ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012101
Case Name	Diana Paredes v. A&B Staffing Services, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0140
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Andrew Fernandez

DATE FILED: 4/1/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Diana Paredes,

Petitioner,

vs. NO: 22 WC 12101

A&B Staffing Services, 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 issues of causal connection, medical expenses, temporary total disability, penalties and fees, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 24, 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 $28,800.00. 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.

April 1, 2025

O: 03/27/25
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	22WC012101
Case Name	Diana Paredes v. A&B Staffing Services, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Andrew Fernandez

DATE FILED: 9/24/2024

/s/Nina Mariano; Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 24, 2024 4.27%

STATE OF ILLINOIS)	☐ Injured Workers' Benefit Fund (§4(d))
)SS.	☐ Rate Adjustment Fund (§8(g))
COUNTY OF COOK)	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Diana Paredes
Employee/Petitioner

v.

A&B Staffing Services, Inc.
Employer/Respondent

Case # **22** WC **012101**

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 **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **June 21, 2024.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

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

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☒What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

M. ☒ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the accident date, **April 21, 2022,** Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the 2 weeks preceding the injury, Petitioner earned $**5,744.00**; the average weekly wage was $**666.00**

On the date of accident, Petitioner was **50** 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 $**10,212.00** for TTD, $**0** for TPD, $**0** for maintenance, and **$22,627.51** for medical, and **$0** for other benefits**.**

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

ORDER

Respondent shall pay Petitioner and Petitioner's counsel temporary total disability benefits of $444.00 for 33 and 5/7 weeks, commencing October 30, 2023 through June 21, 2024 at a rate of $444.00 per week as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Illinois Orthopedic Network, $3,956.50; Midwest Specialty Pharmacy, $7,848.20; City North Physical Therapy, $1,347.70, as provided in Sections 8(a) and 8.2 of the Act. While it is noted that Respondent has previously paid $22,627.51 in medical bills, Respondent will only be entitled to a specific credit for any medical bills already paid of the three bills currently being awarded.

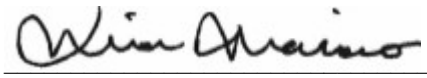
The Arbitrator orders Respondent to authorize the neurectomy of a neuroma of the right palmar cutaneous branch of the median nerve as recommended by Dr. Wiesman.

Respondent shall pay to Petitioner penalties, as provided in Section 16 of the Act; Section 19(k) of the Act; and Section 19(l) of the Act, which will be provided in the body of the decision.

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

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

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



Signature of Arbitrator

September 24, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Diana Paredes,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22 WC 012101
A&B Staffing Services, Inc.,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on June 21, 2024, in Chicago, Illinois before Arbitrator Nina Mariano on Petitioner's Petition for Immediate Hearing under Sections 19(b) and 8(a). The issues in dispute were causal connection, medical bills, TTD benefits, prospective medical, and penalties. Arbitrator's Exhibit 1 (AX1).

Procedural History

This matter proceeded to trial on December 19, 2022 before Arbitrator Mariano on Petitioner's 19(b). On March 3, 2023, a decision was rendered by Arbitrator Mariano finding that Petitioner's condition was causally related to her work accident on April 21, 2022; Petitioner was entitled to TTD benefits; Petitioner was awarded reasonable and necessary medical bills; and awarded the first extensor compartment release and right carpal tunnel release as recommended by Dr. Wiesman. On September 20, 2023 the Commission affirmed and adopted the Arbitrator's findings.

Petitioner testified that she had previously testified in this matter on December 19, 2022. TX9. Petitioner testified her testimony was truthful, accurate, and to the best of her recollection and knowledge. Id.

Summary of Medical Records

On October 30, 2023, Petitioner underwent a right carpal tunnel release and right first extensor compartment with synovectomy by Dr. Wiesman. PX1. Petitioner followed up with Dr. Wiesman on November 13, 2023 with 9/10 pain with a burning/throbbing sensation on the volar aspect of her right hand. Id. Petitioner still had numbness in her digits and a feeling of cold sensation on the first and fifth digits. Id. Dr. Wiesman recommended physical therapy. Id. Petitioner completed a course of physical therapy at City North Physical Therapy from

November 22, 2023 through December 18, 2023. PX2. On December 15, 2023, Petitioner presented to Dr. Wiesman with swelling and weakness in her right wrist. Id. Petitioner had noticed some pruritus and purplish color change to her hand at times with numbness along all digits worse along digits 2 through 5. Id.

Petitioner followed up with Dr. Wiesman on January 24, 2024 with continued swelling, aching, as well as burning on the carpal tunnel incision in her right wrist. Id. At this visit Dr. Wiesman administered a diagnostic injection to assess for neuroma of the palmar cutaneous branch of the median nerve along the carpal tunnel incision. Id. Following the injection, Petitioner's pain had decreased. Id. Dr. Wiesman diagnosed Petitioner with a right-sided neuroma of the palmar cutaneous branch of the median nerve, for which he recommended a neurectomy. Id. Petitioner followed up with Dr. Wiesman on February 21, 2024 with continued complaints of burning sensation, numbness/tingling and increased sensitivity in the right wrist/hand. id. Petitioner presented to Dr. Wiesman on March 20, 2024 with similar subjective complaints and physical examination findings, including sensitivity along the volar incision. Id. Petitioner last presented to Dr. Wiesman on May 16, 2024 with similar complaints. Id. Dr. Wiesman continued to recommend the neurectomy surgical procedure. Id.

Independent Medical Examination

On March 21, 2024, Petitioner presented to Dr. Fernandez at the request of the insurance company for an IME. RX1, Dep. Ex. 2. At the IME, Dr. Fernandez noted that Petitioner had symptoms along the arm focused mostly along the palm region of the right hand at the insertion site, secondarily also at the radial thumb, but also along the arm in general. Id. Petitioner had 10/10 pain with any activities involving the hand. Id. On physical examination, Dr. Fernandez noted that Petitioner had paresthesias in the right hand at all fingers; pain complaints on percussion and compression at the incision site of the carpal tunnel; and positive physical examination findings to the cervical spine. Id.

Dr. Fernandez opined that Petitioner had inconsistent and nonphysiologic pain complaints. Id. Dr. Fernandez opined that Petitioner's diagnosis "could include a neuroma of the palmar cutaneous branch of the median nerve, which would be a postoperative complication of the carpal tunnel release." Id. Dr. Fernandez noted that he could not explain Petitioner's symptoms but some of her symptoms could be explained with the neuroma over the palmar cutaneous nerve. Id. Dr. Fernandez opined that Petitioner's initial work injury was a nail plate avulsion which would have resolved within six weeks after the injury and that the carpal tunnel and de Quervain's tenosynovitis was not a result of the work accident. Id.

Dr. Fernandez opined that it would not be unreasonable to treat Petitioner with the surgery for the neuroma that was being proposed, although, indicated it was not related to the work accident, but to the carpal tunnel surgery. Id. Dr. Fernandez noted that it would be reasonable to restrict Petitioner to light use of the right hand (10 to 20 pounds) related to the neuroma. Id. Dr. Fernandez opined that Petitioner was at MMI from the nail avulsion injury. Id.

Testimony of Petitioner

Petitioner testified that following the surgery, she continued to feel pain and tingling in her right hand/wrist. Id. at 10. Petitioner testified that her right-hand changes color. Id. at 10-11. Petitioner testified that she does not have much sensation in her right hand/wrist. Id. at 11-12. Petitioner testified that the injection she underwent on January 24, 2024 helped her symptoms for a couple of hours. Id. at 12. Petitioner testified that she has not worked for Respondent or any other employer since October 30, 2023. Id. at 13. Petitioner testified that she had two other work accidents prior to her carpal tunnel surgery on October 30, 2023. Id. at 13.

Petitioner testified that as of the date of trial, her right hand felt a tingling sensation, cold, and numb. Id. at 14. Petitioner testified that her right hand/wrist condition affects her ability to take care of her hair and dress. Id. at 15-17. Petitioner testified she wished to proceed with the surgery recommended by Dr. Wiesman. Id. at 16-17. Petitioner testified that Petitioner's Exhibit No. 7 are all checks from Respondent that Petitioner received directly to her following the carpal tunnel surgery. Id. at 17-18. Petitioner testified that the address Respondent had listed on the checks was incorrect. Id. at 17-18.

On cross examination, Petitioner testified that her right hand and wrist hurt. Id. at 22-23. The Arbitrator noted on the record that Petitioner's right hand had darker coloration and was more swollen when compared to her left hand. Id. at 23-24. Petitioner testified that to do her hair, she requires both of her hands. Id. at 24-25. Petitioner testified that most of her right hand is useless. Id. at 26. Petitioner testified that she is right hand dominant and is unsure what type of work she could perform with her left hand. Id.at 27-28.

On Redirect Examination of Petitioner, Petitioner testified that she was no longer employed by Respondent and is currently on work restrictions. Id. at 29.

On Recross Examination of Petitioner, Petitioner testified that she did not receive a letter of termination but was told there was no work for her at Respondent. Id. at 29-30. Petitioner testified that she spoke with Elsie whether Respondent had work accommodations for her at Respondent. Id. at 30-31.

Petitioner testified that she had previously testified regarding her conversations with Respondent about work restrictions on December 19, 2022. Id. at 32-33.

Testimony of Dr. John J. Fernandez (IME Physician)

Dr. Fernandez testified regarding the opinions contained in his IME report. RX3. Dr. Fernandez testified that on physical examination of Petitioner, he noted sensitivity along Petitioner's carpal tunnel incision among other nonphysiologic and nonorganic behavior. Id. at 9. Dr. Fernandez testified that Petitioner's subjective complaints were inconsistent with his examination, as Petitioner had global numbness/tingling and burning pain and pain at the incision site. Id. at 10. Dr. Fernandez testified that Petitioner's diagnosis had significantly expanded over time from a nail bed injury to de Quervain's tenosynovitis, carpal tunnel syndrome, a postoperative neuroma, and bilateral cervical spine problems. Id. Dr. Fernandez testified that Petitioner's subjective complaints could not be fully explained by her work injury. Id. at 11. Dr. Fernandez testified that if Petitioner had a neuroma, which is rare, it was a result of the carpal tunnel surgery. Id. at 11.

Dr. Fernandez testified that a neuroma is sensitivity or pain that can occur along a nerve that's been injured and is specific to the area where the incision of the surgery is performed. Id. at 12. Dr. Fernandez testified that there was no connection between Petitioner's nail bed injury and the development of her symptoms. Id. at 12-13. Dr. Fernandez testified that "some of her symptoms could be explained with the neuroma." Id. at 15. Dr. Fernandez testified he could not explain a large portion of Petitioner's symptoms and that her diagnosis would be pain and disability of an unknown etiology and nonphysiologic findings. Id. at 16. Dr. Fernandez testified that Petitioner could be malingering. Id. at 16-17. Dr. Fernandez testified that Petitioner was given a diagnosis of a neuroma of the palmar branch of the median nerve. Id. at 20. Dr. Fernandez testified the neuroma "would have been related to the surgery and not the work injury" and that it would not be unreasonable to treat the neuroma with what Dr. Wiesman recommended. Id. at 20-22. Dr. Fernandez testified that the neuroma does not explain all of the symptoms Petitioner has. Id. at 22-24.

On cross examination, Dr. Fernandez testified that he could not say definitively whether there was or was not a neuroma. Id. at 29-30. Dr. Fernandez testified that the neuroma would be causally related to the carpal tunnel surgery. Id. at 30. Dr. Fernandez testified that it would be reasonable to treat the neuroma surgically. Id. Dr. Fernandez testified the 10-to-20-pound work restriction of the right hand would be related to the neuroma. Id. at 30-31.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Statement of Facts in support of the Conclusions of Law set forth below.

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

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. 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 (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).

On October 30, 2023, Petitioner underwent a right carpal tunnel release and right first extensor compartment with synovectomy by Dr. Wiesman. Petitioner then continued treating with Dr. Wiesman post-surgery throughout 2023 and 2024. Throughout Petitioner's treatment, she had consistent complaints in her right hand/wrist including pain, numbness, and pain along her carpal tunnel incision. On January 24, 2024, Dr. Wiesman administered a diagnostic injection to assess for a neuroma of the palmar cutaneous branch of the median nerve along the carpal tunnel incision, which Petitioner had temporary relief from. Dr. Wiesman then diagnosed Petitioner with a neuroma and recommended a neurectomy of the neuroma of the right palmar cutaneous branch of the median nerve.

Dr. Fernandez opined that Petitioner's symptoms were non physiologic and non-organic but indicated that some of Petitioner's symptoms could be explained by the neuroma. In the IME report, Dr. Fernandez explained:

> [t]he diagnosis could include a neuroma of the palmar cutaneous branch of the median nerve, which would be a postoperative complication of the carpal tunnel release. This is not its own separate problem which was left untreated, but occurred as a result of the surgery and following surgery.
>
> RX3, Dep. Ex.2

Therefore, Dr. Fernandez agrees that the differential diagnosis of a neuroma is causally related to the right carpal tunnel surgery. Throughout Dr. Fernandez's report and testimony, he indicated that Petitioner's differential diagnosis of a neuroma is not related to the original work accident on April 21, 2022. However, it has already been established as a matter of law that Petitioner's carpal tunnel syndrome was causally related to the work accident and the right carpal tunnel release was awarded. See Petitioner's Exhibit No. 3, 23IWCC0413 Commission Decision. Therefore, Dr. Fernandez's

opinions that Petitioner's current condition was not related to the work accident are moot. Both physicians agree that the neuroma is a result of the carpal tunnel surgery, which had already been found to be causally related to the work accident.

Based on the above, Arbitrator finds that Petitioner's current condition of ill-being related is causally related to 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:

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the April 21, 2022 work accident. This is supported by Petitioner's medical records from Illinois Orthopedic Network and Dr. Wiesman. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Petitioner's treating physicians 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.

Having already found Petitioner's current condition of ill-being being causally related to the work accident, the Arbitrator orders Respondent to pay Petitioner and Petitioner's counsel for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Illinois Orthopedic Network, $3,956.50
- Midwest Specialty Pharmacy, $7,848.20
- City North Physical Therapy, $1,347.70

WITH RESPECT TO 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 neurectomy of a neuroma of the right palmar cutaneous branch of the median nerve as recommended by Dr. Wiesman. Dr. Fernandez agreed that this surgery would be reasonable to treat a neuroma.

Therefore, the Arbitrator finds that Respondent is liable for neurectomy of a neuroma of the right palmar cutaneous branch of the median nerve as recommended by Dr. Wiesman.

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

Petitioner was initially placed off work following her surgery on October 30, 2023. Petitioner's off work restrictions were continued until December 15, 2023, when Petitioner was placed on

light duty restrictions. Petitioner's light duty restrictions were continued until the date of trial. Respondent's IME physician, Dr. Fernandez, agreed that Petitioner required 10-to-20-pound restrictions for her neuroma. Therefore, there is no dispute that Petitioner required work restrictions.

As Petitioner testified in the December 19, 2022 trial, Respondent was unable to accommodate Petitioner's work restrictions. The Commission affirmed and adopted the Arbitrator's decision that Petitioner was entitled to TTD benefits. PX3. Therefore, Petitioner is entitled to TTD benefits from October 30, 2023 through June 21, 2024.

Based on the above, the Arbitrator finds Respondent liable for 33 and 5/7 weeks of TTD benefits from October 30, 2023 through June 21, 2024 at a weekly rate of $444.00, which corresponds to $14,905.71, to be paid directly to Petitioner and Petitioner's counsel.

Respondent claims it paid $12,876.00 in TTD benefits. However, Petitioner only received TTD benefit checks that amounted to $10,212.00 post-surgery. Petitioner's Exhibit No.6 are the TTD checks that were sent directly to Petitioner's attorney office. Petitioner Exhibit No. 7 are the TTD checks sent directly to Petitioner. The total amount received listed in Petitioner's Exhibit No. 6 and Petitioner's Exhibit No. 7 equates to $10,212.00.

Petitioner testified that she had moved to a different address around two years prior to the trial. The address Respondent listed on the checks was 3455 North Kildare Ave, Chicago, IL 60641. Petitioner had moved to 3043 North Hamlin Ave, Chicago, IL 60618. Respondent had been put on notice that Petitioner had moved addresses. PX5. However, Respondent failed to issue the checks to Petitioner's correct address. Respondent offered no evidence that the checks were issued to Petitioner's correct address or that the checks were cashed. Therefore, the Arbitrator finds that Respondent is entitled to a credit of $10,212.00 for TTD benefits paid.

WITH RESPECT TO ISSUE (M), WHETHER PENALTIES OR FEES SHOULD BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Worker's Compensation Act includes provisions for penalties under Section 16, §19(k), and §19(l).

§19(k): Penalty for Delay: arises in cases where there has been any unreasonable or vexatious delay of payment of compensation that do not present a real controversy but are merely frivolous or for delay. The Commission may award additional compensation equal to 50 percent of the unpaid amount of compensation.

Section 19(l) provides a penalty of $30 per day for failure to pay weekly compensation benefits up to a maximum penalty of $10,000.00. Furthermore, an employer must respond within 14 days to request for the reason for nonpayment of benefits. Failure to respond in a timely manner creates a rebuttable presumption of unreasonable and vexatious delay.

The Section 19(l) penalty is in the nature of a late fee. *USF Holland v. Industrial Comm'n*, 357 Ill. App. 3d 798, 805, 829 N.E.2d 810, 817 (1st Dist. 2005). The statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment "without good and just cause." *McMahon v. Industrial Comm'n*, 183 Ill. 2d 499, 702 N.E.2d 545 (1998). Assessment of the penalty is mandatory if the benefit payment is late, for whatever reason, and the employer or its carrier cannot show an adequate reason for the delay. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. 820 ILCS 305/19(l). The burden of opposing a petition for Section 19(l) sanctions is on the employer. Penalties under section 19(l) are in the nature of a late fee, and are mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC.

Petitioner submitted the filed 19(b) with penalties along with attached exhibits into evidence. PX4, (a)-(f). On February 23, 2024, Petitioner emailed Respondent Dr. Wiesman's note with the recommendation of the neurectomy. PX4(b). On March 22, 2024, Respondent had emailed Petitioner Dr. Fernandez's IME report and that the claim was therefore denied as non-compensable. PX4(c). On March 25, 2024, Respondent was put on notice that Petitioner would be seeking penalties for unpaid TTD benefits and medical bills. PX4(a).

Respondent's email to Petitioner on March 22, 2024 states:

> [a]ttached please find the recent IME report. As you will see, Ms. Zabala's present complaints do not relate to her original work injury and are therefore non-compensable.
>
> PX4(c)

Respondent fails to note that Dr. Fernandez's opinions on whether Petitioner's current complaints are related to the original work accident are moot. It has been established as a matter of law that Petitioner's right carpal tunnel surgery was related to the work accident. PX3. Both Dr. Wiesman and Dr. Fernandez agree that the neuroma is a postoperative complication from carpal tunnel surgery. As noted previously, Petitioner's neuroma is causally related to the work accident as it is related to the right carpal tunnel surgery that was awarded.

Respondent's email specifically stating that the case is "non-compensable" and denying further TTD benefits and payment of bills is clearly unreasonable and vexatious. Respondent's position is contrary as a matter of law. Respondent had no good faith basis to deny Petitioner's claim.

Therefore, the Arbitrator awards penalties under Section 19(l), Section 19(k), and Section 16 of the Act.

Section 19(l) Penalties

As the Arbitrator finds that Respondent was unable to show an adequate justification for its delay, an award of Section 19(1) penalties is mandatory. Respondent was first put on notice of Petitioner's intention to seek penalties at trial on March 25, 2024. The Arbitrator fines Respondent $30.00 a day from March 25, 2024 through June 21, 2024, representing 89 days. $30.00 per day multiplied by 89 days equals $2,670.00. Therefore, the Arbitrator imposes penalties of $2,670.00 under Section 19(1) against Respondent, to be paid directly to Petitioner and Petitioner's counsel.

Section 19(k) Penalties

Because Respondent's behavior was in bad faith, penalties under Section 19(k) are warranted. Respondent is liable for $13,152.40 for outstanding medical bills prior to the application of the fee schedule. The Arbitrator awards 50% of the fee schedule balance due under Section 19(k), to be paid Petitioner and Petitioner's counsel.

Respondent issued a check to Petitioner's attorney office for TTD benefits, dated June 11, 2024. PX6. Therefore, Petitioner is entitled to penalties under Section 19(k) with respect to TTD from March 25, 2024 through June 11, 2024. PX6. Respondent is liable for $5,010.86 (11 and 2/7 weeks) for outstanding TTD benefits from March 25, 2024 through June 11, 2024. The Arbitrator awards 50% of the outstanding TTD benefits due under Section 19(k), to be paid to Petitioner and Petitioner's counsel, which equates to $2,505.43.

Section 16 Fees

Since Respondent's delay was unreasonable, vexatious, and in bad faith, the Arbitrator will assess attorney's fees under Section 16, which are 20% of awarded fee scheduled medical bills.

Arbitrator will assess attorney's fees under Section 16, which are 20% of the TTD benefits from March 25, 2024 through June 11, 2024, which equates to $1,002.17 (20% of $5,010.86).

