concurrently employed by the Respondent at the time of the accident on June 7, 2021, and Respondent was aware of the concurrent employment prior to the date of accident.

In the instant case, the Petitioner's credible testimony was that he was paid a $20.00 per hour by the Respondent and worked on average between 36 to 48 hours per week between his hire date of May 1, 2021 and the subject incident of June 7, 2021. This is the only evidence in the record regarding the Petitioner's earned wages from the Respondent. This would result in 42 hours per week on average at an hourly rate of $20.00, or an average weekly wage from Respondent of $840.00.

Regarding the Petitioner's employment with the Village of Berwyn, the Petitioner's credible testimony is that he was paid an hourly rate of $25.92 by the Village of Berwyn for the year prior to the accident, and he worked forty hours per week. This results in an average weekly wage from Berwyn totaling $1,036.80. Based upon the greater weight of the evidence, and pursuant to applicable law, the Petitioner's earnings from the Village of Berwyn shall be considered as if earned from the employer liable for compensation.

Based upon the foregoing, and the greater weight of the evidence, the Arbitrator finds that the Petitioner's average weekly wage pursuant to Section 10 of the Workers' Compensation Act is $1,876.80, which consists of $840.00 from Respondent and $1,036.80 from the Petitioner's concurrent employment with the Village of Berwyn.

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

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" See *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705 (2d Dist. 1997). 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)

The Arbitrator adopts the findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- West Suburban Medical Center: $2,597.30 (PX2)
- Specialists in Medical Imaging: $193.00 (PX3)
- Alteon Health IL: $996.00 (PX4)
- Bucktown Foot & Ankle Clinic: $2,100.00 (PX5)
- Advantage MRI: $1,750.00 (PX6)
- Active Rehab Clinic: $2,160.00 (PX7)

Regarding 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. Industrial 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 he 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, he is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill. 2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, ¶35 (2017), citing *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 45; *McDaneld v. Industrial Comm'n*, 307 Ill.App.3d 1045, 1053 (1999).

The emergency room records from West Suburban Medical Center indicate Petitioner was unable to work from the date of accident (June 7, 2021) through June 10, 2021. Petitioner testified that he attempted to return to work on June 11, 2021, but found that he was having difficulty and therefore sought treatment at Bucktown Foot & Ankle Clinic on June 25, 2021. On that date, he was diagnosed with a right ankle sprain and bursal cyst in the right ankle and given a walking boot.

Petitioner testified that he contacted the Village of Berwyn and was told to remain off work until such time as his doctor released him to full duty firefighter-paramedic work. He also

testified that he contacted Respondent and told them he needed to be taken off the schedule. Given his inability to perform his regular work duties with the use of a walking boot for the Village of Berwyn, he did not believe he would be able to work for the Cicero Fire Department either, as the work duties for both departments are essentially the same. There is no evidence the Respondent offered restricted work to the Petitioner.

Petitioner participated in physical therapy at Active Rehab Clinic from July 1, 2021, through September 3, 2021. During the course of his treatment, his pain level went from 10 to 3 on a scale of 1 to 10, and his symptoms generally improved over the course of physical therapy.

He continued to treat at Bucktown Foot & Ankle Clinic from June 25, 2021, through July 27, 2021. The records indicate his condition improved over time and he moved from the use of a walking boot to the use of a brace for the right ankle. He was released to return to work on July 27, 2021.

Based on the above, the Arbitrator finds Petitioner sustained his burden of proving entitlement to receipt of TTD benefits for the periods of June 7, 2021, through June 10, 2021, and again from June 25, 2021, through July 27, 2021, a total period of 5-2/7 weeks.

Regarding 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 (2015). 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 was employed as a firefighter-paramedic, both before and after the accident. The Arbitrator acknowledges the physical requirements of this job and that Petitioner was released to full duty without restrictions by Dr. Parekh, and also testified as to his ability to perform all work activities as a firefighter-paramedic without restrictions. The Arbitrator therefore gives no weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 28 years old at the time of the accident and as such has a potentially long work life ahead of him. The Arbitrator gives lesser weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner returned to full duty work after discharge from care and no evidence was presented to show any loss of future earning capacity. The Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives greater weight to this factor. The Petitioner was diagnosed with a sprain of the right ankle and a bursal cyst in the ankle. He participated in a course of conservative treatment, including approximately three months of physical therapy and the use of a walking boot and ankle brace. Seven weeks after the accident, Petitioner was released to full duty work without restrictions. He testified that certain activities cause pain in the ankle, but that such activities are not "debilitating" and he is otherwise having "no problems with it."

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 the right foot, pursuant to §8(e)11 of the Act which corresponds to 8.35 weeks of permanent partial disability benefits at a weekly rate of $871.73.

Regarding Issue N, whether Respondent is due any credit, the Arbitrator finds as follows:

A payment may form the basis of a credit only if it is payable solely as the result of a work-related injury. *Village of Streamwood Police Dept. v. Industrial Comm'n*, 57 Ill. 2d 345, 351 (1974). It is the burden of the employer to establish its right to a credit under this section of the Act. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 953 (1st Dist. 2011). The right of an employer to receive such a credit is an exception to liability created by the Act, so it is narrowly construed. *World Color Press v. Industrial Comm'n*, 125 Ill. App. 3d 469, 471 (5th Dist. 1984).

On the Request for Hearing form, Respondent marked "TBD" as the possible amount paid pursuant to its group medical plan for which credit may be allowed under Section 8(j) of the Act. The Respondent's attorney agreed the claim for credit depended upon whether medical payments as reflected in the submitted medical bills were from a group health insurance policy provided by Respondent.

In the instant case, the Petitioner testified that he received no employee benefits whatsoever from the Respondent because of his injury. He further testified that his health insurance plan was provided by the Village of Berwyn. The Respondent offered no evidence to dispute or contradict the Petitioner's credible testimony.

Based upon the foregoing, and the greater weight of the evidence, the Arbitrator finds that the Respondent did not meet its burden of establishing that it is entitled to any credit under the Act. Accordingly, the Arbitrator finds that the Respondent is not due any credit in connection with this claim.

It is so ordered:

James M. Byrnes, Arbitrator

February 9, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011572
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	20WC011573; 20WC011574;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0469
Number of Pages of Decision	23
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	John Morris

DATE FILED: 9/30/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Herbert Bade,

Petitioner,

vs. NO. 20WC011572

Westbrook West Condominium,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

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

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

September 30, 2024
SM/msb
o-8/7/24
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	20WC011572
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	John Morris

DATE FILED: 11/17/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/Frank Soto, Arbitrator

Signature

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

Herbert Bade
Employee/Petitioner

v.

Westbrook West Condominium
Employer/Respondent

Case # **20WC011572**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/17/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/10/2018**, 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 not*** given to Respondent.

In the year preceding the injury, Petitioner earned $**73,840.00**; the average weekly wage was $**1,420.00**.

On the date of accident, Petitioner was **64** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services given none are owed.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services given none are owed.

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

Petitioner proved by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Petitioner failed to prove by the preponderance of the evidence the notice of the accident was given within 45 days as required under the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Given the Arbitrator's finding regarding notice the remaining issues are moot and need not be addressed. The relief sought by Petitioner is hereby denied.

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

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

By: /o/ *Frank J. Soto* **NOVEMBER 17, 2023**
Arbitrator

Procedural History

Herbert Bade (hereinafter referred to as "Petitioner") filed three claims involving his lower back while working for Westbrook West Condominium (hereinafter referred to as "Respondent"). All three cases were tried together but separate decisions were issued for each case.

In the oldest claim (*i.e.* 20WC011572), Petitioner claims he injured his low back after slipping and falling at work on October 10, 2018. In that case, the disputed issues are accident, notice, causal connection, unpaid medical bills, TTD benefits, and the nature and extent of Petitioner's injury. (Arb. Ex. #1, 4).

In the second claim, Petitioner claims he injured his low back lifting bags of salt at work on December 12, 18, 2018 (*i.e.* 20WC011573). In that case, the disputed issues are accident, notice, causation, medical bills, TTD benefits, and the nature and extent of Petitioner's injury. (Arb. Ex. #2, 5).

In the third case, Petitioner claims he injured his low back using a shop vac at work on May 13, 2020 (*i.e.* 20WC0011574). In that case, the disputed issues are accident, notice, causation, unpaid medical bills, TTD benefits, and the nature and extent of Petitioner's injury, (Arb. Ex. #3, 6).

Findings of Fact

Petitioner was employed for 49 years by Respondent as a maintenance engineer at a condominium complex covering 26 acres consisting of 24 to 35 units, 4 parking lots and over 2 miles of sidewalks. (T11, 12). As part of his duties Petitioner performed a variety of work including snow removal and salt spreading. (T11). Petitioner testified during the years he worked for Respondent he sustained one prior work injury in 2002 which involve breaking his hand while using a snowplow. (T12-13). Petitioner testified prior to October 10, 2018, he never experienced any significant lower back pain or underwent prior medical treatment for his low back. (T13-14).

Work Accident of October 10, 2018 (20 WC 11572)

Petitioner testified on October 10, 2018, he was fixing a water leak when he walked into a laundry room he slipped and fell striking his buttock, elbow, and head on the ground. Petitioner testified the floor was slippery due to a cleaning crew stripping waxed floors. (T14).

Petitioner testified he went to the office and reported the incident to Nancy, the office manager. (T15). Petitioner did not seek medical treatment because, he believed, the pain would go away. (T16). Petitioner treated his symptoms with aspirin, Bengay, and ice. (T17). Petitioner

testified he continued to work but had to work slower due to pain. (T17). At that time, no accident report was completed. (T16) When asked to explain why an accident report wasn't completed, Petitioner responded that he was a "loyal worker" for 49 years who works through pain. (T16).

Work Accident of December 18, 2018 (20 WC 11573)

Petitioner testified to a second work accident on December 18, 2018. Petitioner testified he reinjured his low back filling a salt spreader. Petitioner testified the salt spreader is located on the back of a plow truck and is about five feet off the ground. Petitioner testified filled the salt spreader with approximately 23-24 50-pound bags of salt when he experienced sudden sharp low back pain which caused him to drop a bag of salt. (T19). After about 10 minutes, Petitioner attempted to lift the bag of salt but he couldn't. Petitioner testified, at that time, he went to the office and reported the incident. (T19).

Petitioner testified when entered the office Ryan Newland, the property manager, and Bill Bortilotti, the president of the Condominium association, were in the office. Petitioner testified he told them he injured his low back loading salt and he couldn't do it anymore. (T19). Petitioner testified during that conversation, Mr. Newland said you have plenty of time coming so take off and get yourself better. (T20). Petitioner testified, at that time, Mr. Newland discussed the possibility of hiring a contractor to perform snow removal. (T53).

Petitioner testified the following day he took vacation which consisted of eight weeks and, during that time, he treated his low back pain with ice and Bengay. (T20). Petitioner testified he wasn't feeling very well so he wanted to have a checkup. Petitioner testified he presented to Family Medical Center of LaGrange on January 2, 2019[1]. (T23). Petitioner testified he told the doctor his body wasn't feeling good and that he didn't know what was going on. (T23). Petitioner testified he did not mention low back pain at that time. (T23). The medical records show Petitioner reported issues with his left leg and that he was concerned about past exposure to asbestos. (PX1).

Petitioner returned to the doctor on January 11, 2019. The medical records reflect Petitioner reported low back pain at that visit. Petitioner testified he did not mention what caused his low back pain because he didn't think about it at the time. (T24). The medical records show Petitioner reported back pain and being stiff in the morning but that his symptoms improved during the day. (PX1). X-rays of the spine were taken which showed arthritis in the lumbar spine. (PX1).

[1] Petitioner testified his first visit with the doctor was on January 11, 2019 but his first visit was on January 2, 2019 and Petitioner's second visit was on January 11, 2019. (PX1),

On February 11, 2019, Petitioner presented to Advocate Medical Group. (T24, PX5). At that visit, Petitioner reported the slipping and falling at work and injuring his low back lifting bags of salt. Petitioner testified he realized his back was causing his problems so he told the doctor what happened. (T25). The medical records show Petitioner attributed his symptoms to slipping on wax/stripped floors while at work landing on his back and doing a lot of lifting of salt bags at work which aggravated his symptoms. (PX5, pg. 441). An MRI was ordered which Petitioner underwent on February 11, 2019. (T26).

Petitioner testified he was referred to a pain specialist, Dr. Hong at Gateway Spine, who recommended epidural steroid injections. (T28). Petitioner testified he was doing well after the injections but his pain returned. (T29). Petitioner testified Dr. Hong referred him to Dr. Karahalios, a neurosurgeon. (T30). Petitioner presented to Dr. Karahalios on August 15, 2019 who ordered another MRI and administered a second epidural steroid injection. (T30). Petitioner testified the second injection lasted 3-4 days. (T30).

On February 13, 2020, Dr. Karahalios recommended surgery consisting of a bilateral laminal foraminotomy at L4-5 and L5-S1. (PX 5, p. 367, T30-31). Petitioner continued working full-time until the date of his surgery. (T31). Petitioner used his own accrued benefit time for the surgery. (T31-32).

On February 19, 2020, Petitioner underwent the L4-5 laminectomy and bilateral foraminotomies at Advocate Lutheran General Hospital. (PX 10). On March 3, 2020, Petitioner followed up with Dr. Karahalios' office reporting he was doing well. (PX 5, p. 351). On April 2, 2020, Petitioner presented for a virtual follow-up examination with Dr. Karahalios. (PX 5, p. 330). At that time, Petitioner reported weakness in his lower extremities was improving but he continued to experience mild low back pain and occasional radiating pain. (PX 5, p. 330). In the medical records, Dr. Karahalios described Petitioner's symptoms as markedly improved and, at that time, physical therapy was recommended. (PX 5, p. 330).

Petitioner attended physical therapy at Doctors of Physical Therapy. (PX10). As part of the patient intake process, Petitioner filled out a form titled INJURY QUESTIONNAIRE which asked whether the prescribed treatment was accident related. Petitioner did not check the box indicating the treatment was related to a work injury. (RX10). When asked why he did not check the box, Petitioner testified he skipped that part of the form and just signed his name. (T67)

Petitioner's first physical therapy sessions was on April 7, 2020. (PX10). The physical therapy records show that Petitioner had difficulty standing up straight and performing moderately strenuous physical activities for extended periods. (PX10). The April 22, 2020 physical therapy records shows Petitioner was experiencing general improvements but that he continued to have difficulty standing up straight. (PX10)

On April 23, 2020, Petitioner reported to the physical therapists that he was concern about being unable to perform his full and unrestricted work duties. (RX6). The next day, Petitioner contacted the office of Dr. Karahalios reported difficulty standing straight and he was told that he would continue to gain flexibility with physical therapy. (PX 5, p. 322)

On April 30, 2020, the physical therapy notes indicate Petitioner was improving but that his pain returns following the sessions. (RX6). On that same day, Petitioner's wife contacted Dr. Karahalios office reported that Petitioner was doing well overall but he continued to have issues with flexibility. (PX 5, p. 320). Petitioner was instructed to continue with physical therapy. (PX 5, p. 320)

Petitioner testified he was told to return to work by May 6, 2020 or he would lose his job. (T71). Mr. Newland acknowledged contacting Petitioner after the surgery and advising Petitioner his vacation and sick time was expiring and that he would need a doctor's note to return to work. (T98). Petitioner testified to contacting Dr. Karahalios office to facilitate returning to work. (T74). Petitioner requested documentation from Dr. Karahalios office confirming he could return to work with restrictions. (PX 5, p. 314, T32). On May 6, 2020, Petitioner was released to light-duty with restrictions of no lifting over 10-15 pounds and no overly strenuous activity. (PX 5, p. 316, T32).

Petitioner testified after returning to work Respondent would not honor his work restrictions. (T33). Petitioner testified upon returning to work he was required to carry various items, climb ladders, perform overhead reaching which exacerbated his lower back. (T34). On May 7, 2020, Petitioner's wife called the Dr. Karahalios office reporting Petitioner experienced increasing back pain after returning to work. (PX 5, p. 306). At that time, Dr. Karahalios ordered an updated MRI. (T34, PX 5, p. 305). On May 12, 2020, the day before his alleged work incident, Petitioner returned to the physical therapy reporting his pain improved since the last visit and, at that visit, Petitioner reported "no pain" compared to the "8/10 pain" level he reported at the prior physical therapy session. (RX6).