In conclusion, the Arbitrator imposes attorney's fees and costs under Section 16 against Respondent, to be paid directly to Petitioner and Petitioner's counsel.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001990
Case Name	Diana Leticia Gonzalez v. Labor Network
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0141
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Robert Smith

DATE FILED: 4/1/2025

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ 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

Diana Leticia Gonzalez,

Petitioner,

vs. NO: 24 WC 001990

Labor Network,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, prospective medical care, and future 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 5, 2024, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,400.00. 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.

April 1, 2025

MP:yl
o 3/27/25
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	24WC001990
Case Name	Diana Leticia Gonzalez v. Labor Network
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Robert Smith

DATE FILED: 8/5/2024

/s/ Paul Seal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 30, 2024 4.93%

STATE OF ILLINOIS)	☐ Injured Workers' Benefit Fund (§4(d))
)SS.	☐ Rate Adjustment Fund (§8(g))
COUNTY OF DuPAGE)	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Diana Leticia Gonzalez
Employee/Petitioner

v.

Labor Network
Employer/Respondent

Case # **24** WC **001990**

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 **Wheaton** on **June 20, 2024.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

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

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☒What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the accident date, **December 19, 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 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 $**29,536.66** the average weekly wage was $**568.01**

On the date of accident, Petitioner was **36** years of age, **single** with **2** dependent children.

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

Respondent shall be given a credit of $**7,557.70** 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

Temporary Total Disability

Respondent shall pay Petitioner and Petitioner's counsel temporary total disability benefits of $456.04 for 25 and 1/7 weeks, commencing December 27, 2023 through June 20, 2024 at a rate of $456.04, as provided in Section 8(b) of the Act.

Medical Benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Midwest Specialty Pharmacy, $1,809.92; Suburban Orthopaedics, $1,811.63; Physicians Immediate Care, $290.86; Barrington Orthopedics, $2,469.00.

Prospective Medical

The Arbitrator orders Respondent to authorize left ankle arthroscopy, open Brostrom/Gould lateral ligament repair as recommended by Dr. Peterson.

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 5, 2024

FINDINGS OF FACTS

This matter proceeded to hearing on June 20, 2024, in Wheaton, Illinois before Arbitrator Paul Seal on Petitioner's Petition for Immediate Hearing under Sections 19(b) and 8(a). The issues in dispute were accident, causal connection, medical bills, TTD benefits, and prospective medical. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner testified that she was last employed by Respondent, Labor Network, where she was placed at a warehouse for "Heritage."TX11. Petitioner testified that the warehouse contained baggage, backpacks, office articles, and other items. Id. at 12. Petitioner testified that she had been placed at the warehouse for over a year. Id. Petitioner's job duties included processing orders, labeling products, and assembling/disassembling pallets. Id. at 12-13.

Petitioner testified that her typical shift was from 6:30 AM to 3:00 PM, five days per week. Id. at 13-14. Petitioner testified that she was on her feet for five to six hours per shift. Id. at 13-14.

Accident

Petitioner testified that on December 19, 2023, Petitioner was leaving work towards the parking lot when her left foot stepped on an uneven surface twisting her left ankle. Id. at 14. Petitioner was then shown RX4, which is a 2018 Google Maps view of Respondent's warehouse from the front. Id. at 15-16. Petitioner testified that the door leading into the warehouse was the door she was leaving when she injured her left ankle. RX4, TX15-16. Petitioner testified that the door she used was only for employees and requires a card to enter/leave that door. RX4, TX16. Petitioner circled the parking lot to the left of the warehouse on RX4 as where Petitioner was walking to when she injured herself. RX4, TX17. Petitioner testified that the parking lot is an employee only parking lot. TX18. Petitioner testified that the door she used to leave the warehouse is the only door that she can use to get to her car in the parking lot. Id. at 18.

Petitioner was then shown PX7, which depicts the sidewalk in front of the door to the warehouse at Respondent. PX7, TX18. Petitioner testified that she took the picture of the sidewalk on June 19, 2024 at 10:05 AM. TX18-19. Petitioner then circled the portion of the sidewalk where she twisted and injured her left ankle. PX7, TX 19. Petitioner testified that the circled portion was an uneven surface, which twisted her left ankle outwards, and Petitioner felt a "crack." Id. at 20-21. Petitioner testified that a coworker grabbed Petitioner as the accident occurred, stopping Petitioner from falling to the ground. Id. at 21. Petitioner testified that after feeling immediate pain in her left ankle, she drove herself to the hospital. Id. at 22.

Petitioner testified that she notified her boss's wife of the accident. Id. at 23-24. Petitioner was shown PX8, which was text messages between Petitioner and her boss's wife stating that Petitioner injured her left ankle while leaving work. PX7, TX24-25.

Summary of Medical Records

On December 19, 2023, Petitioner presented to Advocate Sherman Hospital with a history of left ankle pain from a twisting injury. PX1. On physical examination, tenderness and reduced range of motion was noted to the left ankle and swelling over the left lateral malleolus. Id. Petitioner was diagnosed with left ankle pain status post twisting her left ankle. Id. Petitioner was recommended to wear a boot and follow up with an orthopedic doctor. Id.

On December 27, 2023 Petitioner presented to Physicians Immediate Care with a history consistent with her trial testimony and left ankle pain. PX2. On physical examination, Petitioner had an abnormal gait, inability to bear weight, lateral malleolus swelling, and tenderness. Id. Petitioner was returned to work with restrictions and referred to orthopedics. Id.

On January 8, 2024, Petitioner presented to Dr. Patel at Barrington Orthopedics where Dr. Patel noted that Petitioner had stepped on uneven ground and felt something "crack." PX3. On physical examination to the left ankle, Dr. Patel noted pain extending from the posterior ankle to the calf with swelling, paresthesias that rim the tarsal tunnel canal proximally and distally to the plantar foot, and pain with palpation of the posterior ankle. Id. Dr. Patel noted that Petitioner has had pain that is burning in nature and transferring along the back of the leg down to the plantar foot following the work accident. Id. Dr. Patel recommended a stat doppler to rule out DVT, MRI, and an Achilles boot. Id.

On January 16, 2024, Petitioner underwent an MRI of her left ankle which showed: (1) lateral subcutaneous edema and thickening; (2) question 13 mm ganglion cyst versus mildly prominent joint fluid at the lateral posterior talocalcaneal joint; and (3) intact PTT and Achilles tendon. Id. Petitioner followed up with Dr. Patel on January 22, 2024 with similar physical examination findings, but also positive Tinel sign across the sural nerve with radiation to the distal toes. Id. Dr. Patel reviewed the MRI and noted there was no soft tissue injury, but that Petitioner's symptoms were focal to the sural nerve consistent with a neuropraxia type injury, possible axonotmesis. Id. Dr. Patel administered a steroid injection into Petitioner's left ankle and diagnosed her with a closed injury posterior tibial nerve and left foot neuritis. Id.

On January 23, 2024, Petitioner presented to Dr. Mandal at Illinois Orthopedic Network with burning/pulsing left ankle pain, radiating pain to her upper leg below the knee, swelling, and associated numbness/tingling. PX4. Dr. Mandal noted that Petitioner's pain increased following the steroid injection. Id. Dr. Mandal referred Petitioner to podiatry and placed her off work. Id. On January 26, 2024, Petitioner presented to Dr. Peterson at Suburban Orthopaedics with throbbing left ankle pain and a history consistent with the testimony at trial. PX6. On physical examination to the left ankle, Dr. Peterson noted selling, lateral ankle instability with positive anterior drawer, talar tiling, crepitus, decreased ankle inversion and pain resisted with eversion, and pain at the peroneal tendons. Id. Dr. Peterson diagnosed Petitioner with significant lateral ankle sprain, ATFL sprain, lateral ankle instability, peroneal tendinitis, and possible peroneal tendon tear. Id. Dr. Peterson recommended physical therapy and placed Petitioner off work. Id. Petitioner completed one session of physical therapy at La Clinica on January 25, 2024. PX5.

Petitioner followed up with Dr. Peterson on February 9, 2024 with pain in the Achilles and similar physical examination findings. Id. On February 13, 2024, Petitioner underwent an ultrasound which ruled out DVT. Id. On February 19, 2024, Petitioner presented to Dr. Peterson

with 9/10 left ankle pain and swelling and similar physical examination findings. Id. Dr. Peterson took stress radiographs of Petitioner's left ankle, which showed positive lateral ankle instability noted with increased talar tilting and increased anterior drawer with talar subluxation. Id. Dr. Peterson noted that Petitioner had failed nonoperative treatment, confirmed his diagnosis with clinical examination as well as diagnostic studies, and recommended a left ankle arthroscopy, open Brostrom/Gould lateral ligament repair. Id.

Petitioner followed up with Dr. Peterson on March 4, 2024, April 1, 2024, and April 29, 2024 with continued burning pain and swelling in her left ankle with occasional radiating pain up her left leg and tingling/numbness into her toes. Id. Dr. Peterson noted similar physical examination findings. Id.

On March 28, 2024, Dr. Vora authored an IME report based on his examination of Petitioner on March 20, 2024 and review of the medical records. RX1. At the IME, Petitioner complained of pain in the ankle and posterior Achilles area and gave a history consistent with the testimony at trial. Id. On physical examination, Dr. Vora noted that Petitioner had pain with palpation in the posterolateral ankle on the tendo-Achilles region. Id. Dr. Vora opined that Petitioner sustained a left ankle sprain as a result of the work accident and that Petitioner's degree of hypersensitivity was not validated clinically. Id. Dr. Vora opined that Petitioner's treatment with Dr. Peterson was not medically necessary and did not recommend surgery for Petitioner. Id. Dr. Vora recommended that Petitioner undergo physical therapy and could return to work in a sedentary position followed by full duty after physical therapy. Id. Dr. Vora opined that Petitioner would be at MMI following physical therapy. Id.

Petitioner last presented to Dr. Peterson on May 30, 2024 with similar subjective complaints. Id. On physical examination to the left ankle, Dr. Peterson noted soft tissue swelling, lateral ankle instability with positive anterior drawer, talar tilting, crepitus, decreased ankle inversion and pain with resisted eversion, and pain at the peroneal tendons, ankle, Achilles, and calf. Id. Dr. Peterson continued to recommend the surgery for Petitioner's left ankle. Id. Throughout Petitioner's treatment with Dr. Peterson, he placed Petitioner off work. Id.

Testimony of Petitioner

Petitioner testified that when she first went to Physicians Immediate Care, she was suffering significant burning pain with numbness in her toes. TX26. Petitioner testified that Respondent was unable to accommodate her work restrictions from Physicians Immediate Care. Id. Petitioner testified that her pain worsened after the cortisone injection as her left foot became "purple." Id. at 27. Petitioner testified that Respondent was not able to accommodate her work restrictions by Dr. Patel. Id. Petitioner testified that she attempted physical therapy at La Clinica, but she could not perform any activity as she felt significant pain and could not tolerate weight bearing on her left foot. Id. at 28.

Petitioner testified that she wished to proceed with the surgery recommended by Dr. Peterson, as she wants her pain alleviated and to care for her children. Id. at 30. Petitioner testified that she has worn the CAM boot throughout her treatment as recommended and that it helps by giving stability to her left foot. Id. at 31. Petitioner testified that she has not worked for any employer

since the work accident. Id. at 31. Petitioner testified that her left foot/ankle condition has affected her ability to perform daily chores such as laundry and taking care of her children. Id. at 32. Petitioner testified that she had no issues with her left ankle prior to the work accident. Id. at 32. Petitioner testified that she has had no intervening accidents involving her left ankle since the work accident. Id.

Cross examination of Petitioner

On cross examination, Petitioner testified that she has been wearing the CAM boot throughout her treatment. Id. at 34. Petitioner testified that she never told Dr. Vora that she was hesitant about having the surgery recommended by Dr. Peterson. Id. at 36. Petitioner testified that she only had one visit at La Clinica. Id. at 37-38. Petitioner testified that she notified her boss's wife of the work accident. Id. at 39-40. Petitioner testified that her boss's wife was also her boss. Id. at 40. Petitioner testified that the parking lot in front of Respondent is for office employees. Id. at 41. Petitioner testified that the sidewalk in front of Respondent slopes downward. Id. at 42. Petitioner testified that she had clocked out when she was walking to the employee parking area, injuring herself. Id. at 43. Petitioner testified that the conditions were dry and there were no holes or debris where she twisted her left ankle. id. at 43-44. Petitioner testified that everyone who enters and exits the building uses the door that she used on the accident date. Id. at 44.

Redirect Examination of Petitioner

On redirect examination, Petitioner testified that the sidewalk was level immediately after exiting the door at Respondent. Id. at 45. Petitioner testified that as the sidewalk exits to the parking lot, there is a slight decline. Id. Petitioner testified that the sidewalk area where she twisted her left ankle had a defect with the crack dividing the sidewalk with one side being lower than the other. Id. at 46. Petitioner testified that the deviation or defect in the sidewalk where she tripped was around two inches. Id. at 47. Petitioner testified that the other portions of the sidewalk did not have this deviation. Id. at 47. Petitioner testified that she was told by Heritage Travelware to park in the side parking lot and not in the front where the office employees park. Id. at 48.

Recross Examination of Petitioner

Petitioner testified that she used this sidewalk for a year and six months when working for Respondent. Id. at 49-50.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered

in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. Petitioner was calm, well-mannered, composed, and spoke clearly. 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 Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent. The Arbitrator notes that the issue of accident was narrowed to "arising out of." Id. at 24.

Petitioner credibly testified that on December 19, 2023, she was leaving work for Respondent to the employee only parking lot when she twisted her left ankle on uneven ground on the sidewalk in front of Respondent. The Arbitrator notes that Petitioner's testimony is consistent with the medical records and that Respondent presented no evidence to refute Petitioner's history of the work accident.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003); *Warren v. Industrial Commission*, 61 Ill.2d 373, 335 N.E.2d 488 (1975). "Arising out of the employment" refers to the origin or cause of the claimant's injury. A risk is distinctly associated with employment "if, at the time of the occurrence, the employee was performing acts

he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties." *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill.2d 52, 541 N.E.2d 665, 667, 133 Ill.Dec. 454 (1989).

Here, Petitioner was directed by her employer to park in a parking lot that was designated for warehouse employees. The door shown in RX4 leading outside of the warehouse was the only door Petitioner could use to enter and exit the warehouse. Petitioner had to use an employee card to enter and exit this door. Therefore, as noted in *Caterpillar*, Petitioner was performing acts that were instructed by her employer i.e. using a warehouse employee parking lot.

With respect to the defect, Petitioner credibly testified that she twisted her ankle on a deviation in the sidewalk. In *Litchfield Healthcare Center v. Industrial Commission,* 349 Ill.App.3d 486, 812 N.E.2d 401, 285 Ill.Dec. 581 (5th Dist. 2004), a certified nursing assistant sustained an injury when rolling her ankle on the sidewalk where the concrete was not level coming from the parking lot. The Commission denied compensation on the basis that "there was no evidence to show either that Litchfield restricted the method by which the claimant entered or exited its building or that she was subjected to a risk uncommon to the general public or to a greater degree than the general public." 812 N.E.2d at 404. However, the Appellate Court overturned the Commission's decision as the Commission's finding that the sidewalk contained no defect was against the manifest weight of evidence. The Appellate Court found that the claimant testified that she tripped on an area where the concrete was not level and submitted an exhibit showing a variation in the sidewalk.

The case at hand is comparable to *Litchfield*. Just as in *Litchfield*, Petitioner testified that she twisted her left ankle on uneven ground in the sidewalk. Further, Petitioner presented photographic evidence (PX7), which clearly shows a deviation in the sidewalk where Petitioner tripped. The fact that Petitioner uses this pathway every time while working for Respondent does not negate that there was a defect. Thus, the Arbitrator notes the Appellate Court's findings in *Litchfield* as a credible comparison to Petitioner's claim here.

The Arbitrator finds that Petitioner's work accident arose out of an in the course of her employment.

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).

The Arbitrator finds Dr. Patel and Dr. Peterson 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. Peterson credible with respect to his opinions in the medical records and its relationship to the claimed injury at work for the Respondent.

Petitioner immediately went to Advocate Sherman Hospital after the accident with significant left ankle pain and swelling. Eventually, Petitioner was referred to orthopedics where she treated with Dr. Patel in January of 2024. Dr. Patel noted that Petitioner had burning pain in her left ankle, radiating pain up her left leg, and swelling. Petitioner underwent an MRI of the left ankle which showed lateral subcutaneous edema and thickening. Dr. Patel opined that Petitioner's condition was likely neuropraxia or a closed injury to the peroneal nerve, so he administered a cortisone injection into Petitioner's left ankle. However, as Petitioner testified to and the medical records corroborate, Petitioner's pain worsened following the injection.

Petitioner was eventually referred to Dr. Peterson on January 26, 2024 where she treated until May 30, 2024. Throughout Petitioner's treatment with Dr. Peterson, she had consistent complaints of left ankle pain, swelling, and occasional radiating pain up her left leg and numbness/tingling in her toes. Dr. Peterson consistently noted positive physical examination findings such as lateral ankle instability with positive anterior drawer, crepitus, decreased ankle inversion and pain with resisted eversion, and pain at the peroneal tendons. Petitioner underwent stress radiographs on February 19, 2024, which confirmed Dr. Peterson's diagnosis of lateral ankle instability. Due to Petitioner's failure of conservative treatment, Petitioner's subjective complaints, positive physical examination findings, and diagnostic studies, Dr. Peterson recommended surgery for Petitioner's left ankle.

Respondent intends to rely upon their IME physician, Dr. Vora. Dr. Vora opined that Petitioner sustained a left ankle sprain as a result of the work accident. Dr. Vora recommended additional physical therapy but indicated that surgical intervention was not warranted. However, Dr. Vora fails to note that Petitioner did attempt physical therapy at La Clinica. As Petitioner testified to, she is unable to bear weight on her left foot and requires a CAM boot to assist her in walking. Due to

Petitioner's inability to bear weight and significant pain, Petitioner was unable to perform physical therapy. Dr. Peterson took this into consideration when coming to a definitive diagnosis and treatment plan while Dr. Vora did not. Further, Dr. Vora performed only one physical examination while Dr. Peterson treated Petitioner for several months. Therefore, the Arbitrator finds Dr. Peterson more credible than Dr. Vora on the issue of causation.

The Arbitrator notes Petitioner had no left ankle issues prior to the work accident. Respondent offered no evidence to refute this and Dr. Vora admitted that Petitioner had no prior left ankle condition. Petitioner had no issues performing her work activities for Respondent, which required her to be on her feet most of her shift, prior to the work accident. Following the work accident, Petitioner's left ankle condition progressed to the point where Petitioner had no ability to bear weight on her left ankle without a CAM boot. Thus, Petitioner's condition is clearly more significant than a left ankle sprain.

Based on the above, Arbitrator finds that Petitioner's current condition of ill-being related to her right shoulder is causally related to 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:

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the December 19, 2023 work accident. This is supported by Petitioner's medical records from Advocate Sherman Hospital, Physicians Immediate Care, Dr. Patel, Dr. Mandal, and Dr. Peterson. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Petitioner's treating physicians 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.

Having already found Petitioner's current condition of ill-being being causally related to the work accident, the Arbitrator orders Respondent to pay Petitioner and Petitioner's counsel for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Midwest Specialty Pharmacy, $1,809.92
- Suburban Orthopaedics, $1,811.63
- Physicians Immediate Care, $290.86
- Barrington Orthopedics, $2,469.00

The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act of $0.00.

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

Petitioner was initially placed on work restrictions by Physicians Immediate Care on December 27, 2023 and subsequently by Dr. Patel on January 8, 2024. Respondent was unable to

accommodate Petitioner's work restrictions. Petitioner was then taken off work by Dr. Mandal on January 23, 2024. Throughout the remainder of Petitioner's treatment, she was placed off work by Dr. Peterson. Having found for Petitioner's current conditions of ill-being related to her work accident, the Arbitrator finds that Petitioner is entitled to TTD benefits.

Based on the above, the Arbitrator finds Respondent liable for 25 and 1/7 weeks of TTD benefits (December 27, 2023 through June 20, 2024) at a weekly rate of $456.04, which corresponds to $11,466.15, to be paid directly to Petitioner and Petitioner's counsel. Respondent is entitled to a credit of $7,557.70 in TTD already paid.

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

The Arbitrator finds that Petitioner is entitled to the left ankle arthroscopy, open Brostrom/Gould lateral ligament repair as recommended by Dr. Peterson Petitioner attempted all treatment available to her including medication, physical therapy, injection, and a CAM boot. Due to the persistence in Petitioner's symptoms, positive physical examination findings, and the confirmed pathology on the diagnostic studies, Dr. Peterson recommended surgery.

Dr. Peterson explained:

> [a]t this point she has failed nonoperative treatment. We have confirmed the diagnosis with the clinical examination as well as stress radiographs. The interpretation of the MRI by my read also demonstrates heterogeneity with an attenuated ATFL. She has continued lateral ankle instability. She has failed nonoperative treatment with physical therapy, resting, cam boot immobilization, medications. At this point the next logical treatment step is surgical intervention for left ankle arthroscopy, open Broström/Gould lateral ligament repair. The risk benefits complications were discussed. Surgical order was placed. In my opinion this is medically indicated and required for a full and complete recovery.
>
> PX4, at 57.

Dr. Vora agreed that Petitioner at least suffered an ankle sprain as a result of the work accident. Dr. Vora recommended physical therapy instead of surgical intervention. However, Dr. Vora failed to note that Petitioner was non-weight bearing with her left ankle and that she had attempted physical therapy but was unable to perform the physical therapy activities. As Dr. Peterson notes, the next logical step after failure of conservative treatment is surgical intervention.

As the Arbitrator found that Petitioner's current condition of ill-being related to the left ankle was caused by the December 19, 2023, work-related accident, the Arbitrator finds that Respondent is

liable for left ankle arthroscopy, open Brostrom/Gould lateral ligament repair as recommended by Dr. Peterson.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024818
Case Name	Jeannette Cowan v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0142
Number of Pages of Decision	23
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 4/1/2025

/s/Marc Parker,Commissioner
Signature

Special Concurrence: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeannette Cowan,

Petitioner,

vs. NO: 21 WC 024818

State of Illinois/Pinckneyville
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, temporary total disability, permanent partial disability, medical expenses, prospective medical care, exceeds choice of doctor, and MMI, 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 July 5, 2024, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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.

April 1, 2025

/s/ *Marc Parker*
Marc Parker

MP:yl
o 3/27/25
68

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

SPECIAL CONCURRENCE

I find that the additional injection treatment provided by Dr. Bradley was neither necessary nor reasonable given that two other orthopedic physicians had previously determined that Petitioner had already exhausted conservative management of her left knee condition. Both Dr. Pitts and Dr. Paletta found that treatment by way of medication, physical therapy and a steroid injection had been ineffective and that Petitioner now required surgery. Dr. Bradley nevertheless proceeded with the platelet-rich plasma (PRP) injection which did not change Petitioner's condition. As such, I would not award any charges related to this treatment.

I concur, however, with the award of the prospective left knee arthroscopic procedure initially recommended by Dr. Pitts.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024818
Case Name	Jeannette Cowan v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	22WC011608;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 7/5/2024

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JULY 2, 2024 5.155%

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

July 5, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jeannette Cowan
Employee/Petitioner

v.

SOI/Pinckneyville C.C.
Employer/Respondent

Case # **21** WC **24818**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **June 5, 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 **Has Petitioner reached MMI? Did Petitioner exceed her choice of physicians?**

FINDINGS

On the date of accident, **04/15/2021**, 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 $**122,508.50**; the average weekly wage was $**2,355.93**.

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

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

Respondent shall be given a credit of $**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 $**if any** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's group exhibit, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Bradley, including, but not limited to, left knee 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.

Jeanne L. AuBuchon
Signature of Arbitrator
July 5, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on June 5, 2024, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's left knee condition; 2) payment of medical bills; 3) whether the Petitioner has reached maximum medical improvement; 4) whether the Petitioner exceeded her choice of doctors; and 5) entitlement to prospective medical care to the Petitioner's left knee.

This case was consolidated for purposes of trial with 22WC11608, in which an accident was alleged to have occurred on March 2, 2022, involving the Petitioner's left knee, hip and back.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 51 years old and employed by the Respondent as a clinical service supervisor. (AX1, T. 11) On April 15, 2021, she was on a warden's tour, going to cell houses and talking to the population cell to cell. (T. 11-12) She was on the top deck of a cell house on one side when an individual on the other side wanted to speak to her. (T. 12) She crossed over and slipped on laundry detergent that was on the floor. (Id.) Her left leg went forward and her right leg went backward. (Id.) She did not fall to the floor but strained trying to keep her balance and injured her left knee. (Id.) She denied seeing any doctors for her left knee at the time of the accident. (Id.) Likewise, the medical records showed no prior incidents or treatment regarding the Petitioner's left knee.

On April 20, 2021, Petitioner went to the office of family practice physician Dr. Joseph Molnar at Chester Clinic, where she saw Nurse Practitioner Valerie Blechle for left knee pain. (PX4) She described the accident and said she did not completely fall but twisted her left knee awkwardly. (Id.) She said that the next day, the pain became severe, and her knee swelled. (Id.)

She reported that the pain was primarily medial and posterior, and that she experienced popping and weakness in her knee. (Id.) She rated her pain at 6/10 and she ambulated with a limp. (Id.)

On exam, she had limited range of motion secondary to pain, point tenderness at the medial joint line and posterior knee and a positive McMurray sign. (Id.) An x-ray of the left knee showed early patellofemoral degenerative arthrosis, but no acute bone pathology. (PX3, PX4) She was prescribed an oral steroid, referred for physical therapy and instructed to rest and use ice and compression. (PX4) She was not placed on restrictions at work, as it was noted that she had a desk job (Id.)

The Petitioner underwent physical therapy at ApexNetwork Physical Therapy from May 7, 2022, through June 3, 2022. (PX6) At the last visit, she reported stiffness in her knee. (Id.) She was assessed with pain on the lateral aspect of the left knee, increased active range of motion on flexion, inability to fully extend the knee due to pain, and decreased extension on active range of motion when compared to her initial evaluation. (Id.)

On June 8, 2021, Petitioner returned to Chester Clinic where NP Blechle noted that physical therapy had not helped. (PX4) The Petitioner reported that her knee clicked, was catching, gave out at times and ached all the time. (Id.) The prednisone did not help significantly, and Petitioner was already taking a painkiller and anti-anxiety medication. (Id.) She was diagnosed with left knee pain and instability of the left knee joint. (Id.) NP Blechle ordered an MRI and gave Petitioner a referral to orthopedics. (Id.)

The left knee MRI was performed on June 11, 2021, at Memorial Hospital and showed grade II chondromalacia of the lateral aspect of the medial patellar facet, loss of patellar cartilage at the patellofemoral joint, and tiny joint effusion. (PX3)

The Petitioner testified that Dr. Molnar referred her to Dr. Ryan Pitts, an orthopedic surgeon at Orthopedic Associates. (T. 14) She saw Dr. Pitts on June 15, 2021, and complained of left knee pain and swelling. (PX5) Dr. Pitts noted that physical therapy, icing and an oral steroid offered some improvement, but she still had persistent symptoms that occurred constantly with intermittent worsening. (Id.) An examination revealed moderate effusion, pain with compression, moderate crepitation on patella exam and pain at the end ranges of motion. (Id.) X-rays revealed moderate patellofemoral narrowing and degenerative findings. (Id.) Dr. Pitts reviewed the MRI and noted that the Petitioner had pre-existing patellofemoral chondrosis/osteoarthritis. (Id.) He diagnosed arthropathy, left knee pain, swelling, patellar chondrosis, and alleged work injury. (Id.) He said the work injury was the primary and prevailing factor for the current symptoms and pathology and that the work injury exacerbated versus aggravated the pre-existing condition, and as such, Petitioner was due for treatment. (Id.) He performed a corticosteroid injection and indicated Petitioner should return in two to three weeks for reevaluation. (Id.) He stated that if her symptoms were not resolved, arthroscopic patellar chondroplasty might be indicated. (Id.) The Petitioner testified that the injection gave her relief "very temporarily." (T. 14)

On July 6, 2021, the Petitioner returned to Dr. Pitts and reported that the injection provided near complete relief for seven to 10 days; however, this was followed by a return of her symptoms. (Id.) He indicated that her job was primarily seated duties and she had been able to continue working. (Id.) He recommended knee arthroscopy and patellar chondroplasty, given the cartilage status, the Petitioner's symptoms, the examination findings and response to nonoperative treatments. (Id.) Dr. Pitts did not issue a finding of maximum medical improvement. (Id.)

The Petitioner testified that she wanted to have the surgery but did not because it was not approved by work comp. (T. 15-16)

The Petitioner stated that upon the recommendation of her attorney, she sought a second opinion from Dr. George Paletta, an orthopedic surgeon at the Orthopedic Center of St. Louis. (T. 17-18) She saw Dr. Paletta on September 1, 2021, gave a history of the accident and complained of left knee pain and swelling. (PX7) Dr. Paletta indicated that Petitioner had undergone conservative treatment. (Id.) He noted that Dr. Pitts recommended surgery, but that "they never heard back from workers' compensation, so no surgery had ever been scheduled." (Id.)

An examination revealed left knee peripatellar tenderness, a positive patellar compression test, patellofemoral crepitus and pain with deep flexion. (Id.) X-rays showed mild patellofemoral degenerative changes. (Id.) Dr. Paletta reviewed the MRI and said it demonstrated moderately severe patellofemoral arthrosis with grade II and III changes of the articular cartilage of the patellofemoral articulation with minimal effusion. (Id.) He also noted some subchondral edema involving the patellar bone deep to the areas of chondrosis. (Id)

Dr. Paletta diagnosed patellofemoral pain in a setting of patellofemoral arthrosis. (Id.) He did not recommend a repeat injection and said surgery was relatively unpredictable for this condition, but he felt that Dr Pitts' recommendation for surgery was "not unreasonable." (Id.) He opined that the work incident did not cause the underlying patellofemoral arthritis, but it appeared to have increased the symptoms related to the condition. (Id.) He believed treatment had been reasonable and necessary but ineffective in relieving the symptoms. (Id.) He believed the Petitioner could continue to work full duty. (Id.) Dr. Paletta did not issue a finding of maximum medical improvement. (Id.) The Petitioner testified that Dr. Paletta was not willing to move forward with surgery without approval. (T. 18)

On November 23, 2021, the Petitioner underwent a Section 12 examination by Dr. Timothy Farley, an orthopedic surgeon at Motion Orthopaedics. (RX1) Dr. Farley took a history,

performed a physical examination and reviewed medical records and radiographic images. (Id.) On the MRI, he noted: no meniscal tear; normal anterior cruciate ligament (ACL); normal posterior cruciate ligament (PCL); subchondral changes in the medial patellar facet; articular cartilage height loss in the medial patellar facet; no evidence of injury to the medial collateral ligament (MCL) or lateral collateral ligament (LCL); small effusion; and no intraarticular loose bodies. (Id.)

In his conclusions, Dr. Farley noted the Petitioner's subjective complaints and listed objective findings of no evidence of swelling, no palpable crepitus, stable ligaments and mediopatellar facet chrondromalacia without other intraarticular pathologies. (Id.) He reported a sense of magnification of symptoms and thought the Petitioner's pain response seemed more obvious and to a larger magnitude than he would expect. (Id.) He diagnosed chronic chondromalacia of the mediopatellar facet of the left knee and did not believe the accident represented the causative factor in the Petitioner's current objective findings. (Id.) He believed the diagnosis was a pre-existing longstanding degenerative condition. (Id.)

Regarding additional treatment, Dr. Farley stated that the only thing to offer the Petitioner would be an arthroscopy of the knee with a patellar chondroplasty. (Id.) He said this would be an unpredictable surgery that oftentimes really does not resolve following the intervention. (Id.) However, he agreed with Dr. Paletta that the procedure would not be "unreasonable at this point," given the Petitioner's lack of improvement. (Id.) His prognosis for the Petitioner was guarded because her condition does not respond predictably to arthroscopy, nonsurgical methods that that point had not offered improvement and he sensed some symptom magnification. (Id.) He stated that if the Petitioner did not wish to undergo further medical treatment, he believed she would be at maximum medical improvement. (Id.)

The Petitioner testified that she hurt herself again on March 2, 2022, when she was in her office. (T. 21) She said she stood up to pull her office door closed and, when she reached to grab the door, she fell to the ground because her left knee gave out. (Id.) The next day, the Petitioner went to Chester Clinic and saw physician assistant Angela Albertini and reported the incident. (PX4) She also reported a history of a labral tear in her left hip, for which she was taking medications. (Id. She said she was having a difficult time moving around with her left back, hip and leg pain. (Id.)

An examination revealed back pain with hyperextension and side-to-side bending, as well as tenderness over the left lower lumbar spine. (Id.) Her left hip had decreased range of motion and pain to palpation over the groin and lateral hip. (Id.) X-rays of the left hip showed moderate arthritic changes but no acute fracture or dislocation. (PX3) Lumbar spine X-rays showed progression of scoliosis, stable mild degenerative disc height loss, end plate spondylosis and facet arthropathy at L4-5 and L5-S1. (Id.) The Petitioner was diagnosed with low back and left hip pain and was taken off work until March 7, 2022. (PX4)

The Petitioner returned to Chester Clinic on March 7, 2022, and saw NP Blechle, who indicated that Petitioner's groin pain seemed to be better, but her left flank and buttock pain were worse. (PX4) It was noted that she continued to have left knee issues from her April 2021 work injury and that her fall was from her left knee giving out. (Id.). It was noted that she was still waiting for approval for left knee surgery from her "work comp company." (Id.) She was able to continue working, as her job was mostly desk work. (Id.) She was given an oral steroid and muscle relaxants. (Id.)

At a deposition on June 22, 2022, Dr. Paletta testified consistently with his report. (PX12) He said he would be able to perform the recommended surgery but typically would seek approval

from work comp before scheduling a patient for surgery unless the wait for approval would compromise their well-being, health or potential outcome. (Id.) He said that although prolonging the Petitioner's surgery was not likely to worsen her knee or symptoms, he did not think the symptoms would get better by waiting. (Id.) Dr. Paletta reviewed Dr. Farley's report and agreed with his diagnosis but disagreed with his conclusion that the Petitioner's ongoing symptoms were not related to the work injury. (Id.)

Dr. Paletta described the recommended surgery as debriding or smoothing out the areas of wear of the cartilage, removing any loose or fragmented pieces and cleaning up any inflammation or synovitis in the joint. (Id.) He explained that by stating that the proposed surgery is unpredictable, he meant that in about one-third of patients the surgery resolves the symptoms, a third get some relief and a third get minimal or no relief. (Id.) He said he expected that the Petitioner's complaints would be less significant with the surgery. (Id.)

On February 3, 2023, the Petitioner saw NP Blechle at Chester Clinic for ongoing problems with her left knee. (PX4) As to why the Petitioner didn't have the surgery recommended by Dr. Pitts and Dr. Paletta, the notes said "it wasn't approved by work comp," and the Petitioner had "just suffered through it since then." (Id.) She said she needed another opinion because her symptoms were becoming "unbearable." (Id.) The Petitioner reported that she was taking pain medication and a relaxant and using a topical arthritis pain reliever. (Id.) She said her knee pain was sharp and constant, she had trouble doing steps, and her knee was giving out often. (Id.)

On exam, she had limited range of motion in her left knee secondary to pain; there was tenderness at the medial and lateral joint lines as well as at the superior knee; and she had a positive McMurray sign. (Id.) In her plan, NP Blechle indicated that Petitioner should continue

medications. As to a treatment plan, NP Blechle stated: "refer to Dr. Matthew Bradley at Metro East Orthopedics per patient request." (Id.)

The Petitioner denied that her attorney told her to see Dr. Bradley and could not recall when she received the referral. (T. 23-24) When she was shown the office visit note from February 3, 2023, she said that was accurate. (T. 25-26) The Petitioner testified that she did not know if a referral was sent to Dr. Bradley but assumed it was. (T. 27)

On April 10, 2023, Petitioner saw Dr. Bradley with symptoms of anterior left knee pain. (PX8) She reported that her pain began on April 15, 2021, and described the accident. (Id.) She said she had pain with going up and down stairs or inclines, as well as with prolonged standing or walking. (Id.) .Dr. Bradley noted the history of prior treatment with therapy, anti-inflammatories and an injection as well as Dr. Pitts' and Dr. Paletta's surgical recommendations. (Id.) He stated that since these recommendations were made, "they have been trying to get her surgery, however, she has run into one roadblock after another and has been unable to get her recommended surgery." (Id.) The Petitioner denied interval trauma and indicated that she had come to Dr. Bradley's office to see if he had any further information or recommendations for her. (Id.) She denied any history of pain in her left knee prior to the April 15, 2021, incident. (Id.).

An examination showed pain to palpation in the peri-patella, active range of motion to 125+ degrees, positive McMurray testing, severe pain or crepitus with patellar compression testing, and decreased quad strength. (Id.) Dr. Bradley performed x-rays, reviewed the June 11, 2021, MRI and diagnosed left patellofemoral disease. (Id.) He indicated that the Petitioner's symptoms were certainly consistent with her diagnosis. (Id.) He noted that the MRI was performed without intra-articular contrast and recommended a new MRI scan with contrast to more

fully evaluate the cartilage and patellofemoral joint and ensure there was not an underlying meniscal tear that may not have been appreciated on initial exam. (Id.)

Dr. Bradley allowed the Petitioner to continue to work full duty, as she reported that she could safely perform all her necessary job requirements. (Id.) He believed that the injury from April 15, 2021, resulted in acute, now chronic, anterior knee pain which was at least contributing to her ongoing symptoms and the need for further medical work and evaluation. (Id.) A left knee MRI arthrogram was performed at MRI Partners of Chesterfield on May 9, 2023, and showed intact menisci, areas of advanced chondral thinning along the medial patellar surface with mild subchondral changes and a mild MCL sprain. (Id.)

The Petitioner returned to Dr. Bradley on June 15, 2023, and reported no change in her symptoms. (PX8) Dr. Bradley reviewed the new MRI and noted fairly significant arthritis along the medial surface of the patella without obvious flap type chondral changes. (Id.) He indicated that the Petitioner's symptomology was very reproductive to palpation over the lateral distal femur. (Id.) He felt there was a small ridge or bone spur in this area that was painful. (Id.) He could reproduce this pain when the knee was in full extension if he slightly translated the patella laterally. (Id.) He noted a very slight lateral patella j-sign coming into full extension. (Id.) He believed that when she twisted at the time of her injury, her patella slightly subluxed laterally and aggravated some of the underlying degenerative disease. (Id.) He recommended a platelet-rich plasma (PRP) injection prior to surgical intervention and indicated that if this failed to provide relief, the next step might be diagnostic arthroscopy. (Id.) The injection was performed on August 4, 2023. (Id.)

Dr. Farley testified consistently with his report at a deposition on September 12, 2023. (RX3) He explained that chondromalacia means the articular cartilage – cushioning at the ends of the bones – is starting to fray or wear away. (Id.) He acknowledged that because the Petitioner

said she had no pre-existing pain and there were no medical records or evidence that would argue against that, the Petitioner could claim that the work accident aggravated her previously asymptomatic knee. (Id.)

Dr. Farley stated that the treatment had been reasonable, but the Petitioner would be a bad surgical candidate in that the issue in her knee does not respond favorably to surgeries, according to medical literature and his experience. (Id.) He did not think surgery would offer the Petitioner much improvement. (Id.) On cross-examination, Dr. Farley acknowledged that he had not seen any of the Petitioner's medical records following September 1, 2021. (Id.)

On September 18, 2023, the Petitioner saw Dr. Bradley and reported that following the injection, she had some increased pain, but it settled down to her baseline pain. (PX8) Dr. Bradley noted that the Petitioner's pain continued to be over her medial greater than lateral patella and she was having some slight lateral joint line tenderness as well. (Id.) A physical examination was similar to his prior exam. (Id.) Dr. Bradley indicated that the Petitioner had exhausted all non-operative treatment and agreed with Dr. Pitts and Dr. Paletta that the Petitioner needed a chondroplasty with possible microfracture of the patella. (Id.) He explained to the Petitioner that the goal would be pain reduction, although zero percent pain might not be achievable. (Id.) The Petitioner wished to proceed with surgery. (Id.)

Dr. Bradley testified consistently with his records at a deposition on December 22, 2023. (PX13) He explained that the surgery was a pretty simple procedure with a quick recovery, low pain and low risk. (Id.) He said more aggressive options would be replacing the kneecap or replacing the whole knee. (Id.) He did not believe the Petitioner would improve without surgery. (Id.) He described the chondroplasty procedure as smoothing the rough edges of the cartilage. (Id.) He described microfracture as drilling small holes in the bone where the cartilage is

completely gone so that the bone bleeds and fills up the space where the cartilage is missing with blood that hardens or clots. (Id.)

Regarding Dr. Farley's opinions, Dr. Bradley said he agreed that surgery would be the next step but disagreed with his prognosis, stating that he thought there was a reasonable chance that the patient would at least do better and possibly significantly better with low risk. (Id.)

As to the effect of the second accident on the Petitioner's condition, Dr. Bradley did not think the Petitioner's knee gave out because of instability because she didn't have a torn meniscus or anterior cruciate ligament (ACL). (Id.) He thought her knee giving out was from pain inhibition when a body part – in this case the quad muscle – stutters or gives out briefly, causing the knee to buckle. (Id.)

The Petitioner testified that her knee felt "crappy" – with daily pain that does not go away and at times is achy, throbbing, stabbing and feels weak. (T. 19) She said her condition has altered her gait, causes her to take stairs one step at a time and affects her carrying, cleaning, doing yard work and sleeping. (T. 20) She acknowledged missing very little work because she is "old school" when it comes missing work. (Id.) She said there are days she shows up to work with her gait worse on some days than others. (Id.) She said it affects what she does on the job because there are a lot of stairs at the facility. (Id.) She said she wants her knee fixed. (T. 21)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator finds the Petitioner to be credible. Her testimony was consistent with the accident reports submitted to the Respondent and with her reports to the

doctors. Although Dr. Farley believed the Petitioner was exaggerating her symptoms, he did not seem to doubt that she had symptoms.