Work Accident of May 13, 2020 (20 WC 11574)

On May 13, 2020 Petitioner testified the basement of a building flooded due to the failure of a sump pump. Petitioner testified after the old sump pump was removed, he carried it about 50 feet to the boiler room. Upon returning to the area, Petitioner started to vacuum up the water on the floor using a wet vac. Petitioner testified the wet vac held between 5 and 6 gallons of water and he had to repeatedly empty the wet vac. At first Petitioner testified to carrying the wet vac filled with water and pouring the contents of the wet vac into a wash tub. Petitioner testified as he went to empty the wet vac into the wash tub when is back "*said no*" and, at that point, Petitioner had to bend over and push the wet vac across the floor to empty it. (T35). Petitioner testified when his back "*said no*" he experienced a sharp pain in his back and he could no longer lift the wet vac. (T36). Petitioner testified he repeated the process of bending over and pushing the wet vac an additional 12 times before his coworker, Jim Leginski, took over. (T35).

Petitioner testified the pain he experienced at that time was constant and never went away. (T36). Petitioner testified after that incident his pain level never returned to the same level it was prior to that incident. (T37). Petitioner explained the pain that developed after lifting the wet vac was different type of pain than he previously experienced or reported during physical therapy or while walking. (T38). Petitioner testified prior to the wet vac incident his back pain would go away after stopping the activities he was preforming but after the incident his pain was constant. (T38).

Petitioner testified later that day, he spoke to Mr. Newland, the property manager, and Sue, the office manager, about the wet vac incident. (T39). At that time, Sue gave him an accident report which Petitioner completed. (PX14, T39). Petitioner testified May 13, 2020, was the last day he worked for Respondent. (T40).

On May 16, 2020, Petitioner underwent an MRI which showed spondylolisthesis of L5 and S1 with bilateral spondylolysis not present on the previous MRI. (PX 9, p. 876). After reviewing the MRI, Dr. Karahalios ordered a lumbar CT scan. (PX 5). On May 20, 2020 Petitioner underwent the CT scan which showed bilateral subacute fractures through L5 and right L4 pars interarticularis as well as the left L5 transverse process and a grade I anterolisthesis of L5 on S1. (PX 5, p. 268). At that time, Dr. Karahalios recommended an LSO brace and bone stimulator. (T42, PX 5, p. 265). Petitioner was referred to Dr. Hong for pain management. (PX 5, p. 265).

Petitioner returned to Dr. Hong on June 9, 2020. (PX 7, pg. 82). At that visit, Petitioner reported an increase in lower back pain due to wet vacuuming and painting at work. (PX 7, pg. 82). Petitioner continued to follow up with Dr. Hong but the pain medications did not fully alleviate his back pain. (T42, PX 7, pg. 79). Petitioner continued to use his back brace and the bone growth stimulator without improvement. (PX 5, pg. 246). Petitioner underwent a second CT scan on June 24, 2020 which showed stable findings compared to the prior study. (PX 5, pg. 237).

On June 25, 2020, Petitioner returned to Dr. Karahalios who recommended Petitioner proceed with instrumented fusion from L3-S1. (PX 5, pg. 228). On July 22, 2020, Petitioner received a denial for the surgery from the workers' compensation carrier so he proceeded with the surgery using his group health insurance plan. (PX 5, pg. 211). On August 18, 2020, Dr. Karahalios performed L3-S1 decompression and fusion consisting of a right L3-L5 hemilaminectomies, L3-S1 facetectomies, L3-S1 posterolateral arthrodesis, L3-S1 posterior interbody arthrodesis, insertion of intervertebral biomechanical device at L3-S1, and L3-S1 pedicle screw rod fixation. (PX 9, pg. 440). Following the surgery Petitioner continued to be restricted from working. (T44).

On February 9, 2021, Petitioner returned to Dr. Karahalios for his 6 month follow up visit. (PX 5, pg. 109). At that visit, Petitioner continued to report difficulties with strength and ambulation and he was still using a walker. (PX 5, pg. 107). On February 10, 2021, Petitioner was discharged from physical therapy noting continued complaints of pain and difficulty with standing for extended periods, using stairs, and getting in and out of bed. (RX10). It was determined that Petitioner plateaued with physical therapy so he was discharged with instruction to continue following up with his doctor. (RX10).

On May 3, 2021, Petitioner returned to Dr. Hong who recommended a caudal epidural steroid injection with sedation. (PX 7, pgs. 55-56). On May 28, 2021, Petitioner underwent the caudal epidural steroid injection. Dr. Hong diagnosed post laminectomy syndrome with irretractable lower back pain. (PX 7, pgs. 52-53). Petitioner returned to Dr. Hong on June 8, 2021, reporting excellent relief from the injection for approximately three days. (PX 7, pg. 49-50). Given the lack of extended relief, Dr. Hong considered the injection unsuccessful and declined to repeat the process. (PX 7, pg. 49-50).

On August 27, 2021, Petitioner returned to Dr. Karahalios for his 12 month follow up visit. (PX 5, pg. 93). At that visit, Petitioner reported persistent back pain which had increased in

severity since his last visit despite conservative treatment and ongoing pain management. (PX 5, pg. 93). A new MRI with and without contrast and a CT scan was ordered which Petitioner underwent on September 2, 2021 and September 7, 2021. (PX 5, pg. 384, T45). After reviewing the films, Dr. Karahalios opined Petitioner was not a surgical candidate and he released Petitioner from care but recommended Petitioner continue pain management with Dr. Hong. (T45).

On December 13, 2021, Dr. Hong recommended a spinal cord stimulator which Petitioner declined. (T46, PX 7, pg. 31). Petitioner continues to manage his symptoms with pain medications. (T46, PX 7, pg. 11-31). Petitioner testified he continues to see Dr. Hong once a month. (T48).

As to his current condition, Petitioner testified to ongoing pain complaints which impacts his activities of daily living including bathing, getting dressed, putting on shoes. (T47). Petitioner also testified that he can no longer perform household chores such as dishes or laundry. (T47). Petitioner testified he has never been allowed to return to work. (T47, 49).

Testimony of Ryan Newland, Witness for Respondent

Ryan Newland testified he is employed by Forster Premier, Inc., which is Respondent's management company. (T85). Mr. Newland testified as the managing company his responsibilities include overseeing day-to-day operations as well as overseeing the office and maintenance staff. (T86). Mr. Newland testified each time he visited the property he would go over various projects with Petitioner. (T90).

Mr. Newland testified he first learned of Petitioner's October 10, 2018 accident was in 2020 after he had a conversation with Petitioner in May of 2020 and after receiving a copy of Petitioner's May 2020 accident report. (T91). Mr. Newland testified he first learned of Petitioner's December 18, 2018 accident involving lifting the salt bags in 2020 at the same time he learned about Petitioner's October 10, 2018 accident. (T91). Mr. Newland testified he was aware of Petitioner's May 13, 2020 shop vac incident on May 13, 2020. (T100).

Mr. Newland testified prior to receiving the 2020 accident report, he never had any conversation with Petitioner about his 2018 work accidents nor did Petitioner ever mentioned injuring his back lifting salt bags in December of 2018. (T92). Mr. Newland testified after being advised of Petitioner's work accidents he never conducted any investigation nor did he question any of Petitioner's coworkers about the 2018 work accidents. (T.96).

Mr. Newland testified Petitioner took 3-4 weeks off work for the February 2020 surgery and that Petitioner had vacation and sick time to use. (T97). On cross examination Mr. Newland

denied telling Petitioner to use his vacation time. (T.101). Mr. Newland acknowledged speaking with Petitioner after the surgery regarding returning to work because Petitioner used up all his vacation and sick time. (T98). Mr. Newland also acknowledged telling Petitioner to obtain a doctor's note before returning to work. (T.98).

Mr. Newland testified Respondent has a form to be completed for work accidents and that the injured employee reports the accident to the onsite office manager who gives him the form once it is completed by the injured employee. (T86). Mr. Newland acknowledged Respondent does not have a written policy regarding the time frame an injured employee needs to complete the accident report. Mr. Newland testified there is no rule, no written policy but that's how it has always been done[2]. (T.107).

On cross examination, Mr. Newland testified snow contractors were hired in 2019 because the snow removal was a great deal of work for the two maintenance workers. (T105). Mr. Newland testified the process of obtaining contractors for snow removal started after discussing the issue with Petitioner, Jim, and the board. (T. 105). Mr. Newland testified the maintenance workers were getting up in age and Jim was having issues with his knee which was why the snow removal contract process was started. (T105, 110). Mr. Newland testified Petitioner never complained about the demands of the snow removal job nor did Petitioner ever complain about having even a sore muscle or issues performing his job duties. (T107). Mr. Newland acknowledged on December 18, 2020, the board president, Bill Bortolotti, was at the office. (T111).

Testimony of William Bortolotti, Witness for Respondent

William Bortolotti testified he was the president of the condominium association for 6 years and a board member for 12 years. (T140). Mr. Bortolotti testified he would occasionally be in the office with Mr. Newland. (T143). Mr. Bortolotti denied being informed that Petitioner injured his back lifting salt bags at work on December 18, 2018. (T140). Mr. Bortolotti testified he was not involved in the decision process of hiring outside contractors for snow removal. (T148). Mr. Bortolotti testified he was unaware that Petitioner underwent back surgery in February of 2020. (T144). Mr. Bortolotti testified he was not involved with workers' compensation accidents. (T145).

[2] Nancy Neary, who was employed by Respondent as an assistant community manager, testified the only one workers' compensation claim was filed in 9 years and that claim involved her own work injury. (T.138).

Testimony of Nancy Neary, Witness for Respondent

Nancy Neary testified she was previously employed by Respondent as an assistant community manager working three days a week. (T133). Ms. Neary last worked for Respondent in June of 2019. (T128, T129).

Ms. Neary testified Petitioner did not tell her on October 10, 2018 he fell at work nor did Petitioner he tell her on December 18, 2018 that he hurt his back lifting salt. (T133). Ms. Neary testified she did not complete any paperwork for those incidents nor was she aware Petitioner missed work at the end of 2018 through 2019. (T133). Ms. Neary stopped working for Respondent in June of 2019 after being diagnosed with stage 4 lung cancer. (T128). Ms. Neary testified in the nine years she was employed by Respondent she only participated in the filing of one workers' compensation claim and that claim involved her own injury. (T138). Ms. Neary testified if someone reported a work accident, she would generate the accident report and forward it to her supervisor, Ryan Newland. (T132).

Testimony of Jim Leginski, Witness for Respondent

Jim Leginski testified he worked for Respondent as a maintenance engineer and his job duties included shoveling snow and maintaining the property. (T113-114). Mr. Leginski worked the same shift as Petitioner and he testified that each day he and Petitioner would start the day in the office going over work which needed to be done. (T115).

Mr. Leginski testified Petitioner did not report to him falling at work in October of 2018. (T116). Regarding Petitioner's back pain after lifting salt, Mr. Leginski testified Petitioner may have told him but he doesn't remember. (T116). Mr. Leginski testified Petitioner told him about seeing a doctor for his back in 2019 but not how it happened. (T117).

Regarding lifting the bags of salt, Mr. Leginski testified he and Petitioner both struggled lifting the bags of salt. (T124). Mr. Leginski testified he and Petitioner both discussed with Mr. Newland the difficulty performing the snow removal duties before Respondent contracted the work out. (T124). Mr. Leginski testified it was probable the conversations occurred in December of 2018 prior to the work being contracted out. (T125).

Mr. Leginski testified when Petitioner returned to work around May 6, 2020, he worked more slowly and walked kind of hunched over. (T. 120). Mr. Leginski testified on May 13, 2019 he and Petitioner vacuumed up water with a shop vac. (T120). Mr. Leginski testified he did not see Petitioner emptying the shop vac because he and Petitioner work in different buildings. (T123).

Testimony of Dr. Dean Karahalios, the Treating Surgeon

Dr. Karahalios is a neurosurgeon who specializes in complex spinal surgery. (PX13). Petitioner presented to Dr. Karahalios on August 15, 2019. At that visit, Petitioner reported low back pain beginning in October of the prior year after falling at work. Petitioner complained of pain radiating into his bilateral lower extremities. (PX13, p. 9).

The exam noted tenderness in the paraspinal region. Dr. Karahalios reviewed an MRI dated February 11, 2019 which, he said, showed degenerative changes most pronounced at L4-S1 with mild degenerative soft tissue edema in the parafacet regions around the facet joints. Dr. Karahalios noted the MRI showed severe stenosis at L4-5 and L5-S1. (PX13, p. 11). Dr. Karahalios diagnosed Petitioner with a symptomatic lumbar degenerative condition and, he believed, Petitioner's radiating symptoms were likely related to the foraminal stenosis in the lower lumbar area. Dr. Karahalios also diagnosed mechanical back pain and facet arthropathy involving the facet joints in the back of the spine. (PX13, p. 11).

At that time Dr. Karahalios opined Petitioner's fall in October of 2018 was a competent mechanism of injury that aggravated his degenerative lumbar condition. (PX13, p. 12). Dr. Karahalios testified as the spine degenerates it loses the ability to carry its own weight and becomes more prone to injury because of the lost structural capacity. (PX13, p. 12)

Dr. Karahalios testified Petitioner was administered injections which provided temporarily relief. Dr. Karahalios testified he reviewed an MRI taken in 2020 and compared it to the MRI taken in 2019. Dr. Karahalios noted severe right and moderate left foraminal stenosis at L4-5 and severe right and moderate left foraminal stenosis at L5-S1and, at that time, he recommended surgery to open the nerve root passages which Petitioner underwent on February 19. 2020. (PX13, p. 14).

Dr. Karahalios testified six weeks after surgery Petitioner was doing well with some mild low back pain and radiating pain. Dr. Karahalios testified Petitioner's surgical outcome was very favorable and he was moving the right direction. (PX13, p. 15). At that time, Petitioner started physical therapy and Dr. Karahalios issued work restrictions of no lifting over 10-15 pounds and no overly strenuous activity. (PX13, p.16).

Around May 21, 2020, Dr. Karahalios testified he spoke to Petitioner who reported pain in his back and leg after returning to work[3]. Petitioner followed up with Dr. Karahalios on June 25, 2020 and, at that visit, Petitioner reported returning to work and engaging in heavy activity, strenuous activity involving pushing and pulling heavy weights. Dr. Karahalios ordered additional imaging which showed Petitioner developed pars fractures in his spine. (PX13, p. 18). At that time, Dr. Karahalios believed Petitioner may need surgery but Petitioner desired to proceeded conservatively with bracing. (PX13, p. 18).

Dr. Karahalios testified pars fractures after decompressive surgery is unusual but that it could happen. Dr. Karahalios testified Petitioner's pars fractures happened catastrophically at multiple sites causing the spine to become unstable at L4-5 and L5-S1. (PX13, p. 21). Dr. Karahalios testified the pars factures were new findings. Dr. Karahalios indicated both Petitioner and his wife believed Petitioner was doing well 18 weeks after the surgery until returning to work and upon returning to work Petitioner was engaged in activities including wet vacuuming and painting which involved bending, twisting, reaching, and extending which caused Petitioner to experience an acute onset of back pain. (PX13, p. 20).

At that visit, Dr. Karahalios performed an examination which showed bilateral neural tension signs. (PX13, p. 20). At that time, Dr. Karahalios recommend surgery because Petitioner's spine was unstable from the pars fractures. (PX13, p. 21). Dr. Karahalios opined Petitioner's work activities after return to work could be a competent mechanism for causing the pars fracturs. Dr. Karahalios testified the structures left behind after the decompression surgery are responsible for maintaining the structure of the spine but as one twists and turns it places stresses on those structures and those structures could break. Dr. Karahlios testified Petitioner's case was very unusually because the structures broke in so many different areas. (PX13, p. 22). Dr. Karahlios testified it was clear that some sort of traumatic event caused the fractures and the types of activities Petitioner described could have caused it. (PX13, p. 23).

On August 18, 2020, Petitioner underwent a lumbar fusion surgery from L3 to S1. Dr. Karahlios testified 12 weeks following the surgery Petitioner was doing well with no radiating pain into the legs but that Petitioner reported some low back pain and weakness in the right lower extremity. (PX13, p. 25).

[3] The date of the phone call appears to have been on May 21, 2020 and not May 21, 2021. The error involved a question by the attorney.