Issue (F): Is Petitioner's current condition of ill-being causally related to the accident?
Issue (O): Has the Petitioner reached maximum medical improvement?

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). 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." *Id.*

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The doctors agreed that the Petitioner had a degenerative condition in her knee. Dr. Paletta and Dr. Bradley testified affirmatively that the first work accident aggravated that condition. Dr. Farley initially opined that the Petitioner's knee condition was degenerative and, thus, not causally related to the accident. However, he did acknowledge in his deposition that the work accident

could have aggravated that condition. These opinions are supported by the circumstantial evidence that the Petitioner was asymptomatic prior to the work accident but experienced pain and difficulties afterwards.

The Arbitrator also must determine the effect of the Petitioner's second injury on the relationship between the first accident and the Petitioner's current condition. As long as a "but-for" relationship exists between the original event and the subsequent condition, the employer remains liable. *International Harvester Co. v. Industrial Commission,* 46 Ill.2d 238, 263 N.E.2d 49 (1970). *See also Vogel v. Industrial Commission,* 354 Ill.App.3d 780, 821 N.E.2d 807, 290 Ill.Dec. 495 (2d Dist. 2005).

At the time of the March 2, 2022, accident, the Petitioner was still suffering the effects of the prior accident. None of the doctors determined the Petitioner to be at maximum medical improvement. Dr. Bradley explained that the Petitioner's knee giving out would be from pain inhibition from the first injury. There also was no evidence that the second incident caused any new symptoms or pathology in the Petitioner's knee.

Based on this, the Arbitrator finds that the second accident may have briefly aggravated the Petitioner's condition but did not break the causal connection between the first accident and her current condition.

The Arbitrator also finds the gaps in the Petitioner's treatment do not break the causal connection between the April 15, 2021, accident and her current symptoms. Where a gap in treatment exists, "(t)he ultimate issue is not whether there was a gap in treatment but, rather, whether the initial accident was a causative factor in the condition of ill-being which was produced." *William Gordon v. State of Illinois DOT Joliet Yard*, 07 I.W.C.C. 1599 (2007). The important issue is whether the symptoms and findings later in the treatment match up to the

symptoms immediately following the accident, and whether the gap was logically explained. *Id.* In that case, the claimant did not seek treatment for almost nine months at one point and four months after that. *Id.* The Commission agreed with the Arbitrator that it is not unreasonable for claimants to expect to "simply heal with time" and would not penalize an employee who works through pain. *Id.* See also *Sharon Langorgen v. K-Mart*, 09 I.W.C.C. 1160 (2009), where the Commission recognized that, although there was a gap in formal treatment for two years, the claimant continued to identify the accidental injury as the source of her complaints without rebuttal. *Id.* The Commission relied on her credible testimony and the circumstantial evidence, which showed an absence of any intervening accident, in holding that causal chain remained unbroken and awarding benefits. *Id*.

As in those cases, the gap in treatment does not defeat the Petitioner's claim herein. She was not cured during that time, and her symptoms were the same as at the last time she treated. Aside from the March 2, 2022, incident that the Arbitrator has found did not break the causal chain, there were no intervening incidents. The Petitioner continued to identify the April 15, 2021, accident as the source of her complaints. Lastly, the gap in treatment was logically explained – the Respondent refused to authorize surgery, and the Petitioner was able to perform her job, although she was still experiencing symptoms. The Arbitrator finds that the gap in treatment was not unreasonable and will not penalize the Petitioner for continuing to work through pain.

As to whether the Petitioner reached maximum medical improvement, the Arbitrator notes that none of the treating physicians found her to be at maximum medical improvement. Dr. Farley stated that if the Petitioner did not wish to undergo further medical treatment, he believed she would be at maximum medical improvement. The Petitioner did wish to undergo further medical treatment, but this was denied by the Respondent.

Thus, the Arbitrator finds the Petitioner's current condition of ill-being is causally related to the injury from the April 15, 2021, accident, and she did not achieve maximum medical improvement.

Issue (J): Were the medical services that were provided to Petitioner after November 23, 2021, reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
Issue (O): Did Petitioner exceed her choice of doctors under Section 8(a) of the Act?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

The Respondent is challenging the reasonableness and necessity of treatment after November 23, 2021 – when Dr. Farley found the Petitioner's condition was degenerative and not causally related to the accident. However, Dr. Farley did not review any of the medical records from after September 1, 2021. Dr. Paletta and Dr. Bradley believed the treatment was reasonable. There are no opinions that the treatment after Dr. Farley's examination was not reasonable and necessary.

Regarding whether the Petitioner exceeded her choice of doctors – specifically by seeing Dr. Bradley, the Arbitrator finds sufficient evidence in NP Bleche's note that the Petitioner was referred to Dr. Bradley, which would fall within the chain of referrals from the Petitioner's first choice of doctors.

In light of these findings and the findings above regarding causation, the Arbitrator finds the medical expenses for continued treatment after November 23, 2021, were reasonable and necessary.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Although Dr. Farley felt results of surgery would be unpredictable and may not provide long-lasting relief, he said the procedure would not be "unreasonable at this point," given the Petitioner's lack of improvement. The treating physicians also were cautious about how effective the surgery would be, but they recommended it based on the failure of conservative treatment to alleviate the Petitioner's symptoms. Dr. Bradley was optimistic that the surgery would provide at least some, if not significant, improvement.

An important function of the Act is to give workers the treatment necessary to try to return them to the conditions they were in prior to their work accidents. Although efforts have been made to return the Petitioner to her pre-accident state, this has not been accomplished, and treatment options have not been exhausted.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically arthroscopic surgery and follow-up care as recommended by Dr. Bradley, as he is the

physician who saw the Petitioner most recently and is morst familiar with her current condition. The Respondent shall authorize and pay for such.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC024370
Case Name	Ethan Madden v. Southeastern Illinois Electric Co-op
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0143
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Daniel Keefe
Respondent Attorney	Joseph Guyette

DATE FILED: 4/1/2025

/s/Christopher Harris,Commissioner
Signature

DISSENT: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ETHAN MADDEN,

Petitioner,

vs. NO: 18 WC 24370

SOUTHEASTERN ILLINOIS ELECTRIC COOP.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of occupational disease, exposure, arising out and in the course of his employment, causal connection, the necessity of the medical treatment, temporary total disability ("TTD") benefits, and permanent partial disability ("PPD") benefits, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds that Petitioner established a work-related accident arising out of and in the course of his employment on August 2, 2018. Therefore, the Commission finds Petitioner is entitled to outstanding medical expenses of $44,647.04, TTD benefits from August 9, 2018 through May 29, 2022 and that he sustained 60% loss of the person-as-a-whole.

FINDINGS OF FACT

Job Duties and Witness Testimony:

Petitioner testified that he was hired as an apprentice tree trimmer by the Respondent in January 2011 and successfully completed a 15 week lineman bootcamp without issue. (T.53.) He progressed to a journeyman tree trimmer and then to a foreman where he would oversee and help train apprentice tree trimmers. (T.15.) He had to walk long distances between the poles while

carrying equipment weighing between 15 to 20 pounds on the light end. (T.21.) The poles were between 30 and 45 feet tall. (T.25.) He wore spikes while climbing and had to have one leg locked at all times. (T.27.)

He successful passed the Department of Transportation ("DOT") examinations on January 18, 2012, December 9, 2013, and November 6, 2015.

Jeff Neuman is the operations manager for the Respondent. (T.67.) He testified that the Petitioner would climb 6 poles per month and averaged 2 per month. (T.69.) The Petitioner had a lift bucked available to help him reach the top of the poles. (T.70.) On cross-examination, Petitioner never climbed 5 poles when he worked with him. (T.78.) He has very little personal knowledge what the Petitioner did between December 2015 and March 2018. (*Id.*)

Andy Sweat is the operations manager for the Respondent and supervised the Petitioner between December 2015 and March 2018. (T.85.) He stated Petitioner would climb between 1 to 2 poles a month and had a lift bucket available. (T.86.) On cross-examination, he did not have any reports showing how often Petitioner climbed poles. (T.90.)

Dustin Tripp is the president and CEO for the Respondent. (T.94.) Petitioner was offered a customer service representative position that accommodated his work restrictions. He would have had periodic raises in this position pursuant to the union contract. (T.99.)

Pre-Employment Medical Treatment:

While the Petitioner acknowledged a lengthy history of prior left knee issues, he testified that his left knee felt good and he was in the best shape of his life when he began working for the Respondent in January 2011. (T.14.)

Dr. John Fisk performed a curettage and bone graft of the left lateral condyle tumor on June 27, 2006. He had a tumor of the left lateral condyle. Petitioner was 14 years. (RX.1.)

Dr. Paletta performed a left knee arthroscopy with extensive debridement, chondroplasty and microfracture osteochondritis dissecans ("OCD") lesion, lateral femoral condyle, and removal of loose bodies on July 18, 2007. (RX.5.)

Dr. Paletta performed a left knee arthroscopy with debridement and chondroplasty of the lateral femoral condyle and removal of loose bodies on December 1, 2009. The diagnoses were OCD lesion, lateral femoral condyle, and intraarticular loose bodies of the left knee. (RX.6.)

Petitioner underwent a Department of Transportation ("DOT") examination on February 10, 2010. The record indicated that he had OCD. (PX.4.)

Post-Employment Treatment:

Petitioner was seen by Dr. Mark Korte ("Dr. Korte") of Logan Primary Care on December 9, 2016 for headaches and confusion. He had an ongoing history of knee pain and a lot of popping in the left knee. There was marked crepitance in the left knee. He had full range of motion with no laxity. He was to continue to monitor his knee. (RX.7.)

Petitioner testified that his left knee started to swell, pop and become weak in 2018. (T.32.) He stated that pole climbing was the main aggravating factor and he had a hard time keeping his leg locked. (T.33.)

Petitioner was seen by Dr. Matthew Bayes ("Dr. Bayes") of Bluetail Medical Group on April 9, 2018 for evaluation of his chronic left knee pain. He had a painful clicking and mostly lateral and somewhat posterior pain, worse with climbing poles. The x-ray revealed posterior lateral loose bodies, small and rounded, possibly extra articular. There was minimal joint space narrowing in the left lateral joint space. The assessment was chronic left knee pain with chronic left knee cartilage defects. Dr. Bayes recommended an updated MRI, viscosupplement injections, and stem cell treatment. (PX.5.)

Petitioner obtained a second opinion from Dr. Shiraz Patel ("Dr. Patel") of the Orthopedic Institute of Western Kentucky on August 2, 2018. He reported working as a lineman and performing a lot of pole climbing which, along with squatting, tends to aggravate his pain. The x-ray revealed significant degenerative joint space to the lateral compartment of the left knee with fairly well preserved medial compartment and patellofemoral compartments. The assessment was primary osteoarthritis of the left knee. Petitioner declined joint replacement surgery. An MRI and Monovisc injections were recommended. (PX.2.)

Petitioner received work restrictions of ground level work only on August 9, 2018 due to the risk of self-harming himself or others. He was also advised to avoid climbing. (PX.2.) Petitioner testified that he provided the restrictions to Jeff Neuman and was sent home as they were unable to accommodate the restrictions. (T.35-36.)

Petitioner underwent an MRI of the left knee on August 11, 2018. There was cartilage loss in the inferior patellofemoral compartment with edema of the lateral patella and adjacent lateral femoral condyle, presumably from a repetitive rubbing injury. There was thinning of the cartilage with fissuring in the lateral compartment of the knee without appreciable full thickness cartilage loss. Subchondral cystic changes were seen in the adjacent lateral femoral condyle. There was an abnormal appearance of the anterior horn of the lateral meniscus, which appeared small/thin and abnormal in shape without a discrete tear identified. (PX.2.)

Petitioner was seen by Dr. Korte on August 15, 2018 with a reported 2 year history of gradually worsening left knee pain. Petitioner further reported that his left knee pain has progressed to the point it hurt all the time and he was unable to bend or squat. He was told he could no longer work as a lineman. He was diagnosed with severe osteoarthritis and told he needed a total knee

replacement but he was too young. He was given restrictions to avoid climbing due to his severe osteoarthritis. (RX.8.)

Petitioner followed up with Dr. Patel on September 6, 2018. Petitioner reported he was experiencing locking episodes and had progressive pain in his knee. Dr. Patel reviewed the MRI and noted that he has an essentially degenerative cartilaginous defect in the lateral condyle. Given the persistent symptoms, a left knee arthroscopy and a chondroplasty on the lateral side was recommended. He was too young to consider arthroplasty. Dr. Patel noted that performing an aggressive labor, such as a lineman, and climbing probably did not help his situation as this put a lot of force through the joint and probably accelerated the process, which he should avoid. (PX.2.)

Dr. Patel performed a left knee arthroscopy with removal of 10mm loose body, posterolateral compartment in the left knee, patellar chondroplasty, and lateral femoral condyle chondroplasty on November 2, 2018. There were grade 4 changes of the lateral aspect of the trochlear groove measuring about 2.5 centimeters with grade 3 and grade 4 changes on the other surface of the patella. There were global grade 3 changes of the lateral femoral condyle with a previous microfracture procedure done in the past. The lateral meniscus, medial meniscus, medial compartment, and ACL were well preserved. Dr. Patel noted Petitioner was having significant patellofemoral symptoms. He was not sure that an isolated lateral compartment replacement would help unless Petitioner was willing to live with the patellofemoral symptoms. Other options would include a lateral and patellofemoral replacement. (PX.2.)

Petitioner was seen by Dr Korte on November 19, 2018. Dr. Korte noted that the knee scope revealed a large chunk of bone inside the knee which was pulled out. The diagnosis was primary osteoarthritis of both knees. He had filled out a long term disability application and has been off work for 65 days. (PX.4.)

Petitioner followed-up with Dr. Patel on January 10, 2019. Dr. Patel noted that it was clear Petitioner should change careers as he should not perform physical labor. He could perform sedentary work only. He then a series of injections, which were not helping. (PX.2.)

Petitioner was seen by Dr. Patel on June 3, 2019. Petitioner noted that he was hurt while climbing poles at work and has left knee pain. (PX.2.)

Petitioner followed up with Dr. Patel on September 10, 2019. He noted that Petitioner was to proceed with a total knee replacement as he exhausted all other conservative care. Petitioner indicated this was a workers' compensation claim. (PX.2.)

Respondent obtained a Section 12 examination from Dr. Michael Nogalski ("Dr. Nogalski") on March 31, 2020. He diagnosed Petitioner with osteoarthritis of the left knee secondary to progressive degeneration of the lateral femoral condyle, after recurrent episode of articular cartilage breakdown and degeneration requiring four surgical procedures. He did not have a specific condition in the left knee that was related to his work activities. His left knee showed

issues from 2006 to the present. He had recurrent episodes demonstrating a natural history of the process of recurrent breakdown of joint surface cartilage injury and loose body creation well before his employment with Respondent. He did not have a normal joint surface that would be reasonably able to withstand pressure from squatting, climbing, or leg presses. There was no doubt Petitioner would experience symptoms in his left knee from either work or home. The amount of symptoms would be proportional to the amount of force placed on his knee. Petitioner did not show a significant or permanent aggravation of a knee condition which has existed for years prior to the alleged work aggravation. The treatment and surgery is not related to the injury. (RX.14.)

Petitioner was seen by Dr. Patel on November 10, 2020. He was over 2 years out from his left knee scope with documented bone-on-bone changes in the lateral compartment with grade 4 changes in the patellofemoral compartment. Dr. Patel noted that Petitioner has no other option than to proceed with pain management in the form of continued injections or radiofrequency ablation of the left knee. The definitive step would be a total knee replacement. Dr. Patel noted that this all stemmed from what sounded like an OCD lesion on the lateral femoral condyle which was treated on June 27, 2006. Dr. Patel wrote a work note stating that extensive climbing and physical labor will further exacerbate his symptoms. He recommended Petitioner choose a career that does not involve heavy lifting or demand so much of his left knee. (PX.3.)

On February 22, 2021, Dr. Korte wrote a letter "To Whom It May Concern." He saw the Petitioner on February 19, 2021 and he was 100% disabled due to left knee osteoarthritis. Petitioner was to undergo a knee replacement in March 2021. (PX.4.)

Dr. Patel performed a left total knee arthroplasty on March 26, 2021. The post operative diagnosis was osteoarthritis of the left knee. (PX.3.) Dr. Patel subsequently performed a left knee injection and manipulation on June 4, 2021. (*Id.*)

Petitioner underwent an independent examination of the left knee with Dr. Spencer Romine of the Orthopedic Institute on February 9, 2022. He agreed with Dr. Patel's examinations that showed Petitioner had a significant amount of arthritic changes in the lateral compartment of his knee as well as the patellofemoral compartment prior to the total knee replacement. He worked a very labor intensive job and had to climb poles multiple times a day and lift an extensive amount of weight during his job. His range of motion was from 0 to 90 degrees of flexion which would significantly impact his ability to climb poles. He had to limit carrying up to 40 pounds. He did not feel Petitioner could crawl on his knees and hands. Given his pain, loss of function and mechanical symptoms, a total knee replacement was reasonable. He should perform ongoing therapy to improve his strength and range of motion. (PX.1.)

Petitioner presented to Dr. Patel for a one year follow up on March 31, 2022. His range of motion was 0-123 degrees and he had 3mm of excursion medially and 2mm laterally. He was doing fantastic. He could go back to work but he could not climb as this would be the best avenue to help preserve the knee in someone as young as Petitioner. (PX.3.) Petitioner testified that this was the last time he saw Dr. Patel and he is to follow up every 5 years.

Current Condition and Employment:

Petitioner testified that his employer offered him a job within his restrictions but they were going to take away 10 years of his seniority and reduce his pay to $31.00 per hour. (T.41.) He resigned and now works as a site technician maintaining trails with the Illinois Department of Natural Resources. (T.43.) He mows and uses a chain saw to cut trees. (*Id.)* He was making $90,000.00 plus for the Respondent and now earns $60,000.00. (*Id.*)

Currently, he has trouble pulling up his socks, he has numbness on the outside of his leg from the surgery and he has an 8 inch incision. (T.44.) The surgery helped and he now gets around better. (T.45.) He had no knee issues after the surgeries in high school and did not notice issues until 2018. (T.46.) The nature of the work as a lineman was what caused his knee issues. (T.47) He received long term disability between 2018 and 2022. (*Id.*)

Deposition Testimony:

Dr. Nogalski was deposed June 8, 2020. He is board certified in orthopedic surgery and specializes in the knee and shoulder. Based on his review of the prior records, he stated that the treatment Petitioner had to the left knee in 2018 was not related to any work activity. (RX.15. pg.27.) It was more likely than not that Petitioner would have problems with his knee and he subsequently lost some joint surface cartilage in that knee over time and the mechanics of the knee have changed to a point where he was at risk to have problems on an ongoing basis. (RX.15. pg.28.) The need for a knee replacement is not related to his work and this was not an aggravation of a preexisting condition as he has significant deformity and ongoing problems, which would be a natural sequela of a preexisting problem. This would have happen whether he was a lineman, a bus driver, or if he worked in a cubicle. (RX.15. pgs.30-31.)

On cross-examination, Dr. Nogalski testified that Petitioner's anatomical knee condition was so altered that it was fairly obvious he was going to have issues. (*Id.*) It was more likely than not that his symptoms would come on with any type of activity given the natural history of this process which had already shown itself for at least 3 to 4 years. (RX.15. pg.34.) There is some force put on the knee when climbing a pole. (RX.15. pg.38.) While he did not seek treatment between 2010 and 2016, it is obvious Petitioner had issues with his knee given he had a flat joint surface. (RX.15. pg.42.) The duties of a lineman would place physical stress on someone's knee more than just sitting at a desk all day. (*Id.*) His years as a lineman did not cause the condition for which he underwent the treatment. (RX.15. pg.48.) The constant significant stresses on the knee did not accelerate the presentation of his symptoms. (RX.15. pg.49.) His condition did change between 2010 and 2016, rather, it was a natural progression of the osteochondritis dissecans. (*Id.*)

On re-direct examination, Dr. Nogalski stated there was some popping noted in Dr. Korte's December 9, 2016 record. This is significant as it would reasonably be a symptom of osteochondritis dissecans, the flattened lateral femoral condyle, and an area where there's some breakdown or irregularities of the knee due to the osteochondrosis dissecans lesion. (RX.15.

pg.54.) That record also indicated he had ongoing left knee pain, which means he had issues for over a year. (RX.15. pg.55.)

CONCLUSIONS OF LAW

An employee who suffers a repetitive trauma injury must meet the same standard of proof as an employee who sustains an injury arising from a single identifiable event. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 308 Ill. Dec. 715 (2006); see also *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529-30, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987) (noting that an injury is considered "accidental" under the Act if it is caused by the performance of a claimant's job, even though it develops gradually as a result of repetitive trauma). An employee who alleges injury based on repetitive trauma must "show[] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530. Although medical testimony as to causation is not necessarily required, "where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that [an employee's] work activities caused the condition complained of." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478, 510 N.E.2d 502, 109 Ill. Dec. 634 (1987). Cases involving the aggravation of a preexisting condition primarily concern medical questions and not legal ones. *Id.* This is especially true in repetitive trauma cases. *Id.* Thus, where there is evidence of a preexisting condition, medical evidence is necessary to establish a causal connection between the alleged repetitive trauma and the employee's resulting condition of ill-being. See *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43, 433 N.E.2d 649, 60 Ill. Dec. 607 (1982).