Dr. Karahalios opined Petitioner's work activities as reported on May 21, 2020 was a cause or aggravating factor to his current condition. (PX13, p. 29). Dr. Karahalios testified the activities Petitioner described placed forces on the spine which caused the pars fractures because the spine was destabilized by the original surgery. (PX13, p. 29). Dr. Karahalios also opined the fusion surgery was needed because of the activities Petitioner described after returning to work caused or aggravated Petitioner's condition. (PX13, p. 29). Dr. Karahalios opined both surgeries were related to Petitioner's work activities. Dr. Karahalios testified the first surgery was necessary to decompress the neural elements and the second surgery was necessary due to the pars fractures caused by Petitioner's work activities. (PX13, p. 56).

Testimony of Dr. Frank Phillps, who Performed a Records Review

Dr. Frank Phillps is a board-certified orthopedic surgeon who performed a records review. (RX1, pgs. 4-7). Dr. Phillps testified he reviewed Petitioner's medical records and noted that Petitioner saw an internist on December 20. 2018 and only mentioned left leg problems but not back pain. (RX1, p. 8). Dr. Phillps testified Petitioner's first complained of low back pain on January 11, 2019 and, at that time, x-rays were performed which, he said, showed disk space narrowing, spur formation, severe degeneration as well as osteoarthritis of the joints, facet joints particularly at L5-S1 but less severe at L4-5. (RX1, p. 9).

Dr. Phillps reviewed the MRI report dated February 11, 2019[4]. (RX1, pgs. 11-12). Dr. Phillips testified the February 10, 2020 CT scan report which, he said, showed multilevel degenerative changes with mild to moderate right sided foraminal stenosis at L4-5 and L5-S1. (RX1, pgs. 12-16). Dr. Phillips also reviewed the reports from the May 16, 2020 MRI as well as the CT scan which, he said, showed subacute fractures through the pars at L4-5 and L5-S1. (RX1, p. 19).

Dr. Phillips testified the pars are bony structures in the back which are very important to the structural integrity of the spine and when they are disrupted you can get abnormal slipping of the vertebrae. (RX1, p. 19). Dr. Phillips testified the impression from the CT scan showed surgical changes (*i.e*. the cleaning out around the nerves) and what the radiologist called "*subacute fractures*" which, he said, means "*not very acute*". (RX1, pgs. 18-19). Dr. Phillips acknowledged

[4] Dr. Phillips did not review the actual films. Dr. Phillips testified the only film he reviewed was an x-ray. (RX1, p.33).

the pars fractures were new findings not on any prior CT scans. (RX1, p. 19). Dr. Phillips opined the pars fractures were related to Petitioner's back pain and the fusion surgery. (RX1, p. 20).

Dr. Phillips opined Petitioner had chronic degenerative changes of his low back over time and he developed more and more back pain related to that degenerative condition. Dr. Phillips testified the medical record do not substantiate any specific trauma or any trauma that was responsible for Petitioner's back pain. (RX1, p. 21). Dr. Phillips opined Petitioner's February 19, 2020 surgery was related to degenerative changes of the lumbar spine and not due to Petitioner's October 2018 work accident. (RX1, p. 22). Dr. Phillips testified his opinions were based upon Petitioner's chronic back pain with no clearcut reports at the time of the alleged injuries which specifically relate the back pain to those injuries. Dr. Phillips testified Petitioner's daily activities caused his back pain and the imaging showed chronic degenerative changes that, he said, developed and had been present for many years. (RX1, p. 23). Dr. Phillips opined Petitioner's surgery had no relationship to Petitioner's October 2018 work accident. (RX1, p. 23).

Regarding the pars fractures, Dr. Phillips testified it was possible the laminectomy and foraminotomy surgery either directly or indirectly caused the subacute fractures seen on the May of 2020 CT scan. (RX1, p. 25). Dr. Phillips testified with a fairly aggressive decompression it's possible the bones weakened such that they were predisposed to fracture even without trauma. (RX1, pgs. 25-26). Dr. Phillips testified he didn't have any specific information about the work Petitioner performed after returning to work. (RX1, p. 29). Dr. Phillips was asked if the records showed Petitioner returned to work on May 6, 2020 could the subacute fractures predate Petitioner's return to work and he responded, "*I mean, you know, you've –it's hard to tell for sure but, I mean, based on the report where they talk about subacute fractures, that would suggest they weren't very acute meaning they had been present for at least months before you'd call something subacute. So I think it likely did predate that May 5th or whatever the date was in early May return to work recommendations*". (RX1, p. 30).

On cross-examination, Dr. Phillips testified he never examined nor spoke to Petitioner. (RX1, p. 33). Dr. Phillips acknowledged not reviewing any MRIs or CTs scans but that he did review a 2019 x-ray. (RX1, p. 33). Dr. Phillips acknowledged not being provided a copy of Petitioner's job description or knowing what Petitioner does other than performing custodian work. (RX1, pgs. 34-35). Dr. Phillips also acknowledged heavy activities could aggravate Petitioner's stress fractures and cause back pain. (RX1, p. 35).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (C), Whether an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator Finds as follows:

The claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980); *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 279 Ill. Dec. 726 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise, v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). "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." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003) Citing Caterpillar Tractor, 129 Ill. 2d at 58.

An injury "arises out of one's" employment if it originates from a risk connected with, or incidental to the employment, involving a causal connection between the employment and the accidental injury. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 (1987). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini,* 117 Ill. 2d at 45. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 2016 IL App.(3d), 150500WC, Par. 34. 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 be reasonable be expected to perform incident to her or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58,

see also *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n,* 2013 IL 115728, Par 18, *Sisbro*, 207 Ill. 2d. at 204. Risk incident to employment are those acts the employer might reasonably expect the employee to perform in fulfilling is assigned job duties. *McAllister v. v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020), citing *Orsini,* 117 Ill. App. 2d. at 45, *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386, 388 (1965). The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n,* 236 Ill. 2d 132, 149 (2010).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment as more fully explained below.

Petitioner testified to slipping and falling at work on October 10, 2018. At the time Petitioner fell, a cleaning crew was stripping the wax off the laundry room floor. Petitioner testified as he walked into the laundry room, he slipped on the floor striking his buttocks, elbow, and head. (T14). Petitioner testified to experiencing the immediate onset of low back pain which he treated with ice, aspirin, Bengay. (T16). Petitioner testified he treated his back pain on his own while continuing to work. The Arbitrator finds no credible evidence was presented contradicting Petitioner's testimony. The fact that Petitioner continued to work does not mean he did not sustain an accidental injury at work. We decline to penalize an employee who diligently worked through progressive pain until it affected her ability to work and required medical treatment. *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 862 N.E.2d 918, 923 (2006). Eventually, Petitioner sought medical treatment and, at that time, he provided a detailed history of the accident to his neurosurgeon and pain management physicians which was consistent with his trial testimony. The courts presume that when a person seeks treatment for an injury, he will not falsify statements to a physician from whom he expects to receive medical aid. *Shell Oil Co., v. Industrial Comm'n*. 2 Ill.2d 590, 592; 119 N.E.2d 224, 226 (1954). Respondent called several witnesses who disputed the timeliness of Petitioner's notice but not whether Petitioner sustained an accident which arose out of and in the course of his employment. Mr. Newland testified he did not conduct any investigation of Petitioner's work accidents once he was advised of them. (T96). The testimony of the employee, if not impeached or rebutted, is sufficient to support an award. *Phoell*

Manufacturing Co., Industrial Comm'n, 54 Ill.2d 119, 295 N.E.2d 469 (1973); *Sahara Coal Co., v. Industrial Comm'n*, 66 Ill.2d 353, 362 N.E.2d. 343 (1977).

With Respect to Issue (E), Whether timely notice of the accident given to Respondent, the Arbitrator Finds as follows:

Section 6 (C) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(C)(2) states that "[N]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceeding on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceeding by such defect or inaccuracy." 820 ILCS 305/6(c)(West 2004). Simply reporting a condition without referencing its cause does not put an employer on notice of the accident and does not satisfy the notice requirements under Section 6(c) of the Act. *Swing v. (Compass Group USA), IWCC*, 19 ILWCLB 217 (Ill.App.Ct., 1st 20111). The giving of notice under the act is jurisdictional and a prerequisite of the right to maintain a proceeding under the act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. Workers' Compensation Comm'n*, 870 N.E.2d 821 (2007).

The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence that he provided notice of the accident to Respondent as required under the Act, as more fully explained below.

Respondent claims Petitioner did not provide notice of his accident within the 45 days as required under the Act. It is clear from the record Respondent did not have any written policy or procedures requiring employees to provide notice of accidents within a specific time period. Mr. Newland testified "*there's no rule. No written policy, but that's how we've always done it previously*." (T.107). Despite claiming that's how we've always done it, the Arbitrator notes in the nine years prior to Petitioner's first work accident Respondent had only one reported work accident and that injury was processed by Ms. Neary, the office manager, and the claim involved her own injury. (T132, 138).

The Arbitrator finds it reasonable infer that Respondent was aware of Petitioner's back issues. Respondent had only two maintenance engineers working each day for a condominium complex covering 26 acres, four parking lots, 24-35 units and 2 ½ miles of sidewalks. Each morning the two maintenance engineers would report to the office and receive their daily work assignments. Mr. Newland testified every time he was at the property, he would go over projects

with Petitioner and the other maintenance engineer. (T90). The Arbitrator finds Mr. Newland's testimony that he was unaware of Petitioner's back condition after the October 10, 2018 accident not credible given that work schedules had to be maintained, projects needed to be coordinated, emergencies repairs needed to be made which included the snow or ice removal. As of January of 2019, Petitioner was receiving treatment for his back which included epidural injections and physical therapy. It is reasonable to infer, Petitioner discussed his health issues when receiving his daily work assignments with Mr. Newland. The Arbitrator also notes Mr. Newland's testimony conflicts with the testimony of both Petitioner and Mr. Leginski regarding retaining a private company to perform snow removal services for Respondent which occurred after Petitioner's alleged back injury while loading salt into a salt spreader.

Regardless of Respondent's lack of written policies or rules doesn't circumvent the Act's jurisdictional notice requirement. Petitioner did not argue the issue involves the sufficiency of the notice and Respondent failed to show prejudice or that the 45-day notice requirement should be tolled or was waived by Respondent's lack of rules or procedures. As such, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence the notice of the accident was given within 45 days as required under the Act. Petitioner did not seek medical treatment for the accident so there were no medical records documenting the work accident nor did Petitioner filed an accident report until May of 2020, after the 45-notice requirement expired. Petitioner testified he continued working after his accident. (T17). Petitioner acknowledged that he didn't fill out an accident report and when he originally saw the doctor, he did not report his work accident. (T24).

With Respect to Issues (F, J, K, L), the Arbitrator Finds as follows:

The lack of notice shouldn't mean that Petitioner didn't sustain an otherwise compensable work accident. However, given the Arbitrator's finding regarding notice the remaining issues are moot and need not be addressed. The relief sought by Petitioner is hereby denied.

By: /o/ Frank J. Soto — November 16, 2023

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011573
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	20WC011572; 20WC011574;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0470
Number of Pages of Decision	28
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	John Morris

DATE FILED: 9/30/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HENRY BADE,

Petitioner,

vs. NO: 20 WC 011573

WESTBROOK WEST CONDOMINIUM,

Respondent.

DECISION AND ORDER ON REVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Based upon the foregoing, the clinical notes, records, sworn testimony of Dr. Karahalios, and the greater weight of the evidence support the conclusion that Petitioner's current condition of ill being is causally connected to the work accident of December 18, 2018. The Commission hereby awards temporary total disability benefits commencing February 19, 2020, through May 6, 2020, at a rate of $964.67 per week for 12 4/7 weeks for a lump sum totaling $11,900.99.

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

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

The Commission further awards temporary total disability benefits commencing February 19, 2020, to May 6, 2020, in the amount of $964.67 per week representing 12 4/7 weeks, the date of surgery through the date Petitioner was released back to work by Dr. Karahalios with light duty restrictions.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the lump sum of $11,900.99 representing 12 4/7 weeks commencing February 19, 2020, through May 6, 2020, that being the period of temporary total disability benefits at a rate of $964.67 per week.

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

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

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

Bond for removal by Respondent is hereby fixed at the sum of $40,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to file for Review in Circuit Court.

September 30, 2024

SM/msb
o-8.7.24
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	20WC011573
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	John Morris

DATE FILED: 11/17/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/Frank Soto, Arbitrator

Signature

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

Herbert Bade
Employee/Petitioner

v.

Westbrook West Condominium
Employer/Respondent

Case # **20WC011573**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/17/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/18/2018**, 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 not*** given to Respondent.

In the year preceding the injury, Petitioner earned $**73,840.00**; the average weekly wage was $**1,420.00**.

On the date of accident, Petitioner was **64** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services given none are owed.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services given none are owed.

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

Petitioner proved by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Petitioner failed to prove by the preponderance of the evidence the notice of the accident was given within 45 days as required under the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Given the Arbitrator's finding regarding notice the remaining issues are moot and need not be addressed. The relief sought by Petitioner is hereby denied.

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

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

By: /o/ *Frank J. Soto* **NOVEMBER 17, 2023**
Arbitrator

Procedural History

Herbert Bade (hereinafter referred to as "Petitioner") filed three claims involving his lower back while working for Westbrook West Condominium (hereinafter referred to as "Respondent"). All three cases were tried together but separate decisions were issued for each case.

In the oldest claim (*i.e.* 20WC011572), Petitioner claims he injured his low back after slipping and falling at work on October 10, 2018. In that case, the disputed issues are accident, notice, causal connection, unpaid medical bills, TTD benefits, and the nature and extent of Petitioner's injury. (Arb. Ex. #1, 4).

In the second claim, Petitioner claims he injured his low back lifting bags of salt at work on December 12, 18, 2018 (*i.e.* 20WC011573). In that case, the disputed issues are accident, notice, causation, medical bills, TTD benefits, and the nature and extent of Petitioner's injury. (Arb. Ex. #2, 5).

In the third case, Petitioner claims he injured his low back using a shop vac at work on May 13, 2020 (*i.e.* 20WC0011574). In that case, the disputed issues are accident, notice, causation, unpaid medical bills, TTD benefits, and the nature and extent of Petitioner's injury, (Arb. Ex. #3, 6).

Findings of Fact

Petitioner was employed for 49 years by Respondent as a maintenance engineer at a condominium complex covering 26 acres consisting of 24 to 35 units, 4 parking lots and over 2 miles of sidewalks. (T11, 12). As part of his duties Petitioner performed a variety of work including snow removal and salt spreading. (T11). Petitioner testified during the years he worked for Respondent he sustained one prior work injury in 2002 which involve breaking his hand while using a snowplow. (T12-13). Petitioner testified prior to October 10, 2018, he never experienced any significant lower back pain or underwent prior medical treatment for his low back. (T13-14).

Work Accident of October 10, 2018 (20 WC 11572)

Petitioner testified on October 10, 2018, he was fixing a water leak when he walked into a laundry room he slipped and fell striking his buttock, elbow, and head on the ground. Petitioner testified the floor was slippery due to a cleaning crew stripping waxed floors. (T14).

Petitioner testified he went to the office and reported the incident to Nancy, the office manager. (T15). Petitioner did not seek medical treatment because, he believed, the pain would go away. (T16). Petitioner treated his symptoms with aspirin, Bengay, and ice. (T17). Petitioner

testified he continued to work but had to work slower due to pain. (T17). At that time, no accident report was completed. (T16) When asked to explain why an accident report wasn't completed, Petitioner responded that he was a "loyal worker" for 49 years who works through pain. (T16).

Work Accident of December 18, 2018 (20 WC 11573)

Petitioner testified to a second work accident on December 18, 2018. Petitioner testified he reinjured his low back filling a salt spreader. Petitioner testified the salt spreader is located on the back of a plow truck and is about five feet off the ground. Petitioner testified filled the salt spreader with approximately 23-24 50-pound bags of salt when he experienced sudden sharp low back pain which caused him to drop a bag of salt. (T19). After about 10 minutes, Petitioner attempted to lift the bag of salt but he couldn't. Petitioner testified, at that time, he went to the office and reported the incident. (T19).