Similarly, the employee must establish by a preponderance of the evidence the existence of a causal relationship between his current condition of ill-being and the employment. *ABF Freight Sys. v. Ill. Workers' Comp. Comm'n (Rodriguez)*, 2015 IL App (1st) 141306WC, ¶ 19, 399 Ill. Dec. 86, 45 N.E.3d 757. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). Even if the employee had a pre-existing condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied if he can show that the employment was also a causative factor. *Id.* at 205. An employee may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating or accelerating a preexisting condition. *Id.* at 204-05.

The extent of Petitioner’s pre-existing knee condition is not lost on the Commission. However, the evidence supports the conclusion that Petitioner's job duties as a lineman were a cause of his current left knee condition. While Petitioner had a history of OCD and underwent multiple surgeries before his employment with Respondent, the medical opinions presented established that his daily physically demanding work duties aggravated and/or accelerated the deterioration of his left knee. Additionally, based upon the record, the Commission finds that Petitioner presented medical opinion sufficient to support a finding of causal connection under the theory that his performance of repetitive work duties aggravated his pre-existing knee condition.

Specifically, Dr. Patel, Petitioner's treating physician, provided a medically sufficient and persuasive opinion that performing aggressive labor, like that of a lineman, and climbing poles, did not help his knee condition as this put a lot of force through the joint and accelerated the process. Dr. Patel specifically concluded that Petitioner's job duties aggravated his pre-existing condition, leading to the need for a total knee replacement. Dr. Patel highlighted that without the strenuous nature of his work, Petitioner's knee deterioration would not have progressed as quickly.

While Dr. Nogalski opined that Petitioner's knee condition resulted from the natural progression of pre-existing condition and was unrelated to his job duties, his opinion is less persuasive. He failed to adequately account for the timeline of Petitioner's worsening symptoms, which directly correlated with the demands of his employment. Additionally, Dr. Nogalski's assertion that Petitioner's knee would have deteriorated regardless of his work is speculative and unsupported by the credible medical evidence.

The Commission finds the opinion of Dr. Patel more persuasive, as it is consistent with Petitioner's testimony regarding the increased severity of his symptoms during his employment and the physical nature of his job. The medical evidence establishes a clear connection between Petitioner's on-going work duties and the progression of this knee condition. Accordingly, the Commission concludes that Petitioner met his burden to establish that his job duties were a cause in his work-related condition.

As the Petitioner established a work-related accident arising out and in the course of his employment, and causal connection for his injuries, the Commission finds Petitioner established that he was temporarily and totally disabled from August 9, 2018 through May 29, 2022, representing 197-6/7 weeks of disability. The Respondent disputes TTD on the Request for Hearing form on the basis of there being no liability, not the duration of the disability. The record, however, establishes that the Petitioner was provided with work restrictions that the Respondent was unable to accommodate during the above period. The Commission awards Respondent a credit of $199,941.12 for long term disability payments made as stipulated by the parties at trial.

The Commission further finds that the medical treatment was reasonable and necessary. All doctors agree that Petitioner required medical treatment due to his condition and that the total knee replacement was necessary. Dr. Nogalski did not dispute the reasonableness and necessity of the medical treatment, only that there was no work-related injury. Therefore, the Petitioner is entitled to outstanding medical expenses totaling $44,647.04 and as detailed in the medical bill list attached to the Request for Hearing form.

Finally, the Commission weighs the five factors under Section 8.1b of the Act as follows:

(i) Impairment Rating: The parties did not offer an impairment rating into evidence. The Commission gives no weight to this factor.

(ii) Occupation of Injured Employee: Due to his injury and resulting knee replacement, Petitioner was required to find alternative employment. He currently works with the Illinois Department of Natural Resources maintaining trails. As he will encounter the effects of his injury frequently while in the performance of his job duties, the Commission assigns greater weight to this factor.

(iii) Petitioner's Age: The Petitioner was 26 years old at the time of the injury. Given his younger age, he has a many work years remaining in which to encounter the effects of his injury. Therefore, the Commission assigns greater weight to this factor.

(iv) Petitioner's Future Earning Capacity: The Petitioner testified that he earned approximately $90,000.00 as a lineman and now earns approximately $60,000.00 with the Illinois Department of Natural Resources. As the evidence supports that Petitioner's future earning capacity has been negatively impacted by his injury, the Commission assigns greater weight to this factor.

(v) Evidence of Disability: The Petitioner underwent a knee replacement as a result of his work-related injury. He received permanent restrictions that precluded him from returning to work as a lineman. He has trouble pulling up his socks, he has numbness on the outside of his leg from the surgery and he has an 8 inch incision. Therefore, the Commission assigns greater weight to this factor.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to 60% loss of use of the person-as-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 3, 2024 is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the reasonable, necessary, and related medical bills totaling $44,647.04, and as detailed in the medical bills list attached to the Request for Hearing form, pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $1,117.03 per week for 197-6/7 weeks, from August 9, 2018 through May 29, 2022, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit of $199,941.12 for long term disability payments made and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as stipulated by the parties at trial.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $813.87 per week for 300 weeks because the injuries sustained caused sixty-percent (60%) loss of the person-as-a-whole as provided in Section 8(d)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 other 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 the Circuit Court.

April 1, 2025

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

CAH/tdm

O: 3/13/25
052

/s/ *Marc Parker*
Marc Parker

DISSENT

I respectfully dissent from the Majority and would affirm the Arbitrator's thorough and well-reasoned decision.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC022999
Case Name	Billie L Kellerhuis v. Hy-Vee
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0144
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Christopher Crawford

DATE FILED: 4/2/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BILLIE KELLERHUIS,

Petitioner,

vs. No: 18 WC 22999

HY VEE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, temporary total disability benefits ("TTD"), and permanent partial disability benefits ("PPD"), the Commission modifies the Decision of the Arbitrator, as specified below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made hereof.

Petitioner worked for Respondent as a floral designer. On May 30, 2018, she was walking from the cooler where the flowers were kept, she stepped on the rubber mat near the register, she slipped on water on the mat, caught herself on the counter, and felt her right "knee go pop and twisted it." An MRI taken on June 3, 2018, showed complex tearing of the lateral meniscal body and anterior horn without displaced tissue in the posterior lateral corner, subchondral edema and arthritis narrowing of the lateral compartment joint space, moderate suprapatellar effusion, and mild sprain of medial collateral ligament. On June 13, 2018, Dr. Mitchell performed right knee arthroscopy with partial lateral meniscectomy for complex tear of the body/horn of the lateral meniscus, grade II Chondromalacia of the patellar trochlear groove, grade I-II Chondromalacia of the medial tibial plateau, grade II-III Chondromalacia of the lateral femoral condyle, and grade II Chondromalacia of the lateral tibial plateau.

On August 13, 2018, Petitioner returned to Dr. Mitchell with constant 4-5/10 right-knee pain for two weeks, with occasional functional limitations. X-rays showed mild degenerative joint disease ("DJD"), decreased joint space, and normal soft tissue. Dr. Mitchell administered

an injection in the knee and advised Petitioner to resume activities as tolerated, including return to work. Petitioner returned to Dr. Mitchell's office and received another injection on January 3, 2019 and was released from treatment *prn*.

Respondent's §12 medical examiner, Dr. Karlsson, opined that Petitioner meniscal tear was the natural progression of her underlying DJD. He noted that she had just seen her primary care provider six days before the accident complaining of the types of mechanical symptoms consistent with a meniscus tear and that because of those complaints an MRI was ordered before the instant accident. Dr. Mitchell opined that the meniscal tear was causally related to the work-related accident, surgery was warranted, and although Petitioner had unrelated underlying DJD, the work-related injury aggravated her underlying arthritis as well.

The Arbitrator found causation. In so doing, she found Petitioner to be a sincere credible, witness and the causation opinion of Dr. Mitchell more persuasive than that of Dr. Karlsson. The Arbitrator acknowledged that Petitioner clearly had pre-exiting DJD before the accident, but it was also clear that she was able to work her job full time before the accident and was unable to after. She noted "it is undisputed that Petitioner's condition deteriorated after the accident." We agree with the Arbitrator's decision that Petitioner sustained her burden of proving the work accident caused her meniscal tear requiring treatment under the chain-of-events analysis and that the medical treatment Petitioner received was necessary and reasonable to treat her work-related condition of ill-being. Therefore, we affirm and adopt the Decision of the Arbitrator on the issues of accident, causation, TTD, and the award of medical expenses.

On the issue of permanent partial disability, Petitioner testified that her pain level was worse postop after the removal of the cartilage. She never experienced the clicking or popping in her knee before the accident. She can no longer work in a fast-paced environment; she cannot risk any further injury and always has to be conscious of what she is doing. Her condition has negatively affected all of her activities of daily living. Her limitations are permanent. She acknowledged that Dr. Mitchell released her to full duty on September 28, 2018.

The Arbitrator awarded Petitioner 64.5 weeks of PPD representing loss of 30% of the use of the right leg. In determining the PPD award, the Arbitrator gave moderate weight to Dr. Karlsson's AMA Guides Impairment Rating of loss of 2% of the right leg. She gave significant weight to Petitioner's occupation noting that although she was released to work at full duty, she testified she did not feel physically able to return to work at her previous job. The Arbitrator gave moderate weight to Petitioner's age, 47, noting that she had a least 15 years of working life ahead of her. She gave no weight to possible reduction in future earning potential because no such evidence was introduced. Finally, the Arbitrator gave significant weight to evidence of disability, noting that Petitioner testified about her ongoing disability which was corroborated by the medical records.

The Commission notes that the award appears a little high for a meniscal tear in which surgery was performed in similar claims. We note that the Arbitrator gave significant weight to the evidence of disability corroborated by the medical record. The Commission acknowledges that Petitioner testified to difficulty performing activities of daily life and ongoing pain. However, we note that both Dr. Mitchell and Karlsson agreed that with the extent to Petitioner's underlying arthritis, she would continue to experience pain after surgery. In addition, it is clear

that part of her ongoing impairment stems from her underlying arthritis and not totally from her meniscus tear. Finally, the Commission notes that Petitioner did not show any potential loss of future income. In looking at the entire record before us, the Commission finds an award of 43 weeks of PPD representing loss of the use of 20% of the right leg is an appropriate PPD award. Accordingly, the Commission modifies the Decision of the Arbitrator to reflect that award.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 20, 2023 is hereby modified as specified above and otherwise affirmed and adopted, which is attached hereto and made hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner TTD benefits from May 30, 2018, through September 25, 2018, for a total of 16&2/7 weeks at a rate of $468.52 per week.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay medical bills listed and attached as Petitioner's Exhibit 1, including all out-of-pocket medical expenses listed on Petitioner's Exhibit 1, and shall hold Petitioner harmless for all payments made on her behalf by her group health insurance carrier through Respondent Hy-Vee.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $421.66 per week for 43 weeks because the injuries sustained caused the loss of use of 20% of the right leg as provided in section 8(e) of the act.

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 $25,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 2, 2025

DLS/dw
O-3/19/25
46

/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	18WC022999
Case Name	Billie L Kellerhuis v. Hy-Vee
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Christopher Crawford

DATE FILED: 6/20/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 13, 2023 5.15%

/s/ Jessica Hegarty, Arbitrator

Signature

22999
STATE OF ILLINOIS)
)**SS.**
COUNTY OF LaSalle)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BILLIE L. KELLERHUIS Case # **18** WC **022999**
Employee/Petitioner
v.
HY-VEE
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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Ottawa**, on **2/22/2023**. 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 **5/30/2018**, 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 $**36,544.04**; the average weekly wage was $**702.77**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $ **All medical paid by Petitioner's group health plan with Respondent** under Section 8(j) of the Act.

ORDER

- Respondent shall pay Petitioner TTD benefits from 5/30/2018, through 9/25/2018, for a total of 16 and 2/7 weeks at a rate of $468.52 per week.

- Respondent shall pay medical bills listed and attached as Petitioner's Exhibit 1, including all out-of-pocket medical expenses listed on Petitioner's Exhibit 1, and shall hold Petitioner harmless for all payments made on her behalf by her group health insurance carrier through Respondent Hy-Vee.

- Respondent shall pay Petitioner permanent partial disability benefits of $421.66 per week for 64.5 weeks because the injuries sustained caused the loss of use of 30% of the right leg as provided in section 8(e) of the act.

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

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

Jessica C. Kluntz

_____ **JUNE 20, 2023**

Signature of Arbitrator

ICArbDec p. 2

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter proceeded to hearing on February 22, 2023, in Ottawa, Illinois. (Arb. 1) The issues in dispute are accident, causal connection, medical bills, TTD, and the nature and extent of the alleged injury. (Id.)

FACTUAL FINDINGS

Petitioner's testimony

On May 30th, 2018, Petitioner was a 47-year-old, single mother of an 8-year-old child, employed full-time as a floral designer for Respondent since 2014. Petitioner attended some college and took courses in art and interior design before the date at issue.

Petitioner's duties for Respondent, in addition to creating floral arrangements and displays, included receiving and processing shipments of flowers, cleaning flowers and flower buckets, transporting water buckets to and from the display areas, taking orders, and interacting with the public. According to Petitioner, her workplace was fast paced and extremely busy. Her workday involved "constant deadlines, getting orders, fulfilling orders, and getting them out in time." Petitioner testified she was one of two, full-time employees.

Petitioner worked at least 5 days per week, 8 hours per day, and spent the majority of her day on her feet. The floors of the Hy-Vee floral department were cement with a few rubber standing pads located at the cash register and at each workstation. Generally, the floor was strewn with boxes and mounds of floral debris from the constant cutting of stems. Petitioner likened her workplace to an obstacle course, "You get used to maneuvering around things and each other. It's a tight environment and everybody is go, go, go. So, you are trying to be out of everybody's way and get your job done and maneuver through other people's work so you can get to your work and vice versa."

Regarding her accident, Petitioner testified that on May 30th, 2018, she was walking from the floral storage cooler towards the cash register when she slipped on a wet rubber standing pad and felt her right knee twist and "pop" accompanied by sharp pain. Petitioner testified she caught herself on the counter before falling and "just froze there for a moment trying to figure out if [she] was hurt or not." She slowly bent her knee a few times before returning to finish her duties for the day, albeit at a slower pace than she had worked prior to the incident. Petitioner testified the accident occurred in front of her supervisor, Ashley.

Petitioner testified she had pre-existing bilateral knee problems that began a couple of years earlier while employed by Respondent, which she attributed to standing on the concrete flooring at her workplace. Before the date at issue, Petitioner described her knee pain as "dull, aching, and annoying." She rated her pre-accident knee pain at a 4/5 on a 10-point-scale and testified her knees usually bothered her at the end of her workday.

When asked whether she sought medical treatment prior to this incident for her right knee specifically, Petitioner testified she saw her doctor "in general" but didn't know if it was specific to her right knee or not. She testified, "I just remember going and wondering why it was so difficult for me to stand on concrete."

The day following her accident, Petitioner woke up with very sharp right knee pain she rated at an 8-9 on a 10-point scale. According to her testimony. Petitioner felt like something was "catching" or as if something was "stuck" inside her knee, inhibiting her range of motion and the ability to straighten her right leg.

Petitioner went to the ER at Illinois Valley Community Hospital ("IVCH") where she told staff about her history and complaints.

Petitioner testified generally to the course of her medical treatment which including work restrictions, a right knee MRI, and surgery performed by Dr. Mitchell on June 13, 2018, to repair a meniscal tear.

Post-operatively, Petitioner felt no immediate pain relief in her right knee, although she no longer had the "catching" feeling she experienced following her accident. Petitioner described her post-surgical pain as intense and constant. Petitioner followed up with Dr. Mitchell on August 13, 2019, at which time her right knee was getting better although it wasn't the same as it was before she was injured, per her testimony. Although Petitioner no longer experienced the "catching" feeling, the surgery had left her with "bone rubbing on bone." She felt "pressure and rubbing" in her right knee and had to be very mindful of what she did with her knee.

When she followed up with Dr. Mitchell in September of 2018, Petitioner's right knee was painful and swelled easily when she stood for any length of time. Dr. Mitchell administered an injection that temporarily alleviated her pain and swelling for about two months. She was released to perform activities as tolerated on that day. Petitioner returned to Dr. Mitchell in January 2019, at which time another she received another right knee injection for pain relief.

Petitioner then returned to work for Respondent but felt physically unable to perform her pre-accident duties. She did not want to risk re-injury to her knee. According to her testimony, the floor of Respondents workplace which was regularly strewn with boxes and floral debris, created unnecessary risk. Petitioner further testified, "There was no more being able to work in a fast-paced environment at all because I couldn't jeopardize any type of twisting or reinjury. No bending, no lifting. I had to be a lot more conscious of what I was doing and how I was doing it, and in an environment when you are fast paced, you don't have the time to do that or take your time or have haphazard on the floor that you could reinjure yourself."

Petitioner obtained alternative employment and is currently employed by the State of Illinois at Illini State Park as an office coordinator in a sedentary capacity.

Petitioner testified that prior to her accident, she regularly camped, hiked, fished, ran around with her family, wrestled, and played with her grandchild. She enjoyed swimming, remodeling things around her house, crafting, and gardening. Before her accident and surgery, Petitioner "could be mindful of activities and not be in pain at all."

Petitioner testified that her mobility has been limited due to the lack of cartilage in her right knee and she has constant right knee pain due to the rubbing together of the bones in her knee. Her activities of daily living such as cleaning, and bathing are more difficult due to her right knee issues. She no longer runs outside and only walks outside on smooth terrain. She doesn't feel confident goofing around, wrestling, or holding her grandchild because her knee might get bumped or would ache from activity Petitioner testified that, "At home, everything was more difficult from cleaning and taking care of my house to taking care of myself, getting in and out of the bathtub. Everything just shifted and I couldn't pick up my grandbaby anymore. I couldn't run outside. I couldn't walk on any type of terrain that was not smooth because I couldn't jeopardize hurting myself again. So, it affected everything."

When asked to compare the difference in her pain from before the accident to when she was released from

treatment, Petitioner testified, "It went from being something that I could treat on my own, to make myself comfortable again. to there is not anything I can do now."

Petitioner currently takes Tylenol or Advil 4 times per week for her right knee symptoms.

On cross exam, Petitioner testified she was truthful when speaking to all of the medical doctors and staff involved in her treatment for her right knee. Petitioner agreed that she was being treated for her right knee complaints on May 24, 2018 by Dr. Leifheit. Petitioner did not dispute that Dr. Leifheit's records from that day note a history of moderate right knee pain, 5 out of 10, along with swelling, popping, clicking, and buckling. Petitioner agreed that Dr. Leifheit scheduled an MRI for June 6, 2018 following that visit. Petitioner confirmed that she stands, walks, and bends at home.

Petitioner testified that on the morning of May 31, 2018, she had help from a family member getting to the ER and that she walked into the ER.

Petitioner testified that she still has hobbies and anticipates gardening this summer season. Regarding camping with family, Petitioner testified that she has a son, a daughter, a grandchild, and parents that she used to go camping with. Her family has a camping lot at Wood Haven. She has no plans to camp this summer.

Petitioner confirmed that she finished her shift, on her feet, on May 30, 2018. Regarding the mess around the floral department, Petitioner agreed that as a florist, it was her responsibility for keeping her area clean and would clean it, when there was time.

Petitioner testified she filled out and signed an incident report in this case, Respondent's Exhibit 4, and that the information contained therein is truthful and accurate.

On re-direct, Petitioner testified that Dr. Liefheit is her primary care doctor. Regarding her pre-accident complaints of popping to Dr. Leifheit, Petitioner testified she was having issues from being on the concrete and felt like it was progressing, and her shoes were not helping. She was not having issues bearing weight on her right knee and she did not have to be helped to that appointment. Further, she was working full-time on that date and continued working full time until May 31st, 2018, when the accident occurred.

During the time between May 24th and May 30th, Petitioner's symptoms were the same as what she described at her pre-accident appointment on May 24th. Those symptoms did not inhibit her from performing her full duties at Hy-Vee as a florist. Petitioner further testified that her MRI was moved after her accident from June 6th to June 4th. Regarding her accident, Petitioner testified she continued working maybe 2 or 3 hours, and her pain worsened during that time. Petitioner testified she was at work by herself and was just trying to get through her shift so she could go home. The next day, when Petitioner went to the ER, one of her parents drove her, because she couldn't drive. The parent then walked with Petitioner into the hospital, and she looped arms with the parent and used them as a "kind of human crutch". Petitioner had no access to crutches or a wheelchair prior to the accident.

Respondent's attorney then confirmed that Petitioner was able to walk into the ER the day after the accident with assistance from her family member. When asked how that worked, Petitioner testified, "I had a family member like looping their arm with me so that I bore the weight with them, help from them. So, I didn't have to put weight on my knee." Petitioner testified that after the accident she had the sensation of buckling in her right

knee. Petitioner testified that buckling is instability. When asked if she had buckling before the accident, Petitioner testified, "In a different way. Not the same way.

MEDICAL RECORDS

On May 24, 2018, Petitioner presented to her primary care physician, Dr. Joel Leifheit, who noted a history of diffuse nonspecific right knee pain, swelling, and stiffness that was constant for the past 2 years. (Rx 2) Petitioner reported associated symptoms of swelling, popping/clicking, and buckling. Petitioner reported her right knee pain "now progressively worsening with frequent swelling, pain and sometimes gives out." (Id.) On exam, Dr. Leifheit noted swelling, decreased flexion, tenderness in both joint lines, but worse on the medial joint line. The doctor noted the ligaments seemed intact. (Id.) A suspected cartilage tear was noted. Right knee x-rays that day noted an impression of mild right knee osteoarthritis without fracture, subluxation, or joint effusion. (Id.) A right knee MRI was scheduled for June 6, 2018. (Id.)

On May 31, 2018, Petitioner presented to the ER at Illinois Valley Community Hospital ("IVCH") following her slip and fall accident at work. (PX 4; RX 5) Petitioner's pain was moderate. Aggravating factors were standing, ambulation, and stairs. It was noted Petitioner could bear weight. Swelling and bruising were described as mild. Full range of motion in the right leg was noted. (Id.). Petitioner was restricted from standing longer than 10 minutes and lifting more than 10 lbs., while bending, twisting, climbing, and kneeling was to be limited. (Id.)

On June 4, 2018, Petitioner underwent MRI without contrast of her right knee at IVCH. (Id, pg. 18) The indication for the testing noted intermittent pain for a year that worsened over the last week. The radiologist's impression noted complex tearing of the lateral meniscus body and anterior horn without displaced tissue in the posterior lateral corner, subchondral edema, and arthritic narrowing of the lateral compartment joint space, moderate supratellar effusion, and mild sprain medial collateral ligament. (Id.) That same day, Petitioner was evaluated at IVCH Occupational Health who noted that Petitioner should be sit "100% of the day".

On June 7, 2018, Petitioner presented to Dr. Robert Mitchell at Illinois Valley Orthopedics with a history of diffuse right knee pain for one year was noted (PX5; RX 3) A. It is later noted that she had right knee pain "for years". Petitioner described right knee pain as aching, worsening, sharp, associated with grinding, stabbing, popping and gait instability. Petitioner's right knee symptoms increased with weight bearing, activity, and the knee giving way. Petitioner also reported that her right toes were "tingling" and that she had difficulty with standing, kneeling, walking, getting up from a chair, descending and ascending stairs. She rated her pain at a 9 out of 10 on an average day. (Rx 3) On exam, flexion was 120 degrees, extension -5 degrees, lateral and medial joint line tenderness, positive lateral McMurray test, and positive lateral Apley grind test. Dr. Robert Mitchell noted a diagnosis of an acute lateral meniscus tear and degenerative joint disease. A partial lateral meniscectomy was scheduled for June 13, 2018. (Id.) Work restrictions of no squatting, kneeling, climbing, continuous walking, standing more than 30 minutes were noted. (Id.)

On June 13, 2018, Petitioner underwent right knee arthroscopic surgery with partial lateral meniscectomy and debridement, performed by Dr. Mitchell.

Post-operatively, Petitioner underwent physical therapy and followed up with Dr. Mitchell who kept her off work. On August 21, 2018, Petitioner followed up at Dr. Mitchell's office with complaints of right knee pain after weight bearing. Petitioner was undergoing physical therapy once per week. Dr. Mitchell prescribed

Mobic and a prescription strength NSAID for 2 weeks before returning to full-duty work. A future right knee injection was planned. (Id., pg. 20-21)

On September 25, 2018, Dr. Mitchell noted Petitioner's complaints of pain at a 4/10. He administered a right knee steroid injection that day. Petitioner received a second steroid injection on January 3, 2019. On that date, Dr. Mitchell's examination of Petitioner's right knee noted crepitus with range of motion and medial joint tenderness. Petitioner's right knee pain was noted as a 4/10. (Id., pg. 22-24)

Petitioner retuned to Dr. Mitchell on August 13, 2019, complaining of pain to the lateral side of her knee. (Px 5).

Testimony of Dr. Robert Mitchell

Dr. Robert Mitchell's evidence deposition was taken on November 6, 2019. Dr. Mitchell is an orthopedic surgeon, licensed to practice medicine since 1995, and licensed in orthopedics since June 2000. (PX. 5, pg. 4) On a weekly basis, he performs 5-12 surgeries and sees 70-80 patients. (Id., pgs. 4-5)

Dr. Mitchell testified he initially saw Petitioner on June 7, 2018, Petitioner who reported a history of right knee pain stemming from a May 30, 2018, work accident in which she slipped on water. (Id., pg. 6). Dr. Mitchell reviewed Petitioner's right knee MRI and noted her complaints of "worsening aching, sharp associated grinding standing popping associated with gait instability," that her knee gives way, along with occasional tingling in the toes of her right foot. She rated her pain at 9 out of 10. (Id., pg. 7). On exam, Dr. Mitchell noted that she lacked about 5° of extension, had tenderness over the lateral and medial joint line, and a positive McMurray sign. Based on the MRI and Petitioner's history and clinical presentation, Dr. Mitchell diagnosed a lateral meniscus tear. (Id., pgs. 7-8) He performed Petitioner's surgery on June 13, 2018, at which time he noted a complex tear of the posterior horn of the lateral meniscus and grade II chondromalacia in the medial tibial plateau, and grade II-III chondromalacia in the lateral femoral condyle, as well as grade II chondromalacia in the lateral tibial plateau (Id., pg. 10). Dr. Mitchell testified regarding Petitioner's post-operative care and that he administered two steroid injections to Petitioner's right knee on September 25, 2018, and January 3, 2019. (Id., pg. 13-15).

Dr. Mitchell opined that Petitioner's meniscal tear and subsequent surgery was related to her work accident. He thought the work injury aggravated her underlying osteoarthritis. (Id., pgs. 15-16, 19-20, 22)

On cross-exam, Dr. Mitchell agreed that Petitioner saw Dr. Leifheit, 6 days prior to her accident, although Dr. Mitchell did not review those records prior to his initial consult with Petitioner. (Id., pg. 24). Dr. Mitchell was asked to assume the Petitioner reported symptoms of swelling, popping, clicking, and buckling in her right leg on May 24, 2018. He agreed those symptoms are similar to the symptoms Petitioner reported to him on at his initial consult. (Id., pg. 25). It was Dr. Mitchell's understanding that Dr. Leifheit recommended an MRI on May 24, 2018. (Id., pg. 27)

Dr. Mitchell testified that Petitioner's right knee arthritis was more advanced than that of a typical 47-year-old women. (Id., pg. 28). Dr. Mitchell agreed that pain and swelling are associated with arthritis and that a lateral meniscus tear can develop over time. (Id., pgs. 28-29). He further confirmed that Petitioner's mechanical symptoms went away following the surgery, although her pain did not go away. (Id., pgs. 29-30).
On re-direct, Dr. Mitchell testified that during his initial consult with Petitioner in June of 2018, he noted that she had arthritic-type pain for several years, and that was "most definitely" something that was factored into his

conclusions in this case. (Id., pgs. 35-36)

Testimony of IME Dr. Troy Karlsson

Dr. Troy Karlsson's evidence deposition was taken on December 23, 2019. (RX 1) Dr. Karlsson completed a four-year residency in orthopedic surgery in 1993 and is a board-certified orthopedic surgeon who concentrates in knee, hip, and shoulder repair. (Id., pgs. 5-7)

Dr. Karlsson testified he evaluated Petitioner on October 30, 2018 for an IME regarding her right knee and the exam was essentially normal. (Id., pg. 7, 12) X-rays performed of Petitioner's right knee that day were consistent with tricompartmental right knee arthritis which was severe at the lateral or outer joint line and moderate at the patellofemoral joint. On the outer side of the knee there was near complete loss of the cartilage which wasn't quite bone on bone but very close to it. (Id., pg. 13)

Dr. Karlsson reviewed Dr. Leifheit's May 24, 2018, note where Petitioner stated her pain was 5 out of 10 for the past two years and was associated with swelling, popping, clicking, and buckling that had been progressively worsening with frequent swelling, pain, and sometimes giving out. Dr. Leifheit suspected a cartilage tear which Dr. Karlsson noted is a common phrase for a meniscus tear. Dr. Leifheit's plan as of May 24, 2018, was to obtain an MRI. (Id., pg. 15-16)

Based on Dr. Karlsson's IME and medical record review, he opined that there was no relationship between Petitioner's right knee surgery and the incident on May 30, 2018. (Id., pg. 19) Dr. Karlsson believed that Petitioner had already suffered a meniscal cartilage tear prior to the date of her work accident and that the arthroscopic right knee surgery performed by Dr. Mitchell was performed in response to gradual arthritic changes in Petitioner's right knee, not as a result of injuries sustained in her work accident. Dr. Karlsson noted that, if Petitioner had suffered a separate, single injury during her in May 2018 work accident, there would be evidence in her MRI of a large portion of the articular cartilage as a loose piece. There was no such evidence identified or seen in Petitioner's MRI imaging.

Dr. Karlsson testified that the injury Petitioner described could cause a meniscus tear. Dr. Karlsson expects that the Petitioner will continue to have pain in her knee. There is a good chance she will need a knee replacement (Id., pgs. 21-22). Dr. Karlsson reviewed Petitioner's operative report noting no mention of loose bodies. (Rx 2, pg. 30). If the arthritis was somehow brought on acutely, loose bodies would be seen in the MRI or intraoperative photos. Dr. Karlsson also opined that Petitioner would continue to experience knee pain due to her arthritis and that she would also probably have to eventually undergo a knee replacement. Dr. Karlsson additionally rendered an opinion as to the Petitioner's AMA impairment rating stating that the Petitioner had 2% impairment as a result of the injuries in question in this hearing.

Dr. Karlsson was cross-examined regarding the fact that he never reviewed the operative report prepared by Dr. Mitchell when forming his opinions. The operative report showed cartilage loss. No loose bodies were shown on the MRI. If the arthritis was somehow brought on acutely, loose bodies would be seen in the MRI or intraoperative photos, according to Dr. Karlsson.

CONCLUSIONS OF LAW

Credibility of Petitioner

Petitioner's demeanor during the hearing, including her facial expressions, eye contact, gestures, tone of voice, gave the Arbitrator the impression that she was sincere and trust-worthy. Petitioner testified without hesitation. She seemed confident and eager to tell her story. After the hearing, the Arbitrator found the documentary evidence contained in the record corroborative of Petitioners testimony. The Arbitrator found no credible allegations of malingering or secondary gain. Accordingly, the Arbitrator finds Petitioner credible and places significant weight on her testimony.

D. Accident

The Arbitrator finds that Petitioner has sustained her burden regarding this issue. Petitioner's testimony regarding the accident in question, how it occurred and that she was performing her normal job duties for Respondent is unrebutted and supported by the treating records and the incident report submitted by Respondent.

F. Causal connection

An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). In Illinois, a claimant can establish causation by showing that the work-related accident was a cause of the injury (i.e., one of several contributing factors that either caused the condition or that aggravated a preexisting condition. *Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205 (2003).* Thus, even if an employee has a preexisting condition which made her 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. (*Id*.) As noted above, "[a]ccidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) (*Id*.).

It is clear that Petitioner had a pre-existing right knee condition on her accident date. Equally clear is the fact that Petitioner was working her full duty job before her accident but was unable to do so after. It is undisputed that Petitioner's condition deteriorated after the accident. Work restrictions were documented at the ER the following day and five days after her accident Petitioner was restricted from bearing any weight at all. Petitioner's MRI, which was expedited due to her symptoms, was significant for a meniscal tear. The medical records in evidence document an acute change in symptoms and complaints, restricted work, followed by surgery in relatively short order.

The preponderance of evidence contained in the record does not support Respondent's IME opinion that Petitioner's preexisting condition alone caused her right knee condition. The Respondent's IME opinions do not consider the fact that Petitioner worked, full time, full duty, for Respondent before her accident but was restricted from such after.

As noted above, the Arbitrator found Petitioner's testimony credible. The Arbitrator also found the opinions of Dr. Mitchell credible, persuasive, and substantiated by the chain of events. Accordingly, the Arbitrator finds

that Petitioner's right knee condition is causally related to her work accident.

J. Medical Bills

Based on the Arbitrator's findings with regard to accident and causation, the Arbitrator finds the medical services, which are contained in Petitioner's Exhibit 1, were reasonable and necessary with respect to the injuries sustained during the work accident of May 30, 2018. The Arbitrator finds that the Respondent is liable for the medical expenses contained in Petitioner's Exhibit 1 pursuant to Sections 8(a) and 8.2 of the Act and is entitled to credit under Section (8)(j) of the Act.

K. Temporary benefits

The Petitioner testified that she was off work from the date of accident through September 25, 2018, when she was released by Dr. Mitchell to regular duty work. Dr. Mitchell's treating records corroborate this testimony.

The Arbitrator finds Petitioner is entitled to TTD benefits for a period of 17 2/7 weeks from May 31, 2018, until September 25, 2018, at a rate of $468.52 per week.

L. Nature and extent of Petitioner's injury

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 l, 2011: The reported level of impairment pursuant to subsection (a); The occupation of the injured employee; The age of the employee at the time of the injury; The employee's future earning capacity and; 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 8.1(b), the Arbitrator notes that the Respondent secured an AMA impairment rating from Dr. Karlsson who opined that Petitioner's rating was 2%. The Arbitrator places moderate weight on this factor.

With regard to subsection (ii) of 8.1(b), the occupation of the employee, Petitioner was employed as a florist for Respondent in their floral department on the accident date. Although Petitioner was released to full-duty work in September of 2018. Petitioner testified she felt physically unable to return to her pre-accident, fast-paced job for Respondent. Petitioner testified that she has great difficulty bending, squatting, and carrying heavy objects like buckets of water which were a normal part of her job duties as a florist. Petitioner sought alternate employment and works as an administrative assistant at Illini State Park in a sedentary capacity. The Arbitrator places significant weight on this factor.

With regard to subsection (iii) of 8.1 (b), Petitioner was 47 years old at the time of the accident. The Arbitrator notes that the Petitioner sustained a tear to her right meniscus, underwent surgery, and presented credible testimony regarding her physical disability. Petitioner has a child she can no longer interact with in the same manner she did prior to the accident. Her life has changed drastically for the worse. She can no longer perform

the duties of her chosen job. As of the hearing date, Petitioner is only 52 years old at and likely has at least 15 years of work life ahead of her. The Arbitrator finds that this factor carries moderate weight in the permanency determination.

With regard to subsection (iv) of Section 8.1(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner was working full-time for Respondent earning $702.77 per week. The evidence does not reflect what she currently earns at her new place of employment. As such, this factor carries no weight in the permanency determination.

With regard to subsection (v) of Section 8.1(b), evidence of disability corroborated by the treating medical records, the Petitioner testified that she has difficulty bending, squatting, and kneeling due to the feeling of "bone on bone" grinding in her right knee which occurs regularly. The Petitioner testified her pain complaints have returned to a 5-7/10 as of the date of hearing. She has increased pain with higher levels of activity. The treating records of Dr. Mitchell note that on September 25, 2018, Petitioner complained of pain at a 4/10 and Dr. Mitchell noted crepitus with flexion and extension per his exam. A steroid injection was administered to Petitioner's right knee on that date. Petitioner's last examination by Dr. Mitchell contained in the records is from January 3, 2019, at which time she complained of pain at a 4/10. On exam, crepitus with flexion and extension was again noted and a steroid injection was administered to Petitioner's right knee. The Arbitrator finds the treating medical records corroborate Petitioner's testimony regarding the current condition of her right knee. The Arbitrator assigns significant weight to this factor in determining permanency.

After careful consideration, the Arbitrator finds that Petitioner has suffered **30% loss of use of the right leg** as provided in section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016389
Case Name	Mirella Bruno v. Ferrero USA Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0145
Number of Pages of Decision	14
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Jim Magiera

DATE FILED: 4/3/2025

/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

MIRELLA BRUNO,

Petitioner,

vs. NO: 22 WC 16389

FERRERO USA INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's 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 August 27, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $570.00 per week for a period of 62.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have a credit of $3,598.56 for statutory loss benefits paid under §8(d)2 of the Act, as a result of Petitioner's thoracic vertebral fracture.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $32,100. 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.

April 3, 2025

/s/ *Raychel A. Wesley*

RAW/mck
O: 3/5/25
43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016389
Case Name	Mirella Bruno v. Ferrero USA Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Jim Magiera

DATE FILED: 8/27/2024

/s/James Byrnes, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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

Mirella Bruno
Employee/Petitioner

v.

Fervalue, USA
Employer/Respondent

Case # **22** WC **016389**

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 **James Byrnes**, Arbitrator of the Commission, in the city of **Chicago**, on **July 11, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ 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 **2/16/2021**, 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's average weekly wage was $**950.00**.

On the date of accident, Petitioner was **72** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**3,598.56** for other benefits, for a total credit of $**3,598.56**

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $**570.00**/week for **62.5** weeks, because the injuries sustained caused the **12.5**% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall be given credit for $**3,598.56** for statutory loss benefits paid under Section 8(d)2 of the Act, as a result of Petitioner's thoracic vertebral fracture.

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 27, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MIRELLA BRUNO,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22WC016389
FERVALUE USA,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

This matter proceeded to hearing on July 11, 2024, in Chicago, Illinois before Arbitrator James Byrnes on Petitioner's Request for Hearing. Issues in dispute include causation, nature and extent of the injury and credit to Respondent. Arbitrator's Exhibit 1 (AX 1).

FINDINGS OF FACT

Job Duties

The Petitioner testified that she had been employed by Respondent for about 35 years. (T 20) The Petitioner testified that on February 16, 2021, she was as a production line packer for Respondent. (T 9) As a production line packer, Petitioner testified, she would examine the candies coming through, and place the "good" candies on one pallet and the "bad" ones on another pallet until both pallets weighed 25 pounds each. (T 10) Specifically, she would sort the candies into boxes, and once the boxes became full (approximately 25 pounds), she would pick up the boxes and move to them to pallets. (T 28) Petitioner would identify which ones were good and which ones were bad by looking at the date. (T 10) Petitioner testified that before becoming a packer on the production line, she was packing chocolate. (T 20-21)

Accident

The Petitioner testified that on February 16, 2021, she sustained an injury while working for Respondent. (T 10) Petitioner testified that she was cleaning a machine, and as she reached up to clean the machine, the machine's wheels moved, causing her to fall on her head, neck, and back, injuring all three areas. (T 11)

Petitioner testified that a co-worker immediately called their boss who came and picked Petitioner up off the ground. (T 11) Petitioner was brought to Respondent's cafeteria, where a co-worker from the safety department came to examine her. (T 12) Petitioner testified that she was

told that she was fine and not injured. (T 12) Petitioner testified that after a period of dizziness, she drove herself to the emergency room at Edward Elmhurst Hospital. (T 12)

Prior Medical Condition

The Petitioner testified that prior to the alleged accident on February 16, 2021, she had never injured nor received treatment for her back. (T 20) Petitioner further testified that prior to February 16, 2021, she had never suffered any other work injuries. (T 21)

On December 28, 2018, the Petitioner presented to Edward-Elmhurst Health Immediate Care Addison, complaining of pain in her neck which began five days prior to her visit. She reported no history of trauma or injury. (PX 1, p. 68) The physical examination showed paraspinal tenderness and pain with range of motion of the neck to the left and right. (*Id*., p. 69) Cervical spine x-rays revealed signs of osteoarthritis. (*Id.*, p. 88) She was diagnosed with muscle spasm and arthritis in her neck, prescribed medication and advised to follow up with her physician. (*Id.*, p. 70)

Summary of Medical Records

The Petitioner was initially seen for treatment at Edward-Elmhurst Health Immediate Care Addison on February 16, 2021. At that time, she complained of pain in her head, thoracic and lumbar spine, as a result of a fall on concrete earlier in the day. She denied any loss of consciousness, weakness, paresthesias or decreased range of motion of her extremities. (PX 1, p. 134) The physical examination showed mild swelling of the posterior scalp, but normal findings regarding the cervical and lumbar spine, as well as normal neurological and sensation findings. (*Id.*, pp. 135-136)

A CT scan of the cervical spine showed no acute fracture or subluxation, and mild-to-moderate multilevel degenerative changes. X-rays of the thoracic spine revealed a mild superior endplate compression fracture at T11, noted to be acute in nature, as well as a stable chronic moderate T12 vertebral body compression fracture. X-rays of the lumbar spine confirmed the acute T11 compression fracture, as well as the chronic T12 compression fracture, but otherwise showed mild-to-moderate spondylotic changes. (PX 1, pp. 128-129)

A CT scan of the Petitioner's head showed a soft tissue injury/subgaleal hematoma overlying the right paramedian posterior parietal/occipital calvarium, but no skull fracture. (PX 1, pp. 128-129)

The Petitioner was diagnosed with a compression fracture of the T11 vertebra, a closed head injury without loss of consciousness and a strain of the lumbar region. She was prescribed pain medications, advised to follow up with her physician and discharged home. (PX 1, pp. 129-130)

The Petitioner presented herself to Dr. McNally at Suburban Orthopaedics on February 25, 2021, complaining of neck pain that "comes and goes," with radiation to bilateral shoulders, predominately on the left side, as well as back pain that "comes and goes," without any radiating

pain down her legs. (PX 2, p. 1) After performing a complete physical examination and reviewing the diagnostic imaging, Dr. McNally diagnosed Petitioner with an acute wedge compression fracture of T11-12, a compression fracture of the T12 vertebra, lumbar degenerative disc disease with disc displacement and muscle strains, as well as pain in the thoracic spine. (*Id.*, p. 7) Dr. McNally ordered MRI scans of the thoracic and lumbar spine, prescribed a Medrol Dosepak, and kept Petitioner off work until March 1, 2021, after which she was allowed to return to work in a light-duty capacity of sitting only with alternated standing and walking as needed for comfort. (*Id.*, pp.7-9)

Petition underwent an MRI on her lumbar and thoracic spine at Suburban Orthopaedics on March 20, 2021. The MRI on Petitioner's lumbar spine showed compression deformities at T11 and T12, with multilevel lumbar spondylosis but no stenosis or nerve root compression. (PX 2, pp. 17-18) The MRI of the thoracic spine showed multiple acute compression fractures involving T2, T5, T11, and chronic compression deformity at T12. (*Id.*, pp.19-20)

On April 6, 2021, Petitioner returned to Dr. McNally with reported improvements in pain, including denial of any radiation of pain into her shoulders or lower extremities. (PX 2, p. 21) Petitioner had been working light-duty for weeks at that point and was able to tolerate the workload. (*Id.*, p. 21) Dr. McNally discussed both surgical and non-surgical treatment with Petitioner, including a possible kyphoplasty, but as her condition was improving, it was decided to continue with non-operative care. The Petitioner was advised to continue working light duty and to follow up in six weeks. (*Id.*, p. 25)

Petitioner presented herself to Northwest Neurology on April 22, 2021, for an evaluation of a concussion stemming from the alleged incident on February 16, 2021. (PX 3) The Petitioner complained of pain in the back of her head, as well as intermittent episodes of dizziness and feeling "off-balance," as well as daily headaches which were becoming less intense. She denied any cognitive symptoms or changes in her sleep. (*Id.*, p. 8) Petitioner was diagnosed with a concussion without loss of consciousness, symptoms of a resolving concussion post traumatic head injury, and prescribed medication. (*Id.,* p.10).