Petitioner testified when entered the office Ryan Newland, the property manager, and Bill Bortilotti, the president of the Condominium association, were in the office. Petitioner testified he told them he injured his low back loading salt and he couldn't do it anymore. (T19). Petitioner testified during that conversation, Mr. Newland said you have plenty of time coming so take off and get yourself better. (T20). Petitioner testified, at that time, Mr. Newland discussed the possibility of hiring a contractor to perform snow removal. (T53).

Petitioner testified the following day he took vacation which consisted of eight weeks and, during that time, he treated his low back pain with ice and Bengay. (T20). Petitioner testified he wasn't feeling very well so he wanted to have a checkup. Petitioner testified he presented to Family Medical Center of LaGrange on January 2, 2019[1]. (T23). Petitioner testified he told the doctor his body wasn't feeling good and that he didn't know what was going on. (T23). Petitioner testified he did not mention low back pain at that time. (T23). The medical records show Petitioner reported issues with his left leg and that he was concerned about past exposure to asbestos. (PX1).

Petitioner returned to the doctor on January 11, 2019. The medical records reflect Petitioner reported low back pain at that visit. Petitioner testified he did not mention what caused his low back pain because he didn't think about it at the time. (T24). The medical records show Petitioner reported back pain and being stiff in the morning but that his symptoms improved during the day. (PX1). X-rays of the spine were taken which showed arthritis in the lumbar spine. (PX1).

[1] Petitioner testified his first visit with the doctor was on January 11, 2019 but his first visit was on January 2, 2019 and Petitioner's second visit was on January 11, 2019. (PX1),

On February 11, 2019, Petitioner presented to Advocate Medical Group. (T24, PX5). At that visit, Petitioner reported the slipping and falling at work and injuring his low back lifting bags of salt. Petitioner testified he realized his back was causing his problems so he told the doctor what happened. (T25). The medical records show Petitioner attributed his symptoms to slipping on wax/stripped floors while at work landing on his back and doing a lot of lifting of salt bags at work which aggravated his symptoms. (PX5, pg. 441). An MRI was ordered which Petitioner underwent on February 11, 2019. (T26).

Petitioner testified he was referred to a pain specialist, Dr. Hong at Gateway Spine, who recommended epidural steroid injections. (T28). Petitioner testified he was doing well after the injections but his pain returned. (T29). Petitioner testified Dr. Hong referred him to Dr. Karahalios, a neurosurgeon. (T30). Petitioner presented to Dr. Karahalios on August 15, 2019 who ordered another MRI and administered a second epidural steroid injection. (T30). Petitioner testified the second injection lasted 3-4 days. (T30).

On February 13, 2020, Dr. Karahalios recommended surgery consisting of a bilateral laminal foraminotomy at L4-5 and L5-S1. (PX 5, p. 367, T30-31). Petitioner continued working full-time until the date of his surgery. (T31). Petitioner used his own accrued benefit time for the surgery. (T31-32).

On February 19, 2020, Petitioner underwent the L4-5 laminectomy and bilateral foraminotomies at Advocate Lutheran General Hospital. (PX 10). On March 3, 2020, Petitioner followed up with Dr. Karahalios' office reporting he was doing well. (PX 5, p. 351). On April 2, 2020, Petitioner presented for a virtual follow-up examination with Dr. Karahalios. (PX 5, p. 330). At that time, Petitioner reported weakness in his lower extremities was improving but he continued to experience mild low back pain and occasional radiating pain. (PX 5, p. 330). In the medical records, Dr. Karahalios described Petitioner's symptoms as markedly improved and, at that time, physical therapy was recommended. (PX 5, p. 330).

Petitioner attended physical therapy at Doctors of Physical Therapy. (PX10). As part of the patient intake process, Petitioner filled out a form titled INJURY QUESTIONNAIRE which asked whether the prescribed treatment was accident related. Petitioner did not check the box indicating the treatment was related to a work injury. (RX10). When asked why he did not check the box, Petitioner testified he skipped that part of the form and just signed his name. (T67)

Petitioner's first physical therapy sessions was on April 7, 2020. (PX10). The physical therapy records show that Petitioner had difficulty standing up straight and performing moderately strenuous physical activities for extended periods. (PX10). The April 22, 2020 physical therapy records shows Petitioner was experiencing general improvements but that he continued to have difficulty standing up straight. (PX10)

On April 23, 2020, Petitioner reported to the physical therapists that he was concern about being unable to perform his full and unrestricted work duties. (RX6). The next day, Petitioner contacted the office of Dr. Karahalios reported difficulty standing straight and he was told that he would continue to gain flexibility with physical therapy. (PX 5, p. 322)

On April 30, 2020, the physical therapy notes indicate Petitioner was improving but that his pain returns following the sessions. (RX6). On that same day, Petitioner's wife contacted Dr. Karahalios office reported that Petitioner was doing well overall but he continued to have issues with flexibility. (PX 5, p. 320). Petitioner was instructed to continue with physical therapy. (PX 5, p. 320)

Petitioner testified he was told to return to work by May 6, 2020 or he would lose his job. (T71). Mr. Newland acknowledged contacting Petitioner after the surgery and advising Petitioner his vacation and sick time was expiring and that he would need a doctor's note to return to work. (T98). Petitioner testified to contacting Dr. Karahalios office to facilitate returning to work. (T74). Petitioner requested documentation from Dr. Karahalios office confirming he could return to work with restrictions. (PX 5, p. 314, T32). On May 6, 2020, Petitioner was released to light-duty with restrictions of no lifting over 10-15 pounds and no overly strenuous activity. (PX 5, p. 316, T32).

Petitioner testified after returning to work Respondent would not honor his work restrictions. (T33). Petitioner testified upon returning to work he was required to carry various items, climb ladders, perform overhead reaching which exacerbated his lower back. (T34). On May 7, 2020, Petitioner's wife called the Dr. Karahalios office reporting Petitioner experienced increasing back pain after returning to work. (PX 5, p. 306). At that time, Dr. Karahalios ordered an updated MRI. (T34, PX 5, p. 305). On May 12, 2020, the day before his alleged work incident, Petitioner returned to the physical therapy reporting his pain improved since the last visit and, at that visit, Petitioner reported "no pain" compared to the "8/10 pain" level he reported at the prior physical therapy session. (RX6).

Work Accident of May 13, 2020 (20 WC 11574)

On May 13, 2020 Petitioner testified the basement of a building flooded due to the failure of a sump pump. Petitioner testified after the old sump pump was removed, he carried it about 50 feet to the boiler room. Upon returning to the area, Petitioner started to vacuum up the water on the floor using a wet vac. Petitioner testified the wet vac held between 5 and 6 gallons of water and he had to repeatedly empty the wet vac. At first Petitioner testified to carrying the wet vac filled with water and pouring the contents of the wet vac into a wash tub. Petitioner testified as he went to empty the wet vac into the wash tub when is back "*said no*" and, at that point, Petitioner had to bend over and push the wet vac across the floor to empty it. (T35). Petitioner testified when his back "*said no*" he experienced a sharp pain in his back and he could no longer lift the wet vac. (T36). Petitioner testified he repeated the process of bending over and pushing the wet vac an additional 12 times before his coworker, Jim Leginski, took over. (T35).

Petitioner testified the pain he experienced at that time was constant and never went away. (T36). Petitioner testified after that incident his pain level never returned to the same level it was prior to that incident. (T37). Petitioner explained the pain that developed after lifting the wet vac was different type of pain than he previously experienced or reported during physical therapy or while walking. (T38). Petitioner testified prior to the wet vac incident his back pain would go away after stopping the activities he was preforming but after the incident his pain was constant. (T38).

Petitioner testified later that day, he spoke to Mr. Newland, the property manager, and Sue, the office manager, about the wet vac incident. (T39). At that time, Sue gave him an accident report which Petitioner completed. (PX14, T39). Petitioner testified May 13, 2020, was the last day he worked for Respondent. (T40).

On May 16, 2020, Petitioner underwent an MRI which showed spondylolisthesis of L5 and S1 with bilateral spondylolysis not present on the previous MRI. (PX 9, p. 876). After reviewing the MRI, Dr. Karahalios ordered a lumbar CT scan. (PX 5). On May 20, 2020 Petitioner underwent the CT scan which showed bilateral subacute fractures through L5 and right L4 pars interarticularis as well as the left L5 transverse process and a grade I anterolisthesis of L5 on S1. (PX 5, p. 268). At that time, Dr. Karahalios recommended an LSO brace and bone stimulator. (T42, PX 5, p. 265). Petitioner was referred to Dr. Hong for pain management. (PX 5, p. 265).

Petitioner returned to Dr. Hong on June 9, 2020. (PX 7, pg. 82). At that visit, Petitioner reported an increase in lower back pain due to wet vacuuming and painting at work. (PX 7, pg. 82). Petitioner continued to follow up with Dr. Hong but the pain medications did not fully alleviate his back pain. (T42, PX 7, pg. 79). Petitioner continued to use his back brace and the bone growth stimulator without improvement. (PX 5, pg. 246). Petitioner underwent a second CT scan on June 24, 2020 which showed stable findings compared to the prior study. (PX 5, pg. 237).

On June 25, 2020, Petitioner returned to Dr. Karahalios who recommended Petitioner proceed with instrumented fusion from L3-S1. (PX 5, pg. 228). On July 22, 2020, Petitioner received a denial for the surgery from the workers' compensation carrier so he proceeded with the surgery using his group health insurance plan. (PX 5, pg. 211). On August 18, 2020, Dr. Karahalios performed L3-S1 decompression and fusion consisting of a right L3-L5 hemilaminectomies, L3-S1 facetectomies, L3-S1 posterolateral arthrodesis, L3-S1 posterior interbody arthrodesis, insertion of intervertebral biomechanical device at L3-S1, and L3-S1 pedicle screw rod fixation. (PX 9, pg. 440). Following the surgery Petitioner continued to be restricted from working. (T44).

On February 9, 2021, Petitioner returned to Dr. Karahalios for his 6 month follow up visit. (PX 5, pg. 109). At that visit, Petitioner continued to report difficulties with strength and ambulation and he was still using a walker. (PX 5, pg. 107). On February 10, 2021, Petitioner was discharged from physical therapy noting continued complaints of pain and difficulty with standing for extended periods, using stairs, and getting in and out of bed. (RX10). It was determined that Petitioner plateaued with physical therapy so he was discharged with instruction to continue following up with his doctor. (RX10).

On May 3, 2021, Petitioner returned to Dr. Hong who recommended a caudal epidural steroid injection with sedation. (PX 7, pgs. 55-56). On May 28, 2021, Petitioner underwent the caudal epidural steroid injection. Dr. Hong diagnosed post laminectomy syndrome with irretractable lower back pain. (PX 7, pgs. 52-53). Petitioner returned to Dr. Hong on June 8, 2021, reporting excellent relief from the injection for approximately three days. (PX 7, pg. 49-50). Given the lack of extended relief, Dr. Hong considered the injection unsuccessful and declined to repeat the process. (PX 7, pg. 49-50).

On August 27, 2021, Petitioner returned to Dr. Karahalios for his 12 month follow up visit. (PX 5, pg. 93). At that visit, Petitioner reported persistent back pain which had increased in

severity since his last visit despite conservative treatment and ongoing pain management. (PX 5, pg. 93). A new MRI with and without contrast and a CT scan was ordered which Petitioner underwent on September 2, 2021 and September 7, 2021. (PX 5, pg. 384, T45). After reviewing the films, Dr. Karahalios opined Petitioner was not a surgical candidate and he released Petitioner from care but recommended Petitioner continue pain management with Dr. Hong. (T45).

On December 13, 2021, Dr. Hong recommended a spinal cord stimulator which Petitioner declined. (T46, PX 7, pg. 31). Petitioner continues to manage his symptoms with pain medications. (T46, PX 7, pg. 11-31). Petitioner testified he continues to see Dr. Hong once a month. (T48).

As to his current condition, Petitioner testified to ongoing pain complaints which impacts his activities of daily living including bathing, getting dressed, putting on shoes. (T47). Petitioner also testified that he can no longer perform household chores such as dishes or laundry. (T47). Petitioner testified he has never been allowed to return to work. (T47, 49).

Testimony of Ryan Newland, Witness for Respondent

Ryan Newland testified he is employed by Forster Premier, Inc., which is Respondent's management company. (T85). Mr. Newland testified as the managing company his responsibilities include overseeing day-to-day operations as well as overseeing the office and maintenance staff. (T86). Mr. Newland testified each time he visited the property he would go over various projects with Petitioner. (T90).

Mr. Newland testified he first learned of Petitioner's October 10, 2018 accident was in 2020 after he had a conversation with Petitioner in May of 2020 and after receiving a copy of Petitioner's May 2020 accident report. (T91). Mr. Newland testified he first learned of Petitioner's December 18, 2018 accident involving lifting the salt bags in 2020 at the same time he learned about Petitioner's October 10, 2018 accident. (T91). Mr. Newland testified he was aware of Petitioner's May 13, 2020 shop vac incident on May 13, 2020. (T100).

Mr. Newland testified prior to receiving the 2020 accident report, he never had any conversation with Petitioner about his 2018 work accidents nor did Petitioner ever mentioned injuring his back lifting salt bags in December of 2018. (T92). Mr. Newland testified after being advised of Petitioner's work accidents he never conducted any investigation nor did he question any of Petitioner's coworkers about the 2018 work accidents. (T.96).

Mr. Newland testified Petitioner took 3-4 weeks off work for the February 2020 surgery and that Petitioner had vacation and sick time to use. (T97). On cross examination Mr. Newland

denied telling Petitioner to use his vacation time. (T.101). Mr. Newland acknowledged speaking with Petitioner after the surgery regarding returning to work because Petitioner used up all his vacation and sick time. (T98). Mr. Newland also acknowledged telling Petitioner to obtain a doctor's note before returning to work. (T.98).

Mr. Newland testified Respondent has a form to be completed for work accidents and that the injured employee reports the accident to the onsite office manager who gives him the form once it is completed by the injured employee. (T86). Mr. Newland acknowledged Respondent does not have a written policy regarding the time frame an injured employee needs to complete the accident report. Mr. Newland testified there is no rule, no written policy but that's how it has always been done[2]. (T.107).

On cross examination, Mr. Newland testified snow contractors were hired in 2019 because the snow removal was a great deal of work for the two maintenance workers. (T105). Mr. Newland testified the process of obtaining contractors for snow removal started after discussing the issue with Petitioner, Jim, and the board. (T. 105). Mr. Newland testified the maintenance workers were getting up in age and Jim was having issues with his knee which was why the snow removal contract process was started. (T105, 110). Mr. Newland testified Petitioner never complained about the demands of the snow removal job nor did Petitioner ever complain about having even a sore muscle or issues performing his job duties. (T107). Mr. Newland acknowledged on December 18, 2020, the board president, Bill Bortolotti, was at the office. (T111).

Testimony of William Bortolotti, Witness for Respondent

William Bortolotti testified he was the president of the condominium association for 6 years and a board member for 12 years. (T140). Mr. Bortolotti testified he would occasionally be in the office with Mr. Newland. (T143). Mr. Bortolotti denied being informed that Petitioner injured his back lifting salt bags at work on December 18, 2018. (T140). Mr. Bortolotti testified he was not involved in the decision process of hiring outside contractors for snow removal. (T148). Mr. Bortolotti testified he was unaware that Petitioner underwent back surgery in February of 2020. (T144). Mr. Bortolotti testified he was not involved with workers' compensation accidents. (T145).

[2] Nancy Neary, who was employed by Respondent as an assistant community manager, testified the only one workers' compensation claim was filed in 9 years and that claim involved her own work injury. (T.138).

Testimony of Nancy Neary, Witness for Respondent

Nancy Neary testified she was previously employed by Respondent as an assistant community manager working three days a week. (T133). Ms. Neary last worked for Respondent in June of 2019. (T128, T129).

Ms. Neary testified Petitioner did not tell her on October 10, 2018 he fell at work nor did Petitioner he tell her on December 18, 2018 that he hurt his back lifting salt. (T133). Ms. Neary testified she did not complete any paperwork for those incidents nor was she aware Petitioner missed work at the end of 2018 through 2019. (T133). Ms. Neary stopped working for Respondent in June of 2019 after being diagnosed with stage 4 lung cancer. (T128). Ms. Neary testified in the nine years she was employed by Respondent she only participated in the filing of one workers' compensation claim and that claim involved her own injury. (T138). Ms. Neary testified if someone reported a work accident, she would generate the accident report and forward it to her supervisor, Ryan Newland. (T132).