An MRI scan of the Petitioner's brain was conducted on May 20, 2021. The results showed rounded foci of increased signal in the white matter, as seen with migraine headaches, vasculitis or small vessel disease, but there was no acute infarct, hemorrhage or mass. (PX 3, p. 11)

The Petitioner was last seen at Northwest Neurology on October 8, 2021. On that date, she related that her head pain was slowly improving and the headaches with dizziness were still frequent, but less severe. She denied any other neurologic complaints, including double vision, slurred speech, language difficulty or focal numbness or weakness of her extremities. (PX 3, p. 1) The diagnosis was concussion without loss of consciousness and a slowly resolving concussion post traumatic head injury. She was advised to continue with her medications. (*Id.*, p. 2)

On July 7, 2021, Petitioner presented herself to Dr. Pelinkovic for a surgical consultation at Suburban Orthopaedics. The Petitioner denied any neck pain and noted intermittent back pain without radiation. (PX 2, p. 28) After conducting a physical examination and reviewing the imaging, Dr. Pelinkovic discussed treatment for osteoporosis and a kyphoplasty procedure, the

latter of which the Petitioner did not wish to pursue. (*Id.*, p. 32) The Petitioner was to continue working with restrictions, primarily sitting and no lifting beyond five pounds. (*Id.*, p 33)

The Petitioner was last seen by Dr. Pelinkovic on March 3, 2022. She complained of intermittent neck pain without radiation, but constant low back pain with radiation to both knees, as well as numbness and tingling in both feet. The Petitioner continued to decline any offered surgeries, including the kyphoplasty, and decided to discuss osteoporosis treatment with her primary care physician. (*Id.*, p.40) Dr. Pelinkovic diagnosed lower extremity neuropathy, referred the Petitioner to Dr. Novoseletsky for pain management (ESI), discharged the Petitioner from his care and allowed her to work without restrictions. (*Id.*, pp.40-44)

Expert Reports

On January 10, 2022, Petitioner attended an independent medical evaluation with Dr. Jesse Butler of Spine Consultants. The Petitioner related the details of the work accident on February 16, 2021, and complained of pain at a level of 8 out of 10, on average. She also advised the doctor that she was currently working her regular job, standing and sitting as necessary, without bending or lifting, and noticing some fatigue after 3-4 hours of work. She would take Advil as needed for pain and was able to drive without issue. (RX 3, pp. 1-2)

After reviewing the medical records and performing a physical examination of the Petitioner, Dr. Butler diagnosed her with a T11 compression fracture due to the alleged injury on February 16, 2021. Dr. Butler determined that the current thoracic spine pain and back pain issues were related to Petitioner's age and underlying degenerative issues, and not to the incident on February 16, 2021. In his opinion, no further treatment was needed since the compression fracture healed on its own within three months and the kyphoplasty procedure would not be reasonable or necessary. Dr. Butler opined Petitioner had achieved maximum medical improvement on May 16, 2021, and could work full duty without restrictions. (RX 3, p. 4)

Petitioner's Current Condition

The Petitioner testified that when she returned to work, she had difficulty dealing with heavy objects ("I have to work with light stuff"). (T 19) She testified that her back hurts throughout the day and continues gets bouts of dizziness, especially when the weather changes. (T 19-20) Petitioner testified that she must take medication all the time and wear a patch. (T 20) She has not seen a doctor for this work injury since her final office visit with Dr. Pelinkovic on March 3, 2022. (T 18, 25)

The Petitioner continues to work for Respondent as a production line packer and is currently paid the same as before the accident. (T 26) She continues to sort candy ("Butterfingers") into boxes, up to 25 pounds each, but no longer picks up the boxes when they are full ("It's light duty.") (T 28)

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).

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

The Arbitrator finds the Petitioner's testimony to be credible. The Arbitrator notes that Petitioner's testimony was consistent with the medical records as it relates to her symptoms and progress with treatment. The Arbitrator notes that Petitioner's description of the occurrence was consistent with the subjective history portions of the medical records submitted in evidence as well as the subjective history reported to the Section 12 examiner. The Arbitrator also notes that Petitioner was truthful about her medical history as it relates to her head, neck and back.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1. 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 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).

Prior to the accident of February 16, 2021, Petitioner was performing her regular work duties as a production line packer. In 2018, she presented to Edward-Elmhurst Healthcare

Immediate Care Addison due to pain in her neck, but there is no evidence of any treatment for that condition (or any other condition) in the intervening period prior to her 2021 work accident.

She presented to the same immediate care clinic the same day of the accident, with complaints of head, neck and back pain. X-rays taken on the date of accident revealed an acute compression fracture at T11, and a subsequent MRI scan showed acute compression fractures at T2 and T5 (although it is not clear from the medical records if those fractures were causally related to the work accident). A CT scan of the head taken on the date of the accident revealed an acute soft tissue injury/subgaleal hematoma overlying the right paramedian posterior parietal/occipital calvarium, but no skull fracture. She was subsequently diagnosed with a concussion without loss of consciousness (slowly resolving) due to a traumatic head injury. There is no evidence she had any symptoms regarding her head, neck or back in the several years prior to the work accident of February 16, 2021.

The Arbitrator notes the opinion of Dr. Butler, specifically that Petitioner's current back issues are no longer related to the work accident but rather to her underlying degenerative issues. The Arbitrator, however, again notes that Petitioner was asymptomatic regarding her head, neck and back in the years leading up to the work accident. The Arbitrator also notes that Dr. Butler renders no opinion regarding the Petitioner's post-concussion symptoms.

It is the Commission's function to choose between conflicting medical opinions. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 4 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 232 (1992).

Based on the above, as well as Petitioner's testimony and the medical records presented as evidence, the Arbitrator finds that Petitioner satisfied her burden of proving by a preponderance of the evidence that there is a causal relationship between the work accident of February 16, 2021, and her current condition of ill-being.

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. "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. Therefore, this factor is not applicable, and the Arbitrator gives it no weight.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as a production line packer at the time of the accident in 2021 and prior thereto. Her job duties required packing and lifting boxes (weighing up to 25 pounds each) to create pallets of product. The medical records and the Petitioner's testimony confirm that she was released to return to work full duty without restrictions following her care. Thus, she returned to work as a production line packer for the Respondent after the accident and continues to work in that capacity as of the date of her testimony, although she testified that she no longer lifts the 25-pound boxes. The Petitioner has experienced no change in occupation nor did her official work duties change because of the accident. The Arbitrator gives greater 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 72 years old at the time of the accident and surpasses the work life expectancy in Illinois of sixty-seven. As such, the Arbitrator gives lesser weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner currently earns a wage commensurate with her pre-accident wages. No evidence was presented to show Petitioner's future earning capacity was negatively impacted by the work accident. The Arbitrator gives lesser weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was diagnosed with a compression fracture of the T11 vertebra (and possible fractures at T2 and T5), a closed head injury without loss of consciousness, resulting in post-concussion syndrome, a strain of the lumbar region (overlying lumbar degenerative disc disease), and intermittent neck pain without radiation. The treatment rendered to Petitioner for these conditions was conservative in nature. Dr. McNally discussed both surgical and non-surgical treatment with Petitioner, including a possible kyphoplasty, but as her condition was improving, it was decided to continue with non-operative care. She also testified as to her fear of undergoing surgery and decision to forego such treatment. Medications were prescribed for Petitioner's intermittent headaches and bouts of dizziness, and the post-concussion symptoms were noted to be "slowly resolving" in October of 2021. The Petitioner was last seen at Northwest Neurology on October 8, 2021, and at Suburban Orthopaedics on March 3, 2022, and she testified that she has not sought treatment for her work-related injuries since that date, more than two years ago. The Arbitrator gives greater weight to this factor.

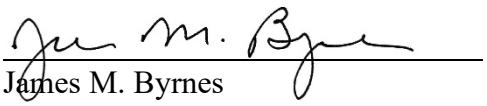
Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% of a person as a whole, pursuant to Section 8(d)2 of the Act, which corresponds to 62.5 weeks of permanent partial disability benefits at a weekly rate of $570.00.

Regarding Issue N, is Respondent due any credit, the Arbitrator finds as follows:

The parties do not dispute that prior to trial, the Respondent paid Petitioner the sum of $3,598.56, representing statutory loss benefits for the fractured vertebra, pursuant to Section 8(d)2.

The Arbitrator therefore finds Respondent is entitled to credit in the amount of $3,598.56, to be applied against the award of permanent partial disability benefits to Petitioner.

IT IS SO ORDERED:



James M. Byrnes
Arbitrator

August 27, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC020156
Case Name	Mackenzie Floeter v. Chemtool Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0146
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Robert Smith

DATE FILED: 4/4/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mackenzie Floeter,
Petitioner,

vs. NO: 17 WC 20156

Chemtool 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, 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 October 1, 2024 is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 4, 2025

O: 03/27/25
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	17WC020156
Case Name	Mackenzie Floeter v. Chemtool Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Robert Smith

DATE FILED: 10/1/2024

/s/Gerald Granada, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 1, 2024 4.215%

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

Mackenzie Floeter
Employee/Petitioner

v.

Chemtool, Inc.
Employer/Respondent

Case # **17** WC **020156**

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 **Rockford**, on **September 13, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/23/27**, 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 $**27,612.00**; the average weekly wage was $**531.00**.

On the date of accident, Petitioner was **29** 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 $**10,603.91 (STD)** for other benefits, for a total credit of $**10,603.91**.

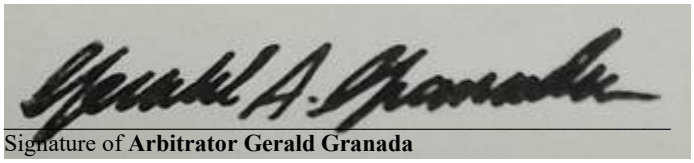
Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Petitioner did not prove that he sustained accident injuries to the left foot/ankle arising out of and in the course of the employment with Respondent on June 23, 2017, due to a repetitive trauma and therefore all benefits are denied. All other issues are moot.

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 Gerald Granada**

October 1, 2024

FINDINGS OF FACT

This case involves Petitioner Mackenzie Floeter, who alleges to have sustained injuries while working for Respondent Chemtool, Inc. on June 23, 2017. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) causation; 3) medical expenses; 4) TTD and 5) nature and extent.

Petitioner began working for Respondent in 2014 or 2015, in packaging. This was a full-time position, working 12-hour shifts, two days on and two days off. His job consisted of packaging grease in various containers. He was on his feet and required to lift or move 35-pound pails as well as rolling 120-pound kegs. He would use a forklift to move the larger drums.

Prior Accident

Petitioner testified that in July 2016, he suffered a work injury to his left foot, wherein he underwent treatment including an MRI and bracing, before being released to unrestricted work in August 2016. He testified that he injured his whole ankle and ultimately returned back to regular work. He filed a claim for this 2016 work injury. That claim was settled in February 2017. (RX 1) The Settlement Contract from the July 2016 claim (date of accident: July 22, 2016) for Case Number 16 WC 025843 indicates an accident wherein Petitioner "slipped on some fluid and rolled left ankle" resulting in a "left ankle sprain", a return-to-work date of September 15, 2016, with settlement terms indicating settlement at 5% loss of the left foot and Petitioner "remaining responsible for all currently unpaid medical bills and future medical bills". (RX 1).

June 23, 2017 Accident

Petitioner testified that after settling the 2016 claim in February 2017, he continued working and was experiencing symptoms in June of 2017 including pain, numbness, and tingling in the left foot. He testified that the numbness and tingling started a month or two after he returned to work in October 2016. At the time, he was doing a lot of keg orders, and walking down the pallets, and sometimes falling through the slats in the pallets. Regarding his symptoms, Petitioner testified that it was a "roller coaster", noting elevated symptoms when he was working and decreased symptoms when he was off. He testified that these symptoms began in 2016 and have not changed from any qualitative or quantitative way.

According to the filed Application for Adjustment of Claim, Petitioner alleges a work injury with an accident date of June 23, 2017. (PX 1).

The Employer's First Report of Injury ("FROI") of July 7, 2017, notes that "[e]mployee claims that he is experiencing constant pain and swelling from a previous injury that occurred on 7-22-16…employee claims he's experiencing discomfort in his left ankle/foot from 'repetitive motion due to walking'". (PX 2, p. 2). The FROI notes the date of accident as "07/22/2016". (PX 2, p. 2).

Petitioner also completed an Injury Report, wherein he stated "[a]bout a year ago (7-22-16) I had [injured] my left ankle/foot in a fall. I am still having some swelling constant pain and developed a lump in the area. It's hard and size of a gumball. On outside of left foot near ankle". Petitioner noted that he was "walking" just before the incident. (PX 2, p. 3). The Injury Report notes an accident/incident/injury date of July 22, 2016. (PX 2, p. 3).

Under "Description of the Near Miss", Petitioner noted "[o]ccured from prior work-related injury". (PX 2, p. 4). Petitioner also noted, "[d]ue to injury on 7-22-16 I was seen by company [doctor] had gotten physical therapy and told to do various stretches and foot exercises over time. I now have constant pain in the area of my foot/ankle that was injured on the top left outside and inward of the top of my foot I also have a lump there about the size of a gumball". (PX 2, p. 5)

Petitioner testified that he did not know the exact date that the ganglion cyst formed but estimated it to be approximately five (5) to six (6) months after returning to work in 2016. The Arbitrator notes that this would be approximately February or March 2017. (Tr. 35).

Medical: Dr. Roshan

Petitioner was previously treating with Dr. Roshan following the July 22, 2016, incident. He testified that initially he was treating with Physicians Immediate Care before transferring treatment to Dr. Roshan. He also treated with her for an unrelated ingrown nail in June 2016. On June 22, 2017, Petitioner returned to Dr. Roshan for left foot pain due to an injury while at work. He reported that he slipped at work and then began having pain in the outside of his foot. (PX 3, p. 30). Petitioner testified that the "slip at work" referred to the July 22, 2016, work incident, when he slipped and fell on oil. He developed a small lesion, possibly a cyst, that is painful. (PX 3, p. 30). An MRI was recommended to confirm finding of possible cyst. (PX 3, p. 30).

Petitioner underwent an MRI of the left foot on July 13, 2017, at Swedish American Hospital. (PX 4, p. 117). The radiologist impression was: (1) multiloculated lateral ganglion cyst measuring approximately 2 cm in maximum diameter, (2) progressing in prominent edema/cystic changes within the navicular, likely representing arthritic changes. (PX 4, p. 117).

Petitioner followed up for the left foot pain due to ganglion cyst with Dr. Roshan on July 27, 2017. (PX 3, p. 46). His symptoms and condition were unchanged since the prior visit. (PX 3, p. 46). Treatment options were discussed including surgery. (PX 3, p. 46-47). Petitioner was provided limitations/restrictions of sitting 80% of the time. (PX 3, p. 91). Petitioner testified that the restrictions were accommodated by his employer.

On September 1, 2017, Petitioner underwent a left foot ganglion cyst removal with Dr. Roshan. (PX 3, p. 107-108, Tr. 16). Following surgery, Petitioner was placed off work with limitations of not being on his feet for more than two (2) hours at a time and with his foot elevated as often as possible. (PX 3, p. 99). Petitioner returned to Dr. Roshan on September 7, 2017, for a follow-up after cyst excision. (PX 3, p. 62). He was instructed to monitor for signs of infection. (PX 3, p. 63). At the September 21, 2017, follow-up, his condition was noted to be "resolved", and Petitioner was given a letter to return to unrestricted work on September 11, 2017. (PX 3, p. 73, 103). Petitioner was instructed to continue unrestricted work on September 25, 2017. (PX 3, p. 105).

Petitioner testified that he returned to work at this time. He testified that he did fairly well with returning to work and that he was continuing with more light duty type work.

On February 2, 2018, Petitioner followed up with Dr. Roshan with complaints of left foot tingling and numbness. (PX 3, p. 84). Dr. Roshan noted that a complication of surgery is numbness and tingling post-operatively and can gradually go away with time. (PX 3, p. 84). Petitioner was instructed to return in 6-8 weeks if pain persists. (PX 3, p. 84).

On November 29, 2018, Petitioner underwent a second left ganglion cyst incision. Petitioner testified that he was kept off work for a period of time after the second surgery. On January 11, 2019, Petitioner was released to return to full duty work on February 1, 2019. (PX 3, p. 113). Dr. Roshan also noted that the numbness and tingling may be present for 6-9 months but could be permanent. (PX 3, p. 114).

Petitioner testified that when he returned to work, the pain, numbness, and tingling would come and go, feeling better the days he wasn't working.

Medical: Dr. Nielsen

On June 13, 2019, Petitioner presented for an initial consultation with Dr. Nielsen, following the retirement of Dr. Roshan. (PX 5, p. 276) He reported that overall, he was doing well but had some numbness at the surgical site and occasionally gets radiating pain when the surgical site is bumped. (PX 5, p. 276). Petitioner had full range of motion and Dr. Nielsen was not able to palpate any cyst or mass. (PX 5, p. 277). Dr. Nielsen indicated that Petitioner's complaints of numbness would persist, but anticipated it lessening over the next six (6) months. (PX 5, p. 277). There were no restrictions or limitations recommended for work. (PX 5, p. 277). On September 6, 2019, Petitioner reported to Dr. Nielsen that the pain worsened since he returned to working longer 12-hour shifts. (PX 5, p. 269). A steroid injection was recommended for Petitioner's neuritis. (PX 5, p. 269). On September 13, 2019, Petitioner advised Dr. Nielsen that he did well following the steroid injection until a few days ago, when he started having severe pain in the left foot. (PX 5, p. 261). He had been off work for a few days which reportedly helped. X-rays were negative and Dr. Nielsen suspected nerve entrapment to be the issue. Petitioner was released to unrestricted work as of September 16, 2019. (PX 5, p. 265). Petitioner continued to follow up with Dr. Nielsen, who recommended shockwave treatment for neuritis and chronic foot pain during his January, 2020 visits. (PX 5, p. 230, 239). On March 11, 2020, Petitioner reported to Dr. Nielsen that he was now having pain medially, was not able to sit and had missed work the day before due to pain. (PX 5, p. 223). Dr. Nielsen recommended therapy for posterior tibial tendinitis, neuritis, and chronic foot pain; and another MRI. (PX 5, p. 224).

Medical: Dr. Heath Hoffman

Dr. Hoffman, a podiatrist board certified in foot surgery, testified via evidence deposition on October 14, 2022 (PX 7) He began treating Petitioner in April, 20202 after Petitioner had undergone several surgeries with Dr. Roshan as well as conservative treatment with Dr. Nielsen, - who does not perform surgeries. (PX 7, p. 287). On July 24, 2020, Dr. Hoffman performed an additional left ganglion cyst excision on Petitioner. (PX 7, p. 289). Petitioner testified that the third surgery did not help his symptoms and he continued to experience numbness and tingling following this surgery.