Testimony of Jim Leginski, Witness for Respondent

Jim Leginski testified he worked for Respondent as a maintenance engineer and his job duties included shoveling snow and maintaining the property. (T113-114). Mr. Leginski worked the same shift as Petitioner and he testified that each day he and Petitioner would start the day in the office going over work which needed to be done. (T115).

Mr. Leginski testified Petitioner did not report to him falling at work in October of 2018. (T116). Regarding Petitioner's back pain after lifting salt, Mr. Leginski testified Petitioner may have told him but he doesn't remember. (T116). Mr. Leginski testified Petitioner told him about seeing a doctor for his back in 2019 but not how it happened. (T117).

Regarding lifting the bags of salt, Mr. Leginski testified he and Petitioner both struggled lifting the bags of salt. (T124). Mr. Leginski testified he and Petitioner both discussed with Mr. Newland the difficulty performing the snow removal duties before Respondent contracted the work out. (T124). Mr. Leginski testified it was probable the conversations occurred in December of 2018 prior to the work being contracted out. (T125).

Mr. Leginski testified when Petitioner returned to work around May 6, 2020, he worked more slowly and walked kind of hunched over. (T. 120). Mr. Leginski testified on May 13, 2019 he and Petitioner vacuumed up water with a shop vac. (T120). Mr. Leginski testified he did not see Petitioner emptying the shop vac because he and Petitioner work in different buildings. (T123).

Testimony of Dr. Dean Karahalios, the Treating Surgeon

Dr. Karahalios is a neurosurgeon who specializes in complex spinal surgery. (PX13). Petitioner presented to Dr. Karahalios on August 15, 2019. At that visit, Petitioner reported low back pain beginning in October of the prior year after falling at work. Petitioner complained of pain radiating into his bilateral lower extremities. (PX13, p. 9).

The exam noted tenderness in the paraspinal region. Dr. Karahalios reviewed an MRI dated February 11, 2019 which, he said, showed degenerative changes most pronounced at L4-S1 with mild degenerative soft tissue edema in the parafacet regions around the facet joints. Dr. Karahalios noted the MRI showed severe stenosis at L4-5 and L5-S1. (PX13, p. 11). Dr. Karahalios diagnosed Petitioner with a symptomatic lumbar degenerative condition and, he believed, Petitioner's radiating symptoms were likely related to the foraminal stenosis in the lower lumbar area. Dr. Karahalios also diagnosed mechanical back pain and facet arthropathy involving the facet joints in the back of the spine. (PX13, p. 11).

At that time Dr. Karahalios opined Petitioner's fall in October of 2018 was a competent mechanism of injury that aggravated his degenerative lumbar condition. (PX13, p. 12). Dr. Karahalios testified as the spine degenerates it loses the ability to carry its own weight and becomes more prone to injury because of the lost structural capacity. (PX13, p. 12)

Dr. Karahalios testified Petitioner was administered injections which provided temporarily relief. Dr. Karahalios testified he reviewed an MRI taken in 2020 and compared it to the MRI taken in 2019. Dr. Karahalios noted severe right and moderate left foraminal stenosis at L4-5 and severe right and moderate left foraminal stenosis at L5-S1and, at that time, he recommended surgery to open the nerve root passages which Petitioner underwent on February 19. 2020. (PX13, p. 14).

Dr. Karahalios testified six weeks after surgery Petitioner was doing well with some mild low back pain and radiating pain. Dr. Karahalios testified Petitioner's surgical outcome was very favorable and he was moving the right direction. (PX13, p. 15). At that time, Petitioner started physical therapy and Dr. Karahalios issued work restrictions of no lifting over 10-15 pounds and no overly strenuous activity. (PX13, p.16).

Around May 21, 2020, Dr. Karahalios testified he spoke to Petitioner who reported pain in his back and leg after returning to work[3]. Petitioner followed up with Dr. Karahalios on June 25, 2020 and, at that visit, Petitioner reported returning to work and engaging in heavy activity, strenuous activity involving pushing and pulling heavy weights. Dr. Karahalios ordered additional imaging which showed Petitioner developed pars fractures in his spine. (PX13, p. 18). At that time, Dr. Karahalios believed Petitioner may need surgery but Petitioner desired to proceeded conservatively with bracing. (PX13, p. 18).

Dr. Karahalios testified pars fractures after decompressive surgery is unusual but that it could happen. Dr. Karahalios testified Petitioner's pars fractures happened catastrophically at multiple sites causing the spine to become unstable at L4-5 and L5-S1. (PX13, p. 21). Dr. Karahalios testified the pars factures were new findings. Dr. Karahalios indicated both Petitioner and his wife believed Petitioner was doing well 18 weeks after the surgery until returning to work and upon returning to work Petitioner was engaged in activities including wet vacuuming and painting which involved bending, twisting, reaching, and extending which caused Petitioner to experience an acute onset of back pain. (PX13, p. 20).

At that visit, Dr. Karahalios performed an examination which showed bilateral neural tension signs. (PX13, p. 20). At that time, Dr. Karahalios recommend surgery because Petitioner's spine was unstable from the pars fractures. (PX13, p. 21). Dr. Karahalios opined Petitioner's work activities after return to work could be a competent mechanism for causing the pars fracturs. Dr. Karahalios testified the structures left behind after the decompression surgery are responsible for maintaining the structure of the spine but as one twists and turns it places stresses on those structures and those structures could break. Dr. Karahlios testified Petitioner's case was very unusually because the structures broke in so many different areas. (PX13, p. 22). Dr. Karahlios testified it was clear that some sort of traumatic event caused the fractures and the types of activities Petitioner described could have caused it. (PX13, p. 23).

On August 18, 2020, Petitioner underwent a lumbar fusion surgery from L3 to S1. Dr. Karahlios testified 12 weeks following the surgery Petitioner was doing well with no radiating pain into the legs but that Petitioner reported some low back pain and weakness in the right lower extremity. (PX13, p. 25).

[3] The date of the phone call appears to have been on May 21, 2020 and not May 21, 2021. The error involved a question by the attorney.

Dr. Karahalios opined Petitioner's work activities as reported on May 21, 2020 was a cause or aggravating factor to his current condition. (PX13, p. 29). Dr. Karahalios testified the activities Petitioner described placed forces on the spine which caused the pars fractures because the spine was destabilized by the original surgery. (PX13, p. 29). Dr. Karahalios also opined the fusion surgery was needed because of the activities Petitioner described after returning to work caused or aggravated Petitioner's condition. (PX13, p. 29). Dr. Karahalios opined both surgeries were related to Petitioner's work activities. Dr. Karahalios testified the first surgery was necessary to decompress the neural elements and the second surgery was necessary due to the pars fractures caused by Petitioner's work activities. (PX13, p. 56).

Testimony of Dr. Frank Phillps, who Performed a Records Review

Dr. Frank Phillps is a board-certified orthopedic surgeon who performed a records review. (RX1, pgs. 4-7). Dr. Phillps testified he reviewed Petitioner's medical records and noted that Petitioner saw an internist on December 20. 2018 and only mentioned left leg problems but not back pain. (RX1, p. 8). Dr. Phillps testified Petitioner's first complained of low back pain on January 11, 2019 and, at that time, x-rays were performed which, he said, showed disk space narrowing, spur formation, severe degeneration as well as osteoarthritis of the joints, facet joints particularly at L5-S1 but less severe at L4-5. (RX1, p. 9).

Dr. Phillps reviewed the MRI report dated February 11, 2019[4]. (RX1, pgs. 11-12). Dr. Phillips testified the February 10, 2020 CT scan report which, he said, showed multilevel degenerative changes with mild to moderate right sided foraminal stenosis at L4-5 and L5-S1. (RX1, pgs. 12-16). Dr. Phillips also reviewed the reports from the May 16, 2020 MRI as well as the CT scan which, he said, showed subacute fractures through the pars at L4-5 and L5-S1. (RX1, p. 19).

Dr. Phillips testified the pars are bony structures in the back which are very important to the structural integrity of the spine and when they are disrupted you can get abnormal slipping of the vertebrae. (RX1, p. 19). Dr. Phillips testified the impression from the CT scan showed surgical changes (*i.e*. the cleaning out around the nerves) and what the radiologist called "*subacute fractures*" which, he said, means "*not very acute*". (RX1, pgs. 18-19). Dr. Phillips acknowledged

[4] Dr. Phillips did not review the actual films. Dr. Phillips testified the only film he reviewed was an x-ray. (RX1, p.33).

the pars fractures were new findings not on any prior CT scans. (RX1, p. 19). Dr. Phillips opined the pars fractures were related to Petitioner's back pain and the fusion surgery. (RX1, p. 20).

Dr. Phillips opined Petitioner had chronic degenerative changes of his low back over time and he developed more and more back pain related to that degenerative condition. Dr. Phillips testified the medical record do not substantiate any specific trauma or any trauma that was responsible for Petitioner's back pain. (RX1, p. 21). Dr. Phillips opined Petitioner's February 19, 2020 surgery was related to degenerative changes of the lumbar spine and not due to Petitioner's October 2018 work accident. (RX1, p. 22). Dr. Phillips testified his opinions were based upon Petitioner's chronic back pain with no clearcut reports at the time of the alleged injuries which specifically relate the back pain to those injuries. Dr. Phillips testified Petitioner's daily activities caused his back pain and the imaging showed chronic degenerative changes that, he said, developed and had been present for many years. (RX1, p. 23). Dr. Phillips opined Petitioner's surgery had no relationship to Petitioner's October 2018 work accident. (RX1, p. 23).

Regarding the pars fractures, Dr. Phillips testified it was possible the laminectomy and foraminotomy surgery either directly or indirectly caused the subacute fractures seen on the May of 2020 CT scan. (RX1, p. 25). Dr. Phillips testified with a fairly aggressive decompression it's possible the bones weakened such that they were predisposed to fracture even without trauma. (RX1, pgs. 25-26). Dr. Phillips testified he didn't have any specific information about the work Petitioner performed after returning to work. (RX1, p. 29). Dr. Phillips was asked if the records showed Petitioner returned to work on May 6, 2020 could the subacute fractures predate Petitioner's return to work and he responded, "*I mean, you know, you've –it's hard to tell for sure but, I mean, based on the report where they talk about subacute fractures, that would suggest they weren't very acute meaning they had been present for at least months before you'd call something subacute. So I think it likely did predate that May 5th or whatever the date was in early May return to work recommendations*". (RX1, p. 30).

On cross-examination, Dr. Phillips testified he never examined nor spoke to Petitioner. (RX1, p. 33). Dr. Phillips acknowledged not reviewing any MRIs or CTs scans but that he did review a 2019 x-ray. (RX1, p. 33). Dr. Phillips acknowledged not being provided a copy of Petitioner's job description or knowing what Petitioner does other than performing custodian work. (RX1, pgs. 34-35). Dr. Phillips also acknowledged heavy activities could aggravate Petitioner's stress fractures and cause back pain. (RX1, p. 35).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (C), Whether an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator Finds as follows:

The claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980); *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 279 Ill. Dec. 726 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise, v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). "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." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003) Citing Caterpillar Tractor, 129 Ill. 2d at 58.

An injury "arises out of one's" employment if it originates from a risk connected with, or incidental to the employment, involving a causal connection between the employment and the accidental injury. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 (1987). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini,* 117 Ill. 2d at 45. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 2016 IL App.(3d), 150500WC, Par. 34. 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 be reasonable be expected to perform incident to her or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58,

see also *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n,* 2013 IL 115728, Par 18, *Sisbro*, 207 Ill. 2d. at 204. Risk incident to employment are those acts the employer might reasonably expect the employee to perform in fulfilling is assigned job duties. *McAllister v. v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020), citing *Orsini,* 117 Ill. App. 2d. at 45, *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386, 388 (1965). The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n,* 236 Ill. 2d 132, 149 (2010).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment as more fully explained below.

Petitioner testified to injuring his low back lifting a 50-pound bag of salt. Petitioner testified he was filling 50-pound bags of salt into a salt spreader which was located approximately 5 feet off the ground on the back of a plow truck. (T18-19). Petitioner testified after filling the salt spreader with 23-24 bags of salt, he experienced a sudden sharp pain in his low back which caused him to drop a bag of salt. (T19). Petitioner attempted to lift the bag of salt after waiting about 10 minutes but he still wasn't able to lift it, so he went to the office to report the incident. (T19). The Arbitrator finds Petitioner's trial testimony consistent with the history of the injury that Petitioner provided to Drs. Karahalios and Hong. The courts presume that when a person seeks treatment for an injury, he will not falsify statements to a physician from whom he expects to receive medical aid. *Shell Oil Co., v. Industrial Comm'n*. 2 Ill.2d 590, 592; 119 N.E.2d 224, 226 (1954).

Respondent called several witnesses who disputed the timeliness of Petitioner's notice but not whether Petitioner sustained an accident which arose out of and in the course of his employment. Mr. Newland testified he never investigated Petitioner's work accidents. (T96). The testimony of the employee, if not impeached or rebutted, is sufficient to support an award. *Phoell Manufacturing Co., Industrial Comm'n*, 54 Ill.2d 119, 295 N.E.2d 469 (1973); *Sahara Coal Co., v. Industrial Comm'n*, 66 Ill.2d 353, 362 N.E.2d. 343 (1977).

With Respect to Issue (E), Whether timely notice of the accident given to Respondent, the Arbitrator Finds as follows:

Section 6 (C) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(C)(2) states that "[N]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceeding on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceeding by such defect or inaccuracy." 820 ILCS 305/6(c)(West 2004). Simply reporting a condition without referencing its cause does not put an employer on notice of the accident and does not satisfy the notice requirements under Section 6(c) of the Act. *Swing v. (Compass Group USA), IWCC*, 19 ILWCLB 217 (Ill.App.Ct., 1st 20111). The giving of notice under the act is jurisdictional and a prerequisite of the right to maintain a proceeding under the act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. Workers' Compensation Comm'n*, 870 N.E.2d 821 (2007).

The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence that he provided notice of the accident to Respondent as required under the Act, as more fully explained below.

Respondent claims Petitioner did not provide notice of his accident within the 45 days as required under the Act. It is clear from the record Respondent did not have any written policy or procedures requiring employees to provide notice of accidents within a specific period of time. Mr. Newland testified "*there's no rule. No written policy, but that's how we've always done it previously*." (T.107). Despite claiming that's how we've always done it, the Arbitrator notes in the nine years prior to Petitioner's first accident Respondent had only one reported work accident and that claim involved Ms. Neary, the office manager, own injury. (T132, 138).

The Arbitrator finds it reasonable infer that Respondent was aware of Petitioner's back issues. Respondent had only two maintenance engineers working each day for a condominium complex covering 26 acres, four parking lots, 24-35 units and 2 ½ miles of sidewalks. Each morning the two maintenance engineers would report to the office and receive their daily work assignments. Mr. Newland testified every time he was at the property, he would go over projects with Petitioner and the other maintenance engineer. (T90). The Arbitrator finds Mr. Newland's testimony of being unaware of Petitioner's back condition after December 18, 2018 was not credible given that work schedules had to be maintained, projects needed to be coordinated, and

emergencies repairs needed to be made which included the snow or ice removal. Petitioner testified day after the incident he took 8 weeks of vacation after speaking to Mr. Newland. (T20, 22). It is reasonable to infer, Petitioner discussed his health issues when receiving his daily work assignments with Mr. Newland. The Arbitrator also notes Mr. Newland's testimony conflicts with the testimony of both Petitioner and Mr. Leginski regarding retaining a private company to perform snow removal services after Petitioner's December 18, 2018 work accident. Mr. Newland testified the snow contractors were hired in 2019 after discussing the issue with the board. (T104, 105). Mr. Newland testified the process for hiring a company to perform the snow removal services started because it was a lot of work for two guys who were getting up there in age. (T105).

Regardless of Respondent's lack of written policies or rules doesn't circumvent the Act's jurisdictional notice requirement. Petitioner did not argue the issue involves the sufficiency of the notice and Respondent failed to show prejudice or that the 45-day notice requirement should be tolled or was waived because of Respondent's lack of rules or procedures. As such, the Arbitrator finds that Petitioner failed to prove by the preponderance of the evidence notice of the accident was within 45 days as required under the Act. Petitioner did not seek medical treatment for his back until January 11, 2019. Petitioner originally saw a doctor on January 2, 2019 but, at that visit, he didn't disclose his back pain. At the January 11, 2019 doctor's visit, Petitioner reported back pain and not that it was from a work accident. It was not until February of 2019 did Petitioner provide his doctors a detailed history of injuring his back at work. Petitioner testified he didn't initially tell his doctor about his work accident because he did not realize his back was causing his problems. (T25).

With Respect to Issues (F, J, K, L), the Arbitrator Finds as follows:

The lack of notice shouldn't mean that Petitioner didn't sustain an otherwise compensable work accident. However, given the Arbitrator's finding regarding notice the remaining issues are moot and need not be addressed. The relief sought by Petitioner is hereby denied.

By: /o/ *Frank J. Soto* November 16, 2023
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011574
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	20WC011572; 20WC011573;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0471
Number of Pages of Decision	30
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	John Morris

DATE FILED: 9/30/2024

/s/Stephen Mathis, Commissioner

Signature

24IWCC0471

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HENRY BADE,

Petitioner,

vs. NO: 20 WC 011574

WESTBROOK WEST CONDOMINIUM,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, temporary 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.

Permanent Disability

The Commission views the evidence of disability differently with respect to Section 8.1b(b) factor (v).

(v) evidence of disability corroborated by the treating medical record

The Arbitrator stated that he gave significant weight to this factor in his Decision. The Commission however notes that the records of Dr. Karahalios reflect that Petitioner sustained catastrophic pars fractures at multiple levels and spondylolisthesis of the L5 onto the sacral spine. Petitioner underwent an extensive, complicated surgery from which he has yet to recover significant function.

Petitioner at present walks with a dramatically shortened stride and has a stooped posture.

He has undergone prolonged and extensive post-operative rehabilitation. He is unable to walk more than a short distance before has to stop due to pain. He relies on his wife for assistance with all of his activities of daily living. His posture is permanently stooped, and he is unable to stand up straight. He relies on pain management including epidural steroid injections, daily narcotic medications, and gabapentin. His sensorium is impacted, and his overall quality of life is permanently affected. It is expected that Petitioner will have to continue with pain management for the rest of his life. His sleep is disturbed and he is in inconstant pain even with medication.

Petitioner was released from care by Dr. Karahalios on September 9, 2021. He remains under the care of Dr. Hong for pain management care.

Having weighed the evidence and analyzed Section 8.1b(b) factor (v), the Commission finds that Petitioner sustained a 50% loss of use of the person as a whole under Section(d)2 of the Act, for an injury resulting in loss of trade.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $946.67 per week for a period of 69 1/7th weeks, commencing May 14, 2020, through September 9, 2021, 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 $836.69 per week at a statutory maximum for a period of 250 weeks of PPD benefits , as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 50% loss of use of the person as a whole, for an injury resulting in loss of trade.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of medical bills identified in Petitioner's exhibits 1 through 12 for services provided after May 13, 2020, subject to the fee schedule for medical expenses under §8(a) 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 $60,000.00. 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.

September 30, 2024

SM/msb
o-8.7.24
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	20WC011574
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	John Morris

DATE FILED: 11/17/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/Frank Soto, Arbitrator

Signature

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

Herbert Bade
Employee/Petitioner

v.

Westbrook West Condominium
Employer/Respondent

Case # **20WC011574**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/17/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/13/2018**, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**73,840.00**; the average weekly wage was $**1,420.00**.

On the date of accident, Petitioner was **66** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services given none are owed.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services given none are owed.

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**.

ORDER

Petitioner proved by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment on May 13, 2020, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Petitioner proved by the preponderance of the evidence that he provided notice of the accident to Respondent as required under the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Petitioner proved by the preponderance of the evidence that his current low back condition is causally related to his work injury of May 13, 2020, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay the medical bills identified in Petitioner's exhibits 1 through 12 for medical services provided after May 13, 2020, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner Temporary Total Disability (TTD) benefits from May 14, 2020 through September 9, 2021, representing 69 1/7ths weeks, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner permanent partial disability benefits for 200 weeks because the injuries sustained cause 40% loss of use of a person as a whole, pursuant to §8(d)2 of the Act, for an injury resulting in a loss of trade, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner compensation that has accrued from May 13, 2020 through August 17, 2023 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.

By: /o/ Frank J. Soto
Arbitrator

NOVEMBER 17, 2023

Procedural History

Herbert Bade (hereinafter referred to as "Petitioner") filed three claims involving his lower back while working for Westbrook West Condominium (hereinafter referred to as "Respondent"). All three cases were tried together but separate decisions were issued for each case.

In the oldest claim (*i.e.* 20WC011572), Petitioner claims he injured his low back after slipping and falling at work on October 10, 2018. In that case, the disputed issues are accident, notice, causal connection, unpaid medical bills, TTD benefits, and the nature and extent of Petitioner's injury. (Arb. Ex. #1, 4).

In the second claim, Petitioner claims he injured his low back lifting bags of salt at work on December 12, 18, 2018 (*i.e.* 20WC011573). In that case, the disputed issues are accident, notice, causation, medical bills, TTD benefits, and the nature and extent of Petitioner's injury. (Arb. Ex. #2, 5).

In the third case, Petitioner claims he injured his low back using a shop vac at work on May 13, 2020 (*i.e.* 20WC0011574). In that case, the disputed issues are accident, notice, causation, unpaid medical bills, TTD benefits, and the nature and extent of Petitioner's injury, (Arb. Ex. #3, 6).

Findings of Fact

Petitioner was employed for 49 years by Respondent as a maintenance engineer at a condominium complex covering 26 acres consisting of 24 to 35 units, 4 parking lots and over 2 miles of sidewalks. (T11, 12). As part of his duties Petitioner performed a variety of work including snow removal and salt spreading. (T11). Petitioner testified during the years he worked for Respondent he sustained one prior work injury in 2002 which involve breaking his hand while using a snowplow. (T12-13). Petitioner testified prior to October 10, 2018, he never experienced any significant lower back pain or underwent prior medical treatment for his low back. (T13-14).

Work Accident of October 10, 2018 (20 WC 11572)

Petitioner testified on October 10, 2018, he was fixing a water leak when he walked into a laundry room he slipped and fell striking his buttock, elbow, and head on the ground. Petitioner testified the floor was slippery due to a cleaning crew stripping waxed floors. (T14).

Petitioner testified he went to the office and reported the incident to Nancy, the office manager. (T15). Petitioner did not seek medical treatment because, he believed, the pain would go away. (T16). Petitioner treated his symptoms with aspirin, Bengay, and ice. (T17). Petitioner

testified he continued to work but had to work slower due to pain. (T17). At that time, no accident report was completed. (T16) When asked to explain why an accident report wasn't completed, Petitioner responded that he was a "loyal worker" for 49 years who works through pain. (T16).

Work Accident of December 18, 2018 (20 WC 11573)

Petitioner testified to a second work accident on December 18, 2018. Petitioner testified he reinjured his low back filling a salt spreader. Petitioner testified the salt spreader is located on the back of a plow truck and is about five feet off the ground. Petitioner testified filled the salt spreader with approximately 23-24 50-pound bags of salt when he experienced sudden sharp low back pain which caused him to drop a bag of salt. (T19). After about 10 minutes, Petitioner attempted to lift the bag of salt but he couldn't. Petitioner testified, at that time, he went to the office and reported the incident. (T19).

Petitioner testified when entered the office Ryan Newland, the property manager, and Bill Bortilotti, the president of the Condominium association, were in the office. Petitioner testified he told them he injured his low back loading salt and he couldn't do it anymore. (T19). Petitioner testified during that conversation, Mr. Newland said you have plenty of time coming so take off and get yourself better. (T20). Petitioner testified, at that time, Mr. Newland discussed the possibility of hiring a contractor to perform snow removal. (T53).

Petitioner testified the following day he took vacation which consisted of eight weeks and, during that time, he treated his low back pain with ice and Bengay. (T20). Petitioner testified he wasn't feeling very well so he wanted to have a checkup. Petitioner testified he presented to Family Medical Center of LaGrange on January 2, 2019[1]. (T23). Petitioner testified he told the doctor his body wasn't feeling good and that he didn't know what was going on. (T23). Petitioner testified he did not mention low back pain at that time. (T23). The medical records show Petitioner reported issues with his left leg and that he was concerned about past exposure to asbestos. (PX1).

Petitioner returned to the doctor on January 11, 2019. The medical records reflect Petitioner reported low back pain at that visit. Petitioner testified he did not mention what caused his low back pain because he didn't think about it at the time. (T24). The medical records show Petitioner reported back pain and being stiff in the morning but that his symptoms improved during the day. (PX1). X-rays of the spine were taken which showed arthritis in the lumbar spine. (PX1).

[1] Petitioner testified his first visit with the doctor was on January 11, 2019 but his first visit was on January 2, 2019 and Petitioner's second visit was on January 11, 2019. (PX1),

On February 11, 2019, Petitioner presented to Advocate Medical Group. (T24, PX5). At that visit, Petitioner reported the slipping and falling at work and injuring his low back lifting bags of salt. Petitioner testified he realized his back was causing his problems so he told the doctor what happened. (T25). The medical records show Petitioner attributed his symptoms to slipping on wax/stripped floors while at work landing on his back and doing a lot of lifting of salt bags at work which aggravated his symptoms. (PX5, pg. 441). An MRI was ordered which Petitioner underwent on February 11, 2019. (T26).

Petitioner testified he was referred to a pain specialist, Dr. Hong at Gateway Spine, who recommended epidural steroid injections. (T28). Petitioner testified he was doing well after the injections but his pain returned. (T29). Petitioner testified Dr. Hong referred him to Dr. Karahalios, a neurosurgeon. (T30). Petitioner presented to Dr. Karahalios on August 15, 2019 who ordered another MRI and administered a second epidural steroid injection. (T30). Petitioner testified the second injection lasted 3-4 days. (T30).

On February 13, 2020, Dr. Karahalios recommended surgery consisting of a bilateral laminal foraminotomy at L4-5 and L5-S1. (PX 5, p. 367, T30-31). Petitioner continued working full-time until the date of his surgery. (T31). Petitioner used his own accrued benefit time for the surgery. (T31-32).

On February 19, 2020, Petitioner underwent the L4-5 laminectomy and bilateral foraminotomies at Advocate Lutheran General Hospital. (PX 10). On March 3, 2020, Petitioner followed up with Dr. Karahalios' office reporting he was doing well. (PX 5, p. 351). On April 2, 2020, Petitioner presented for a virtual follow-up examination with Dr. Karahalios. (PX 5, p. 330). At that time, Petitioner reported weakness in his lower extremities was improving but he continued to experience mild low back pain and occasional radiating pain. (PX 5, p. 330). In the medical records, Dr. Karahalios described Petitioner's symptoms as markedly improved and, at that time, physical therapy was recommended. (PX 5, p. 330).

Petitioner attended physical therapy at Doctors of Physical Therapy. (PX10). As part of the patient intake process, Petitioner filled out a form titled INJURY QUESTIONNAIRE which asked whether the prescribed treatment was accident related. Petitioner did not check the box indicating the treatment was related to a work injury. (RX10). When asked why he did not check the box, Petitioner testified he skipped that part of the form and just signed his name. (T67)

Petitioner's first physical therapy sessions was on April 7, 2020. (PX10). The physical therapy records show that Petitioner had difficulty standing up straight and performing moderately strenuous physical activities for extended periods. (PX10). The April 22, 2020 physical therapy records shows Petitioner was experiencing general improvements but that he continued to have difficulty standing up straight. (PX10)

On April 23, 2020, Petitioner reported to the physical therapists that he was concern about being unable to perform his full and unrestricted work duties. (RX6). The next day, Petitioner contacted the office of Dr. Karahalios reported difficulty standing straight and he was told that he would continue to gain flexibility with physical therapy. (PX 5, p. 322)

On April 30, 2020, the physical therapy notes indicate Petitioner was improving but that his pain returns following the sessions. (RX6). On that same day, Petitioner's wife contacted Dr. Karahalios office reported that Petitioner was doing well overall but he continued to have issues with flexibility. (PX 5, p. 320). Petitioner was instructed to continue with physical therapy. (PX 5, p. 320)

Petitioner testified he was told to return to work by May 6, 2020 or he would lose his job. (T71). Mr. Newland acknowledged contacting Petitioner after the surgery and advising Petitioner his vacation and sick time was expiring and that he would need a doctor's note to return to work. (T98). Petitioner testified to contacting Dr. Karahalios office to facilitate returning to work. (T74). Petitioner requested documentation from Dr. Karahalios office confirming he could return to work with restrictions. (PX 5, p. 314, T32). On May 6, 2020, Petitioner was released to light-duty with restrictions of no lifting over 10-15 pounds and no overly strenuous activity. (PX 5, p. 316, T32).

Petitioner testified after returning to work Respondent would not honor his work restrictions. (T33). Petitioner testified upon returning to work he was required to carry various items, climb ladders, perform overhead reaching which exacerbated his lower back. (T34). On May 7, 2020, Petitioner's wife called the Dr. Karahalios office reporting Petitioner experienced increasing back pain after returning to work. (PX 5, p. 306). At that time, Dr. Karahalios ordered an updated MRI. (T34, PX 5, p. 305). On May 12, 2020, the day before his alleged work incident, Petitioner returned to the physical therapy reporting his pain improved since the last visit and, at that visit, Petitioner reported "no pain" compared to the "8/10 pain" level he reported at the prior physical therapy session. (RX6).

Work Accident of May 13, 2020 (20 WC 11574)

On May 13, 2020 Petitioner testified the basement of a building flooded due to the failure of a sump pump. Petitioner testified after the old sump pump was removed, he carried it about 50 feet to the boiler room. Upon returning to the area, Petitioner started to vacuum up the water on the floor using a wet vac. Petitioner testified the wet vac held between 5 and 6 gallons of water and he had to repeatedly empty the wet vac. At first Petitioner testified to carrying the wet vac filled with water and pouring the contents of the wet vac into a wash tub. Petitioner testified as he went to empty the wet vac into the wash tub when is back "*said no*" and, at that point, Petitioner had to bend over and push the wet vac across the floor to empty it. (T35). Petitioner testified when his back "*said no*" he experienced a sharp pain in his back and he could no longer lift the wet vac. (T36). Petitioner testified he repeated the process of bending over and pushing the wet vac an additional 12 times before his coworker, Jim Leginski, took over. (T35).

Petitioner testified the pain he experienced at that time was constant and never went away. (T36). Petitioner testified after that incident his pain level never returned to the same level it was prior to that incident. (T37). Petitioner explained the pain that developed after lifting the wet vac was different type of pain than he previously experienced or reported during physical therapy or while walking. (T38). Petitioner testified prior to the wet vac incident his back pain would go away after stopping the activities he was preforming but after the incident his pain was constant. (T38).

Petitioner testified later that day, he spoke to Mr. Newland, the property manager, and Sue, the office manager, about the wet vac incident. (T39). At that time, Sue gave him an accident report which Petitioner completed. (PX14, T39). Petitioner testified May 13, 2020, was the last day he worked for Respondent. (T40).

On May 16, 2020, Petitioner underwent an MRI which showed spondylolisthesis of L5 and S1 with bilateral spondylolysis not present on the previous MRI. (PX 9, p. 876). After reviewing the MRI, Dr. Karahalios ordered a lumbar CT scan. (PX 5). On May 20, 2020 Petitioner underwent the CT scan which showed bilateral subacute fractures through L5 and right L4 pars interarticularis as well as the left L5 transverse process and a grade I anterolisthesis of L5 on S1. (PX 5, p. 268). At that time, Dr. Karahalios recommended an LSO brace and bone stimulator. (T42, PX 5, p. 265). Petitioner was referred to Dr. Hong for pain management. (PX 5, p. 265).

Petitioner returned to Dr. Hong on June 9, 2020. (PX 7, pg. 82). At that visit, Petitioner reported an increase in lower back pain due to wet vacuuming and painting at work. (PX 7, pg. 82). Petitioner continued to follow up with Dr. Hong but the pain medications did not fully alleviate his back pain. (T42, PX 7, pg. 79). Petitioner continued to use his back brace and the bone growth stimulator without improvement. (PX 5, pg. 246). Petitioner underwent a second CT scan on June 24, 2020 which showed stable findings compared to the prior study. (PX 5, pg. 237).

On June 25, 2020, Petitioner returned to Dr. Karahalios who recommended Petitioner proceed with instrumented fusion from L3-S1. (PX 5, pg. 228). On July 22, 2020, Petitioner received a denial for the surgery from the workers' compensation carrier so he proceeded with the surgery using his group health insurance plan. (PX 5, pg. 211). On August 18, 2020, Dr. Karahalios performed L3-S1 decompression and fusion consisting of a right L3-L5 hemilaminectomies, L3-S1 facetectomies, L3-S1 posterolateral arthrodesis, L3-S1 posterior interbody arthrodesis, insertion of intervertebral biomechanical device at L3-S1, and L3-S1 pedicle screw rod fixation. (PX 9, pg. 440). Following the surgery Petitioner continued to be restricted from working. (T44).

On February 9, 2021, Petitioner returned to Dr. Karahalios for his 6 month follow up visit. (PX 5, pg. 109). At that visit, Petitioner continued to report difficulties with strength and ambulation and he was still using a walker. (PX 5, pg. 107). On February 10, 2021, Petitioner was discharged from physical therapy noting continued complaints of pain and difficulty with standing for extended periods, using stairs, and getting in and out of bed. (RX10). It was determined that Petitioner plateaued with physical therapy so he was discharged with instruction to continue following up with his doctor. (RX10).

On May 3, 2021, Petitioner returned to Dr. Hong who recommended a caudal epidural steroid injection with sedation. (PX 7, pgs. 55-56). On May 28, 2021, Petitioner underwent the caudal epidural steroid injection. Dr. Hong diagnosed post laminectomy syndrome with irretractable lower back pain. (PX 7, pgs. 52-53). Petitioner returned to Dr. Hong on June 8, 2021, reporting excellent relief from the injection for approximately three days. (PX 7, pg. 49-50). Given the lack of extended relief, Dr. Hong considered the injection unsuccessful and declined to repeat the process. (PX 7, pg. 49-50).

On August 27, 2021, Petitioner returned to Dr. Karahalios for his 12 month follow up visit. (PX 5, pg. 93). At that visit, Petitioner reported persistent back pain which had increased in

severity since his last visit despite conservative treatment and ongoing pain management. (PX 5, pg. 93). A new MRI with and without contrast and a CT scan was ordered which Petitioner underwent on September 2, 2021 and September 7, 2021. (PX 5, pg. 384, T45). After reviewing the films, Dr. Karahalios opined Petitioner was not a surgical candidate and he released Petitioner from care but recommended Petitioner continue pain management with Dr. Hong. (T45).

On December 13, 2021, Dr. Hong recommended a spinal cord stimulator which Petitioner declined. (T46, PX 7, pg. 31). Petitioner continues to manage his symptoms with pain medications. (T46, PX 7, pg. 11-31). Petitioner testified he continues to see Dr. Hong once a month. (T48).

As to his current condition, Petitioner testified to ongoing pain complaints which impacts his activities of daily living including bathing, getting dressed, putting on shoes. (T47). Petitioner also testified that he can no longer perform household chores such as dishes or laundry. (T47). Petitioner testified he has never been allowed to return to work. (T47, 49).

Testimony of Ryan Newland, Witness for Respondent

Ryan Newland testified he is employed by Forster Premier, Inc., which is Respondent's management company. (T85). Mr. Newland testified as the managing company his responsibilities include overseeing day-to-day operations as well as overseeing the office and maintenance staff. (T86). Mr. Newland testified each time he visited the property he would go over various projects with Petitioner. (T90).

Mr. Newland testified he first learned of Petitioner's October 10, 2018 accident was in 2020 after he had a conversation with Petitioner in May of 2020 and after receiving a copy of Petitioner's May 2020 accident report. (T91). Mr. Newland testified he first learned of Petitioner's December 18, 2018 accident involving lifting the salt bags in 2020 at the same time he learned about Petitioner's October 10, 2018 accident. (T91). Mr. Newland testified he was aware of Petitioner's May 13, 2020 shop vac incident on May 13, 2020. (T100).

Mr. Newland testified prior to receiving the 2020 accident report, he never had any conversation with Petitioner about his 2018 work accidents nor did Petitioner ever mentioned injuring his back lifting salt bags in December of 2018. (T92). Mr. Newland testified after being advised of Petitioner's work accidents he never conducted any investigation nor did he question any of Petitioner's coworkers about the 2018 work accidents. (T.96).

Mr. Newland testified Petitioner took 3-4 weeks off work for the February 2020 surgery and that Petitioner had vacation and sick time to use. (T97). On cross examination Mr. Newland

denied telling Petitioner to use his vacation time. (T.101). Mr. Newland acknowledged speaking with Petitioner after the surgery regarding returning to work because Petitioner used up all his vacation and sick time. (T98). Mr. Newland also acknowledged telling Petitioner to obtain a doctor's note before returning to work. (T.98).

Mr. Newland testified Respondent has a form to be completed for work accidents and that the injured employee reports the accident to the onsite office manager who gives him the form once it is completed by the injured employee. (T86). Mr. Newland acknowledged Respondent does not have a written policy regarding the time frame an injured employee needs to complete the accident report. Mr. Newland testified there is no rule, no written policy but that's how it has always been done[2]. (T.107).

On cross examination, Mr. Newland testified snow contractors were hired in 2019 because the snow removal was a great deal of work for the two maintenance workers. (T105). Mr. Newland testified the process of obtaining contractors for snow removal started after discussing the issue with Petitioner, Jim, and the board. (T. 105). Mr. Newland testified the maintenance workers were getting up in age and Jim was having issues with his knee which was why the snow removal contract process was started. (T105, 110). Mr. Newland testified Petitioner never complained about the demands of the snow removal job nor did Petitioner ever complain about having even a sore muscle or issues performing his job duties. (T107). Mr. Newland acknowledged on December 18, 2020, the board president, Bill Bortolotti, was at the office. (T111).

Testimony of William Bortolotti, Witness for Respondent

William Bortolotti testified he was the president of the condominium association for 6 years and a board member for 12 years. (T140). Mr. Bortolotti testified he would occasionally be in the office with Mr. Newland. (T143). Mr. Bortolotti denied being informed that Petitioner injured his back lifting salt bags at work on December 18, 2018. (T140). Mr. Bortolotti testified he was not involved in the decision process of hiring outside contractors for snow removal. (T148). Mr. Bortolotti testified he was unaware that Petitioner underwent back surgery in February of 2020. (T144). Mr. Bortolotti testified he was not involved with workers' compensation accidents. (T145).

[2] Nancy Neary, who was employed by Respondent as an assistant community manager, testified the only one workers' compensation claim was filed in 9 years and that claim involved her own work injury. (T.138).

Testimony of Nancy Neary, Witness for Respondent

Nancy Neary testified she was previously employed by Respondent as an assistant community manager working three days a week. (T133). Ms. Neary last worked for Respondent in June of 2019. (T128, T129).

Ms. Neary testified Petitioner did not tell her on October 10, 2018 he fell at work nor did Petitioner he tell her on December 18, 2018 that he hurt his back lifting salt. (T133). Ms. Neary testified she did not complete any paperwork for those incidents nor was she aware Petitioner missed work at the end of 2018 through 2019. (T133). Ms. Neary stopped working for Respondent in June of 2019 after being diagnosed with stage 4 lung cancer. (T128). Ms. Neary testified in the nine years she was employed by Respondent she only participated in the filing of one workers' compensation claim and that claim involved her own injury. (T138). Ms. Neary testified if someone reported a work accident, she would generate the accident report and forward it to her supervisor, Ryan Newland. (T132).

Testimony of Jim Leginski, Witness for Respondent

Jim Leginski testified he worked for Respondent as a maintenance engineer and his job duties included shoveling snow and maintaining the property. (T113-114). Mr. Leginski worked the same shift as Petitioner and he testified that each day he and Petitioner would start the day in the office going over work which needed to be done. (T115).

Mr. Leginski testified Petitioner did not report to him falling at work in October of 2018. (T116). Regarding Petitioner's back pain after lifting salt, Mr. Leginski testified Petitioner may have told him but he doesn't remember. (T116). Mr. Leginski testified Petitioner told him about seeing a doctor for his back in 2019 but not how it happened. (T117).

Regarding lifting the bags of salt, Mr. Leginski testified he and Petitioner both struggled lifting the bags of salt. (T124). Mr. Leginski testified he and Petitioner both discussed with Mr. Newland the difficulty performing the snow removal duties before Respondent contracted the work out. (T124). Mr. Leginski testified it was probable the conversations occurred in December of 2018 prior to the work being contracted out. (T125).

Mr. Leginski testified when Petitioner returned to work around May 6, 2020, he worked more slowly and walked kind of hunched over. (T. 120). Mr. Leginski testified on May 13, 2019 he and Petitioner vacuumed up water with a shop vac. (T120). Mr. Leginski testified he did not see Petitioner emptying the shop vac because he and Petitioner work in different buildings. (T123).

Testimony of Dr. Dean Karahalios, the Treating Surgeon

Dr. Karahalios is a neurosurgeon who specializes in complex spinal surgery. (PX13). Petitioner presented to Dr. Karahalios on August 15, 2019. At that visit, Petitioner reported low back pain beginning in October of the prior year after falling at work. Petitioner complained of pain radiating into his bilateral lower extremities. (PX13, p. 9).

The exam noted tenderness in the paraspinal region. Dr. Karahalios reviewed an MRI dated February 11, 2019 which, he said, showed degenerative changes most pronounced at L4-S1 with mild degenerative soft tissue edema in the parafacet regions around the facet joints. Dr. Karahalios noted the MRI showed severe stenosis at L4-5 and L5-S1. (PX13, p. 11). Dr. Karahalios diagnosed Petitioner with a symptomatic lumbar degenerative condition and, he believed, Petitioner's radiating symptoms were likely related to the foraminal stenosis in the lower lumbar area. Dr. Karahalios also diagnosed mechanical back pain and facet arthropathy involving the facet joints in the back of the spine. (PX13, p. 11).

At that time Dr. Karahalios opined Petitioner's fall in October of 2018 was a competent mechanism of injury that aggravated his degenerative lumbar condition. (PX13, p. 12). Dr. Karahalios testified as the spine degenerates it loses the ability to carry its own weight and becomes more prone to injury because of the lost structural capacity. (PX13, p. 12)

Dr. Karahalios testified Petitioner was administered injections which provided temporarily relief. Dr. Karahalios testified he reviewed an MRI taken in 2020 and compared it to the MRI taken in 2019. Dr. Karahalios noted severe right and moderate left foraminal stenosis at L4-5 and severe right and moderate left foraminal stenosis at L5-S1and, at that time, he recommended surgery to open the nerve root passages which Petitioner underwent on February 19. 2020. (PX13, p. 14).

Dr. Karahalios testified six weeks after surgery Petitioner was doing well with some mild low back pain and radiating pain. Dr. Karahalios testified Petitioner's surgical outcome was very favorable and he was moving the right direction. (PX13, p. 15). At that time, Petitioner started physical therapy and Dr. Karahalios issued work restrictions of no lifting over 10-15 pounds and no overly strenuous activity. (PX13, p.16).

Around May 21, 2020, Dr. Karahalios testified he spoke to Petitioner who reported pain in his back and leg after returning to work[3]. Petitioner followed up with Dr. Karahalios on June 25, 2020 and, at that visit, Petitioner reported returning to work and engaging in heavy activity, strenuous activity involving pushing and pulling heavy weights. Dr. Karahalios ordered additional imaging which showed Petitioner developed pars fractures in his spine. (PX13, p. 18). At that time, Dr. Karahalios believed Petitioner may need surgery but Petitioner desired to proceeded conservatively with bracing. (PX13, p. 18).

Dr. Karahalios testified pars fractures after decompressive surgery is unusual but that it could happen. Dr. Karahalios testified Petitioner's pars fractures happened catastrophically at multiple sites causing the spine to become unstable at L4-5 and L5-S1. (PX13, p. 21). Dr. Karahalios testified the pars factures were new findings. Dr. Karahalios indicated both Petitioner and his wife believed Petitioner was doing well 18 weeks after the surgery until returning to work and upon returning to work Petitioner was engaged in activities including wet vacuuming and painting which involved bending, twisting, reaching, and extending which caused Petitioner to experience an acute onset of back pain. (PX13, p. 20).

At that visit, Dr. Karahalios performed an examination which showed bilateral neural tension signs. (PX13, p. 20). At that time, Dr. Karahalios recommend surgery because Petitioner's spine was unstable from the pars fractures. (PX13, p. 21). Dr. Karahalios opined Petitioner's work activities after return to work could be a competent mechanism for causing the pars fracturs. Dr. Karahalios testified the structures left behind after the decompression surgery are responsible for maintaining the structure of the spine but as one twists and turns it places stresses on those structures and those structures could break. Dr. Karahlios testified Petitioner's case was very unusually because the structures broke in so many different areas. (PX13, p. 22). Dr. Karahlios testified it was clear that some sort of traumatic event caused the fractures and the types of activities Petitioner described could have caused it. (PX13, p. 23).

On August 18, 2020, Petitioner underwent a lumbar fusion surgery from L3 to S1. Dr. Karahlios testified 12 weeks following the surgery Petitioner was doing well with no radiating pain into the legs but that Petitioner reported some low back pain and weakness in the right lower extremity. (PX13, p. 25).

[3] The date of the phone call appears to have been on May 21, 2020 and not May 21, 2021. The error involved a question by the attorney.

Dr. Karahalios opined Petitioner's work activities as reported on May 21, 2020 was a cause or aggravating factor to his current condition. (PX13, p. 29). Dr. Karahalios testified the activities Petitioner described placed forces on the spine which caused the pars fractures because the spine was destabilized by the original surgery. (PX13, p. 29). Dr. Karahalios also opined the fusion surgery was needed because of the activities Petitioner described after returning to work caused or aggravated Petitioner's condition. (PX13, p. 29). Dr. Karahalios opined both surgeries were related to Petitioner's work activities. Dr. Karahalios testified the first surgery was necessary to decompress the neural elements and the second surgery was necessary due to the pars fractures caused by Petitioner's work activities. (PX13, p. 56).

Testimony of Dr. Frank Phillps, who Performed a Records Review

Dr. Frank Phillps is a board-certified orthopedic surgeon who performed a records review. (RX1, pgs. 4-7). Dr. Phillps testified he reviewed Petitioner's medical records and noted that Petitioner saw an internist on December 20. 2018 and only mentioned left leg problems but not back pain. (RX1, p. 8). Dr. Phillps testified Petitioner's first complained of low back pain on January 11, 2019 and, at that time, x-rays were performed which, he said, showed disk space narrowing, spur formation, severe degeneration as well as osteoarthritis of the joints, facet joints particularly at L5-S1 but less severe at L4-5. (RX1, p. 9).

Dr. Phillps reviewed the MRI report dated February 11, 2019[4]. (RX1, pgs. 11-12). Dr. Phillips testified the February 10, 2020 CT scan report which, he said, showed multilevel degenerative changes with mild to moderate right sided foraminal stenosis at L4-5 and L5-S1. (RX1, pgs. 12-16). Dr. Phillips also reviewed the reports from the May 16, 2020 MRI as well as the CT scan which, he said, showed subacute fractures through the pars at L4-5 and L5-S1. (RX1, p. 19).

Dr. Phillips testified the pars are bony structures in the back which are very important to the structural integrity of the spine and when they are disrupted you can get abnormal slipping of the vertebrae. (RX1, p. 19). Dr. Phillips testified the impression from the CT scan showed surgical changes (*i.e*. the cleaning out around the nerves) and what the radiologist called "*subacute fractures*" which, he said, means "*not very acute*". (RX1, pgs. 18-19). Dr. Phillips acknowledged

[4] Dr. Phillips did not review the actual films. Dr. Phillips testified the only film he reviewed was an x-ray. (RX1, p.33).

the pars fractures were new findings not on any prior CT scans. (RX1, p. 19). Dr. Phillips opined the pars fractures were related to Petitioner's back pain and the fusion surgery. (RX1, p. 20).

Dr. Phillips opined Petitioner had chronic degenerative changes of his low back over time and he developed more and more back pain related to that degenerative condition. Dr. Phillips testified the medical record do not substantiate any specific trauma or any trauma that was responsible for Petitioner's back pain. (RX1, p. 21). Dr. Phillips opined Petitioner's February 19, 2020 surgery was related to degenerative changes of the lumbar spine and not due to Petitioner's October 2018 work accident. (RX1, p. 22). Dr. Phillips testified his opinions were based upon Petitioner's chronic back pain with no clearcut reports at the time of the alleged injuries which specifically relate the back pain to those injuries. Dr. Phillips testified Petitioner's daily activities caused his back pain and the imaging showed chronic degenerative changes that, he said, developed and had been present for many years. (RX1, p. 23). Dr. Phillips opined Petitioner's surgery had no relationship to Petitioner's October 2018 work accident. (RX1, p. 23).

Regarding the pars fractures, Dr. Phillips testified it was possible the laminectomy and foraminotomy surgery either directly or indirectly caused the subacute fractures seen on the May of 2020 CT scan. (RX1, p. 25). Dr. Phillips testified with a fairly aggressive decompression it's possible the bones weakened such that they were predisposed to fracture even without trauma. (RX1, pgs. 25-26). Dr. Phillips testified he didn't have any specific information about the work Petitioner performed after returning to work. (RX1, p. 29). Dr. Phillips was asked if the records showed Petitioner returned to work on May 6, 2020 could the subacute fractures predate Petitioner's return to work and he responded, "*I mean, you know, you've –it's hard to tell for sure but, I mean, based on the report where they talk about subacute fractures, that would suggest they weren't very acute meaning they had been present for at least months before you'd call something subacute. So I think it likely did predate that May 5th or whatever the date was in early May return to work recommendations*". (RX1, p. 30).

On cross-examination, Dr. Phillips testified he never examined nor spoke to Petitioner. (RX1, p. 33). Dr. Phillips acknowledged not reviewing any MRIs or CTs scans but that he did review a 2019 x-ray. (RX1, p. 33). Dr. Phillips acknowledged not being provided a copy of Petitioner's job description or knowing what Petitioner does other than performing custodian work. (RX1, pgs. 34-35). Dr. Phillips also acknowledged heavy activities could aggravate Petitioner's stress fractures and cause back pain. (RX1, p. 35).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (C), Whether an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator Finds as follows:

The claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980); *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 279 Ill. Dec. 726 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise, v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). "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." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003) Citing Caterpillar Tractor, 129 Ill. 2d at 58.

An injury "arises out of one's" employment if it originates from a risk connected with, or incidental to the employment, involving a causal connection between the employment and the accidental injury. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 (1987). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini,* 117 Ill. 2d at 45. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 2016 IL App.(3d), 150500WC, Par. 34. 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 be reasonable be expected to perform incident to her or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58,

see also *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n,* 2013 IL 115728, Par 18, *Sisbro*, 207 Ill. 2d. at 204. Risk incident to employment are those acts the employer might reasonably expect the employee to perform in fulfilling is assigned job duties. *McAllister v. v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020), citing *Orsini,* 117 Ill. App. 2d. at 45, *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386, 388 (1965). The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n,* 236 Ill. 2d 132, 149 (2010).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment on May 13, 2020, as more fully explained below.

Petitioner returned to work after undergoing a laminectomy. Petitioner testified to injuring his low back while using a wet vac at work on May 13, 2020. Petitioner testified to developing low back pain after lifting a wet vac filled with water and repeatedly pushing the wet vac across a floor while bent over 12 times after the initial onset of low back pain. (T36). It is not suggested that Petitioner injured his low back in any other place nor is it suggested that Petitioner didn't experience an onset of low back pain from this event.

Petitioner testified the pain he experienced at that time was different in intensity than the pain he previously experiencing during physical therapy or while walking. Petitioner testified unlike before the pain would not go away. (T38). The Arbitrator finds the history Petitioner provided to Drs. Karahalios and Hong was consistent to his trial testimony. The courts presume that when a person seeks treatment for an injury, he will not falsify statements to a physician from whom he expects to receive medical aid. *Shell Oil Co., v. Industrial Comm'n*. 2 Ill.2d 590, 592; 119 N.E.2d 224, 226 (1954). Petitioner testified to reporting the incident to Mr. Newland who acknowledged being advised of this incident. (T100). Petitioner did not call any witnesses who contradicted Petitioner's testimony regarding Petitioner sustaining an accident which arose out of and in the course of his employment. Mr. Newland also testified that he did not conduct any investigation after being advised of Petitioner's injury. (T96). The testimony of the employee, if not impeached or rebutted, is sufficient to support an award. *Phoell Manufacturing Co., Industrial Comm'n*, 54 Ill.2d 119, 295 N.E.2d 469 (1973); *Sahara Coal Co., v. Industrial Comm'n*, 66 Ill.2d 353, 362 N.E.2d. 343 (1977).

With Respect to Issue (E), Whether timely notice of the accident given to Respondent, the Arbitrator Finds as follows:

Section 6 (C) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(C)(2) states that "[N]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceeding on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceeding by such defect or inaccuracy." 820 ILCS 305/6(c)(West 2004). Simply reporting a condition without referencing its cause does not put an employer on notice of the accident and does not satisfy the notice requirements under Section 6(c) of the Act. *Swing v. (Compass Group USA), IWCC*, 19 ILWCLB 217 (Ill.App.Ct., 1st 20111). The giving of notice under the act is jurisdictional and a prerequisite of the right to maintain a proceeding under the act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. Workers' Compensation Comm'n*, 870 N.E.2d 821 (2007).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that he provided notice of the accident to Respondent as required under the Act, as more fully explained below.

Petitioner testified to providing Respondent verbal and written notice of the accident in May of 2020. Respondent acknowledged receiving timely notice of Petitioner's May 13, 2020 work accident. Mr. Newland testified he learned of Petitioner's work accident in May of 2020 after being told of the incident by Petitioner and after received a written report of the accident in May of 2020. (T91). Despite acknowledging receiving timely notice of Petitioner's work accident Respondent proceeded to trial disputing notice of the accident. (Arb. Ex. #3).

With Respect to Issue (F) Whether Petitioner's current condition of ill-being is causally related to his injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease 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 a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v.*

Industrial Comm'n, 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held that "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, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id*. at 64.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that his current low back condition is causally related to his work injury of May 13, 2020, as set forth more fully below.

Petitioner returned to work after undergoing a laminectomy. Petitioner testified to injuring his low back while using a wet vac at work on May 13, 2020. Petitioner testified to developing low back pain after lifting a wet vac filled with water and repeatedly pushing the wet vac across a floor while bent over 12 times after the initial onset of low back pain. (T36). It is not suggested that Petitioner injured his low back in any other place nor is it suggested that Petitioner didn't experience an onset of low back pain from this event. The Arbitrator also notes that nobody raised the issue of whether or not this incident was an intervening cause since Petitioner was still undergoing medical treatment for the initial surgery at the time of this incident but, hypothetically, if they had, the Arbitrator would have still found this accident to be compensable as an intervening accident which completely broke the casual chain of the December 18, 2018 accident. After the initial surgery, Petitioner's condition was improving such that he was allowed to return to work with restrictions. Dr. Karahalios testified Petitioner's surgical outcome was very favorable and he was moving the right direction. (PX13, p. 15). After this accident, Petitioner's condition

significantly worsened such that he never returned to work and a CT scan identified the source of Petitioner's declining condition as multiple pars fractures.

After undergoing surgery, Respondent contacted Petitioner regarding returning to work since Petitioner exhausted his accumulated vacation and sick pay. (T98). At that time, Petitioner contacted his doctor to obtain a note allowing him to return to work. Petitioner obtained a note from his doctor allowing him to work light duty. (T32). Petitioner returned to work on May 5, 2020. (T32). After returning to work Petitioner contacted his doctor because Respondent was not honoring his work restrictions. (T32).

On May 13, 2020, the boiler room flooded and Petitioner was using a wet vac to remove the water which had accumulated on the floor. Petitioner testified when the wet vac was full of water, he picked it up and took it to a sink to empty it. Petitioner testified as he carried the wet vac filled with water when his "*back said no*". (T35). Petitioner testified, at that time, a sharp pain in his back returned and he was unable to carry the wet vac. (T36). Petitioner testified when his back pain returned it was different than any pain he may have experienced after the surgery prior to returning to work. Petitioner testified the pain was now constant and wouldn't go away. (T36). Petitioner testified his pain level never returned to the level it was prior to lifting the wet vac at work. (T37). Petitioner testified his back pain never returned to the baseline it was at prior to the May 13, 2020 wet vac incident. (T43). Petitioner's coworker, Jim Leginski, confirmed Petitioner's testimony of using a wet vac to remove the accumulation of water in the boiler room on May 13, 2020. (T 120). After this incident, Petitioner went to the office and reported the incident to the office manager. (T39). Petitioner testified he never returned to work after May 13, 2020. (T40).

Dr. Karahalios testified six weeks after Petitioner's decompression surgery he was doing well with only mild low back pain with some occasional radiating pain. (Px13, p. 15). Dr. Karahalios testified six weeks after the original surgery, Petitioner's surgical outcome was very favorable and he was moving the right direction. (PX13, p. 15). At that time, Petitioner started physical therapy and Dr. Karahalios issued work restrictions. (PX13, p.16).

Dr. Karahalios testified to speaking with Petitioner on May 21, 2020 regarding the onset of back pain and leg pain after returning to work. (Px13, p. 17). Dr. Karahalios testified the imaging taken after the May 13, 2020 incident showed Petitioner sustained catastrophic pars fractures at multiple sites causing Petitioner's spine to become unstable. (PX13, p. 18). Dr.

Karahalios testified Petitioner was bending, twisting, reaching, and extending while using a wet vac at work when he experienced an acute onset of back pain. (PX.13, p. 19). Dr. Karahalios opined Petitioner's work activities was a competent mechanism of injury. (PX13, p. 22). Dr. Karahalios testified Petitioner's spine was destabilized to some extent by the prior surgery and that his work activities on May 13, 2020 created mechanical forces on Petitioner's spine causing the pars fractures to occur. (PX13, p. 29). Dr. Karahalios testified as one twists and turns stresses are placed on the spinal structures which could cause them to break and it was clear in this case that some sort of traumatic event consistent with Petitioner's work activities caused the catastrophic failure of multiple facet complexes and acute slippage *(i.e.* spondylolisthesis). (PX13, p. 23).

The Arbitrator finds the opinions of Dr. Karahalios more reliable than the opinions of Dr. Phillps. Dr. Karahalios was Petitioner's treating physician and, as such, had an ongoing relationship involving numinous interactions with Petitioner to assess Petitioner's pain levels, changes in symptoms and to observe Petitioner's responses to testing. Dr. Phillps only performed a records review and never examined or questioned Petitioner. The Arbitrator notes Dr. Phillps never reviewed the actual CT scan or MRI films. Rather, Dr Phillps based his opinion, in part, upon the report of a radiologist who used the term "*subacute*" to describe the pars fractures. (RX1, p. 33). The Arbitrator also notes Dr. Phillps was not provided Petitioner's job description, was not aware of Petitioner's job duties, and he was not aware what work activities Petitioner was performing. (Rx1, p. 34).

Dr. Phillps testified it was possible the laminectomy and foraminotomy surgery caused or indirectly caused the subacute fractures and the bones were weakened enough to make them predisposed to fracture with trauma. (Rx1, pgs. 25-26). However, Dr. Phillps opined Petitioner's pars fractures predate returning to work based, in part, upon the radiologist's use of the term "*subacute"* to describe the pars fractures. Dr. Phillps testified the term "*subacute*" suggests the fractures weren't very acute meaning they had been present for months and, therefore, predate Petitioner returning to work in May of 2020. (Rx1, p. 30). The Arbitrator does not find Dr. Phillps causation opinion to be persuasive. The Arbitrator notes Dr. Phillps failed to provide any medical authority supporting his belief the term "*subacute*", used by the radiologist, was intended to mean months. The Arbitrator finds Dr. Phipps reliance on the term "*subacute*" as meaning months was nothing more than speculation, conjecture, or surmise. It is axiomatic that

the weight accorded an expert opinion is measured by the facts support it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.507, 514-15 (First Dist. 2000). The Arbitrator also notes Dr. Phillps never reviewed the actual MRI or CT scans and, therefore, Dr. Phillps never confirmed if the pars fractures were acute or subacute and, if subacute, whether the films display any other findings supporting the pars fractures existed for months prior to the date of the scan or months before date of the accident.

The Arbitrator notes Dr. Phillps failed to explain how Petitioner was able to work with multiple levels of pars fractures and a destabilized spine prior to the wet vac incident on May 13, 2020. The Arbitrator also notes that Dr. Phillps disregarded the medical history Petitioner provided to Drs. Hong and Karahalios regarding the onset of his symptoms. Based upon Dr. Karahalios' medical records Petitioner was doing well six weeks after the original surgery Petitioner to allowed to return to work. (Px13, pgs. 15-16). On May 12, 2020, the day before his work incident, Petitioner returned to the physical therapy reporting that his pain improved after the last visit and, at that visit, Petitioner reported "no pain" compared to the "8/10 pain" level he reported at the prior physical therapy session. (RX6).

The Arbitrator further finds Petitioner also sustained his burden of proof under a chain-of-events theory. Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held that "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, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *Id*. at 64. In this case, Petitioner had a preexisting condition which made him more vulnerable to injury. Petitioner returned to restricted work and he was able to perform his work duties until sustaining a subsequent injury which caused Petitioner to be taken off work and to undergo a fusion surgery. If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has

deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC. Thus, that there was some preexisting condition with a separate cause is not relevant as long as the accident at issue was a cause of the claimant's condition of ill-being. *Id.* Par. 29.

With Respect to Issue (J) Whether Respondent paid all appropriate changes 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).

The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment rendered was reasonable and necessary to cure and alleviate Petitioner's condition.

The Arbitrator notes both Drs. Karahalios and Phillps opined Petitioner's fusion surgery was necessary and reasonable. Dr. Phillps opined the medical treatment was not related to Petitioner's May 13, 2020 work accident. However, the Arbitrator found that Petitioner's pars fractures were causally related to his May 13, 2020 work accident. The Arbitrator incorporates the Conclusions of Law in Sections C and F into this Section. The Arbitrator finds Respondent responsible to pay Petitioner's low back medical treatment after May 13, 2020 including the August 18, 2020 fusion surgery. As such, Respondent shall pay the medical bills identified in Petitioner's exhibits 1 through 12 for medical services provided after May 13, 2020, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

With Respect to Issue (K) Whether Petitioner is entitled to TTD benefits, the Arbitrator Finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014

IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner seeks TTD benefits from May 14, 2020 through October 4, 2021. (Arb. Ex. #3). The Arbitrator incorporates the Conclusions of Law in Sections C and F into this Section. Petitioner never returned to work after his May 13, 2020 work accident. The medical records indicate Petitioner was released from care by Dr. Karahalios on September 9, 2021. (Px. 5). At that time, Petitioner was instructed to continue a maintenance program with Dr. Hong, the pain management physician. The Arbitrator finds Petitioner reached maximum medical improvement on September 9. 2021 the date Dr. Karahalios released Petitioner from care. The Arbitrator further finds Petitioner proved by the preponderance of the evidence he did not work nor was he able to work from May 14, 2020 through September 9, 2021 the date he reached maximum medical improvement. As such, Respondent shall pay Petitioner Temporary Total Disability (TTD) benefits from May 14, 2020 through September 9, 2021, representing 69 1/7ths weeks.

With Respect to Issue (L) What is the Nature and Extent of Petitioner's 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.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/pr opinion was submitted into evidence so no weight is given to this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed as a maintenance worker which was a physically demanding job. After his work accident, Petitioner was unable to return to his prior occupation due to his work restrictions. As such, the Arbitrator gives this factor great weight in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the age of Petitioner. The Arbitrator notes that Petitioner was 66 years old at the time of the accident and nearing the end of his work life expectancy. Generally, individuals near the end of their work life expectance tend to experience greater difficulties recovering from injuries or are more prone for reinjury. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity. Petitioner was unable to return to work after his work accident. No other evidence of Petitioner's future earning capacity was submitted into evidence. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to subsection (v) of § 8.1b(b), Evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner underwent a fusion surgery and he continues to suffer chronic pain. Petitioner continues to treat with a pain management doctor and he continues to take various medications to combat his ongoing pain symptoms. As such, the Arbitrator gives this factor significant weight in determining permanent partial disability.

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 40% loss of use of a person as a whole, pursuant to §8(d)2 of the Act, for an injury resulting in a loss of trade.

By: /o/ *Frank J. Soto* November 16, 2023
Arbitrator Date