On November 29, 2021, Dr. Hoffman issued a note indicating that Petitioner sustained a work-related injury in 2017 for which a cyst formed shortly after the incident. (PX 6). He stated that the soft tissue mass caused pain and required three (3) separate surgical procedures, and that Petitioner had reached maximum medical improvement. (PX 6). However, he had persistent numbness to the surgical site as well as 20% decreased function in the foot, which would be lifelong. (PX 6).

Dr. Hoffman testified that the diagnosis of neuritis was consistent with scar tissue over the nerve in the surgical site. (PX 7, p. 289). He testified that after having many surgeries in the same spot, Petitioner was going to have some issues with neuritis and scar tissue in that region. (PX 7, p. 290). Dr. Hoffman testified that the diagnosis of sinus tari syndrome came from Petitioner compensating his gait due to his foot pain in the previous surgical site. (PX 7, p. 290).

On cross-examination, Dr. Hoffman testified that he did not review any records prior to 2017 relating to the left foot or left ankle. (PX 7, p. 294). He testified that he did not know the date of the 2017 injury as Dr. Roshan did not specify a date when she first saw Petitioner. (PX 7, p. 300) Regarding the mechanism of injury, he was going based off what Petitioner told Dr. Roshan. (PX 7, p. 301) Dr. Hoffman testified that he was not aware of the left foot and ankle work injury from July 2016. (PX 7, p. 301.) He testified that this was not discussed in any of the records that he read or discussed with him in person. (PX 7, p. 301)

Dr. Hoffman testified that it was possible that the injuries Petitioner sustained to his left foot and ankle could be attributed to the July 2016 injury. (PX 7, p. 302). He further testified that there was no objective evidence that would establish that Petitioner sustained a work-related injury in 2017 rather than in 2016. (PX 7, p. 302)

CONCLUSIONS OF LAW

1. Regarding the issue of accident and causation, the Arbitrator finds that the Petitioner has failed to meet his burden of proof. This finding is supported by both the Petitioner's testimony and the preponderance of the medical evidence. Petitioner's accident claim is based on a repetitive trauma theory due to repetitive walking. The relevant case law establishes that where there is evidence of a preexisting condition, medical opinion evidence is necessary to establish a causal connection between the repetitive trauma and the claimant's work duties. Johnson v Industrial Comm'n, 89 Ill. 2d 438 (claimant presented no medical opinion evidence suggesting that her repetitive trauma injuries were caused or could have been caused by her work activities); Nunn, 157 Ill. App. 3d at 478 (claimant presented no expert medical testimony that might have established whether her prior condition had developed before she began repetitive work activities, only evidence was claimant's undisputed testimony). In the present case, the Petitioner had a prior injury to his left foot on July 22, 2016, for which he filed a prior workers compensation claim and settled that claim just months before the alleged accident in the current case. Petitioner returned to full duty work on September 15, 2016 and arguably, his claimed repetitive walking in the current case aggravated his prior foot condition. However, the Arbitrator notes Petitioner's testimony that he experienced numbness and tingling in his left foot/ankle, which began in 2016, and had not changed in any qualitative or quantitative way upon his return to work. Petitioner described the symptoms as being like a "roller coaster", elevating while he was working and decreasing when he was off work. The Arbitrator notes that there are multiple references in the initial injury reports to the July 22, 2016, incident as being the cause of Petitioner's left foot/ankle condition.

The Petitioner relies on Dr. Hoffman's testimony regarding causation to establish a manifestation date of June 23, 2017. However, Dr. Hoffman testified that he was not aware of Petitioner's prior left foot and ankle injury from July, 2016. The Arbitrator finds persuasive Dr. Hoffman's testimony that it was possible that the injuries Petitioner sustained to his left foot and ankle, could be attributed to the July 2016 injury, and that that there was no objective evidence that would establish that Petitioner sustained a work-related injury in 2017 rather than in 2016. (PX 7, p. 302).

Based on the facts above, the Arbitrator concludes that Petitioner has failed to prove by a preponderance of the evidence that he suffered a repetitive trauma accident which arose out of and in the course of his employment on June 23, 2017. Petitioner has also failed to prove by a preponderance of the evidence that his current condition of ill-being is related to the June 23, 2017, work incident, but rather, by Petitioner's own account, his condition is a continuation of his left foot/ankle injury from the July 22, 2016, work incident. There is no credible expert medical opinion addressing causation due to a repetitive trauma manifesting on June 23, 2017.

2. Based on the Arbitrator's findings regarding the issue of accident and causation, all benefits are denied and the remaining issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023414
Case Name	Ernest West v. W.W. Grainger
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitratoin
Decision Type	Commission Decision
Commission Decision Number	25IWCC0147
Number of Pages of Decision	27
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kyle Tulley
Respondent Attorney	Meg Bentley

DATE FILED: 4/4/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ERNEST WEST,

Petitioner,

vs. NO: 22 WC 23414

W.W. GRAINGER, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19 having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of the benefit rate, causal connection, the reasonableness and necessity of the medical treatment and charges, prospective medical treatment, temporary total disability, credit, 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. 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 June 10, 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 $60,100.00. 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.

April 4, 2025

CAH/tdm
O: 3/27/25
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	22WC023414
Case Name	Ernest West v. W.W. Grainger
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kyle Tulley
Respondent Attorney	Margaret Bentley

DATE FILED: 6/10/2024

/s/Frank Soto, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ERNEST WEST
Employee/Petitioner

v.

W.W. GRAINGER, INC.
Employer/Respondent

Case # **22** WC **023414**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Ottawa**, on **04/03/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **09/02/2022**, 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 $**37,555.55**; the average weekly wage was $**722.22**.

On the date of accident, Petitioner was **51** 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 $**13,253.16** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**30,572.96 (medical paid)** for other benefits, for a total credit of $**43,826.12**.

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

ORDER

Respondent shall pay the medical bills identified in Petitioner's Exhibits 1 through 10, pursuant to Sections 8(a) and 8.2 of the Act and subject to the fee schedule, Respondent shall receive a credit in the amount of $30,572.96 for medical treatment Respondent previously paid and Respondent shall hold Petitioner harmless for those medical bills which Respondent claims a credit, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay for the cervical anterior discectomy and fusion surgery at C5-6 recommended by Dr. Salehi including reasonable and necessary attendant care pursuant to Sections 8.2 and 8(a) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner TTD benefits from September 15, 2022 through April 3, 2024 for a total of 81 weeks pursuant to Section 8(b) of the Act less a credit in the amount of $13,253.18 for TTD benefits Respondent previously paid, as set forth in the Conclusions of Law attached hereto and 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
Arbitrator

June 10, 2024

ICArbDec19(b)

Procedural History

This case proceeded to trial on April 3, 2024 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues were accident, causation, average weekly wage, liability for medical bills, liability for TTD benefits, prospective medical treatment and whether Respondent is entitled to a credit for a TTD overpayment and PPD advance. (Arb. Ex. #1). Since the case proceeded to trial pursuant to Sections 19(b) and 8(a) of the Act the issues involving a PPD advance will be reserved and not addressed at this time.

At trial, Petitioner offered into evidence a Utilization Review, dated October 27, 2022, prepared by Sedgwick Claims Management Services, Inc. (Sedgwick) for American Zurich Insurance Company (Zurich), Respondent's insurance carrier. (Px.12). Respondent objected to the admissibility of the document based upon hearsay. (T.92). Petitioner claims the document are an exception to hearsay as an admission by a party opponent. (T.93). The issue was taken under advisement and the parties were provided an opportunity to submit supporting case law. (T.93).

Petitioner argues Sedgwick is an agent for Respondent and, therefore, Sedgwick documents qualifies are an admission by a party opponent as a hearsay exception. One exception to hearsay is a statement by party opponent which provides, in part, "(D) *a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship*". See Ill. R. Evid. 801(d)(2)(C), eff. 1/1/2011; amended 10/15/2015.

The Arbitrator notes no evidence was submitted showing that Sedgwick was Respondent's agent (W.W. Grainger, Inc.) and that Sedgwick was acting within the authority granted by Respondent. For the admission by the party opponent exception to apply, Petitioner needs to prove Respondent (W.W. Grainger) was Sedgwick's principal and was acting within the scope of the principal's authority. No such evidence was presented in this case. These documents, at best, shows the existence of a business relationship between Sedgwick and Zurich or that services were performed for Zurich by Sedgwick. The Arbitrator finds the documents contained in Petitioner's Exhibit 12 are hearsay and do not qualify as an admission by a party opponent. Respondent's objection to the admissibility of Petitioner's Exhibit 12 is sustained and the documents are not admitted into evidence. However, Petitioner's Exhibit 12 shall remain part of the record as a rejected exhibit.

Findings of Fact

Ernest West (hereinafter referred to as "Petitioner") was employed by W.W. Granger, Inc. (hereinafter referred to as "Respondent") as tugger operator. (T.14). A tugger is a vehicle used in a warehouse to transport items throughout the warehouse. (T.15). The tugger is smaller than a forklift and the operator stands. The tugger has a hook on the back which attaches to carts that contain the items being transported throughout the warehouse. Unlike a forklift the tugger doesn't have front forks for lifting. (T.15).

Average Weekly Wage

Petitioner testified he works "in the line of 10 hours a day" 4 days a week. Petitioner previously worked 8 hours a day for 5 days a week. (T. 35-36). Petitioner testified he also worked overtime. (T. 42-43). Petitioner testified sometimes overtime was mandatory but it varied. (T. 38; 43-44). Petitioner testified when overtime was being offered a manger or supervisor would announce that overtime was available and that he could either accept or reject. (T.37). Petitioner also testified overtime was voluntary prior to his work injury. (T. 44-45)

Accident

Petitioner testified on September 2, 2020 he was operating the tugger when the tugger was rearended by a forklift. (T.21). Petitioner testified the impact jolted him and that he experienced pain in his neck, back and down his legs. (T.22). Petitioner described the pain as severe. (T.22). Petitioner testified he notified his supervisor and completed an accident report before seeking medical care at Morris Hospital Occupational Health. (T.22-24). Petitioner testified while at the hospital he reported experiencing pain in his neck, back, shoulders and arms. (T.24). Upon being released from the hospital, Petitioner was given pain medications and issued work restrictions. (T.24).

Petitioner's Preexisting Condition and Prior Medical Treatment

Petitioner testified on the date of his work accident he was not experiencing any neck or low back pain. (T.20). Petitioner testified he previously injured his neck and low back in an August of 2020 motor vehicle accident. (T.33). Petitioner testified the medical treatment he received after the motor vehicle accident consisted of physical therapy and injections. (T.33). Petitioner testified he last received medical treatment for the motor vehicle accident was on October 28, 2021. Petitioner testified the medical treatment ended because he was feeling better. (T.34). Petitioner testified he told the doctor on October 28, 2021 he was okay and that he wanted

to be released. (T.65). Petitioner testified he remembers that day because he recalled feeling better and being told he could return to work by Dr. Farag. (T.91). Petitioner testified at the time he was released from treatment he had full use and mobility of his neck and back. (T.34). Petitioner testified he did not receive any further medical treatment until September 2, 2022, the date of his work accident. (T.34). Petitioner testified he worked full duty from October of 2021 through September 2, 2022. (T.35).

After the motor vehicle accident, on August 9, 2020, Petitioner presented to Edward Hospital complaining of right upper quadrant pain, soreness in the neck, and pain in the left flank. (RX. 6, p.p. 18). A CT scan of cervical spine showed no acute fractures or subluxations, degenerative changes, and a possible pulmonary edema. (RX. 6. P.p. 20). Petitioner was diagnosed with a contusion of the abdominal wall. Petitioner was discharged and prescribed Ketorolac tromethamine. (RX. 6, p.p. 21-22).

Petitioner treated at Midwest Anesthesia and Pain Specialists (MAPS) from August 11, 2020 through October 11, 2011 with Dr. Farag. (RX 13, pp. 278-396). At his initial August 11, 2020 visit, Petitioner reported pain in the neck, upper back, lower back, head, bilateral shoulders, and bilateral wrists. (RX 13, pp. 277-282). Petitioner was assessed with cervicalgia, strain of muscle/fascia/tendon at neck level, pain in thoracic spine, sprain of ligaments of thoracic spine, low back pain, strain of muscle/fascia/tendon of lower back, pain in bilateral shoulder, and pain in bilateral wrist. (RX 13, p. 281).

On September 17, 2020, Petitioner underwent a cervical MRI which showed: (1) straightening of cervical lordosis with minimal kyphotic reversal across C3-5; and (2) multilevel disc osteophyte with central canal and neuroforaminal stenosis. (RX 10, pp. 16-17). On that same day, Petitioner also underwent a lumbar MRI which showed: (1) straightening of the lordosis with generalized vertebral endplate bowing of multilevel disc bulging; minimal grade 1 retrolisthesis of L5-S1; multilevel posterior element spondylosis with canal and neuroforaminal impingement; (2) L3-4, disc bulging with mild bilateral neuroforaminal stenosis; (3) L4-5, disc bulging with moderate to severe bilateral neuroforaminal stenosis; and (4) L5-S1, retrolisthesis with disc bulging and annular fissure; left and right lateral recess effacement; moderate to severe bilateral neuroforaminal stenosis. (RX 10, pp. 14-15).

Petitioner attended physical therapy at Premier Physical Therapy (PPT) from August 17, 2020 through May 11, 2021. (RX 11, pp. 130-139). On November 10, 2020, Petitioner underwent

a bilateral L5-S1 TFESI. (RX 13, pp. 308-312). On November 17, 2020, Petitioner followed up with Dr. Farag reporting no improvement from the lumbar TFESI. At that time, Dr. Farag diagnosed low back pain with radiculopathy and referred Petitioner for a surgical evaluation. (RX 13, pp. 313-318; RX 14, p. 23).

On December 1, 2020, Petitioner presented to Dr. Sean Salehi of Chicago Neurospine Surgery. At that time, Petitioner reported neck and low back pain with radiating pain to both shoulders and down the back with numbness and tingling. Petitioner also reported physical therapy and injections failed to provide relief. Petitioner was assessed with spondylosis of cervical region, traumatic rupture of lumbar intervertebral disc, and spondylosis of lumbar region. The medical records state Petitioner sustained neck and low back pain as a result of an August 9, 2020 motor vehicle accident which aggravated his foraminal stenosis at C5-6 while his low back pain was secondary to annular tear and facet arthropathy at L5-S1. At that time, 1-2 bilateral C5-6 ESIs and 1-2 bilateral L5-S1 facet injections were recommended. (RX 14, pp. 17-19; RX 12, pp. 10-12).

Petitioner returned to MAPS. (RX 13, pp. 319-360). On November 10, 2020 Petitioner underwent a lumbar TFESI reporting little to no improvement. (RX 13, pp. 319; 328). On June 24, 2021 Petitioner underwent a L5-S1 LESI and a C6-7 CESI on July 8, 2021, reporting temporary relief. (RX 13, pp. 361-374).

At Petitioner's final visit with Dr. Farag on October 28, 2021, he reported continued neck and low back pain and that the injections provided only temporary relief. Petitioner continued to report pain, numbness, and tingling down both arms to the hands, low back pain radiating down the left leg and tingling under his left foot. Petitioner rated his pain level as 8 out of 10. Dr. Farag prescribed a H-wave device, LSO brace, home exercises, Norco, methocarbamol, and gabapentin. At that time, Petitioner was referred again to Dr. Salehi for possible surgical intervention. Petitioner was issued work restrictions consisting of 10-minute breaks every two hours for rest and ice. Petitioner was instructed to return in four weeks. (RX 13, pp. 391-396). Petitioner never returned to treatment.

Petitioner's Medical Treatment as of September 2, 2022

After his work accident, Petitioner presented to Morris Hospital on September 2, 2022 complaining of sharp, shooting pain down left arm and back. Petitioner rated his pain level as 9 out of 10. The examination showed left trapezius pain, cervical spine pain and rotation to the right produced tingling in the left arm. Petitioner was diagnosed with cervical and trapezius spasms and

he was prescribed Norflex, Ibuprofen, and Toradol. Petitioner was issued work restrictions for the neck consisting of no lifting, pushing, or pulling over 20 pounds. (PX 1, pp. 13-24).

On September 6, 2022. Petitioner returned to Morris Hospital reporting soreness and numbness in the left arm. The examination noted full range of motion of the neck and left shoulder. The medical records indicate Petitioner denied prior injures to his neck, left shoulder and back. The medical records stated, "Chronic conditions that have or could exacerbate or complicate today's acute symptom have been reviewed and addressed". Petitioner was directed to follow up with his primary care physician and his work restrictions were renewed. (PX 1, pp. 25-34).

On September 14, 2022, Petitioner presented to Dr. Salehi reporting being involved in a work accident on September 2, 2022 when a tugger he was operating was rearended by a forklift. The medical records indicate Petitioner reported immediate pain that caused him to go to the emergency room. The medical records show Petitioner complained of neck pain to both shoulders radiating down the left arm to the fingertips and, to a lesser extent, down the right arm. Petitioner also reported low back pain radiating down the anterior and posterior thighs to the knees. (RX14, RX 12, PX 2, pp. 9-12,).

After the that visit, Dr. Salehi authored a letter to Dr. Farag which stated Petitioner was last seen on December 1, 2020 for neck and back pain after a motor vehicle accident but that after undergoing injections 2021 Petitioner had not sought additional treatment. In that letter, Dr. Salehi indicated Petitioner reported not undergoing any medical treatment in 2022 and he was doing well with no ongoing pain until his September 2, 2022 work injury. (RX.14, RX.12, PX 2, pp. 9-12).

Dr. Salehi's examination of the cervical spine showed range of motion of 30' for lateral flexion, 30' for left lateral flexion, 10' for extension, 30' for left and right rotation and Dr. Salehi noted a positive Spurling's test on the left. Dr. Salehi's examination of the lumbar spine showed bilateral posterior iliac crest tenderness and that low pain was produced bilaterally with a sitting leg raise test. (RX14, RX 12). Dr. Salehi stated Petitioner was experiencing radiating neck and low back pain from his work injury. Dr. Salehi ordered MRIs of the cervical and lumbar spine, physical therapy and he took Petitioner off work. (RX14, RX 12, PX 2, pp. 9-12).

On September 16, 2022 Petitioner underwent a cervical spine MRI which found: (1) broad based posterior and right paracentral herniation of C5-6 disc approximately 5 mm in size, causing mild narrowing of the central canal and moderate-to-severe narrowing of the neural foramina, bilaterally (right more than left), and mild-to-moderate facetal arthropathy adding neural foraminal

stenosis; (2) broad based posterior and left paracentral as well as foraminal herniation of C3-4 disc approximately 4 mm in size, causing mild narrowing of the central canal and mild-to-moderate narrowing of the neural foramina, bilaterally (left more than right), and mild-to-moderate facetal arthropathy adding to neural foraminal stenosis; (3) diffuse posterior and right paracentral protrusion of C4-5 disc approximately 3 mm in size, causing mild narrowing of the central canal and neural foramina, bilaterally (right more than left); (4) diffuse protrusion of C6-7 disc approximately 3 mm in size, causing mild narrowing of the central canal and neural foramina, bilaterally, and mild facetal arthropathy; (5) diffuse bulge of C2-3 and C7-T11 discs approximately 2 mm in size, without any significant central canal or neural foraminal narrowing, and mild facetal arthropathy; (6) mild vertebral offsets at few levels; (7) heterogeneous marrow in signal intensity; and (8) mild degenerative changes in atlanto-axial joints. (PX 3, pp. 4-6).

On September 16, 2022, Petitioner also underwent a lumbar MRI which found: (1) broad based posterior and left paracentral herniation of L5-S1 disc approximately 7 mm in size, with annular tear, causing mild narrowing of the central canal and moderate narrowing of the neural foramina, bilaterally, and moderate facetal arthropathy adding to neural foraminal stenosis; (2) broad based posterior and left paracentral herniation of L4-5 disc approximately 4 mm in size, causing mild narrowing of the central canal and moderate narrowing of the neural foramina, bilaterally (left more than right), and mild-to-moderate facetal arthropathy and mild ligamentum flavum thickening adding to spinal canal and neural foraminal stenosis; (3) bilateral paracentral and foraminal protrusion of L3-4 disc approximately 3 mm in size, causing mild narrowing of the central canal and mild-to-moderate narrowing of the neural foramina, bilaterally, and mild facetal arthropathy; and (4) diffuse bulge of L2-3 disc approximately 2 mm in size, without any significant central canal or neural foraminal narrowing, and mild facetal arthropathy. (PX 3, pp. 7-8).

Petitioner attended physical therapy from September 19, 2022 to February 20, 2023. (RX 11, pp. 158-298). Petitioner also returned to MAPS for pain management. Petitioner underwent a L5-S1 LESI on November 10, 2022, which did not provide relief. (PX 4, pp. 173-175, PX 2, pp. 17-20). On November 22, 2022 Petitioner was released to return to work performing desk duty. (PX 2, pp. 17-20). On December 1, 2022, Petitioner underwent a bilateral C3-6 MBB, which did not provide relief. (RX 13, pp. 57-60; PX 4, pp. 176-179, RX 13, pp. 61-66; PX 4, pp.180-185). At that time, Petitioner was instructed to follow up with Dr. Salehi. (RX 13, pp. 61-66; PX 4, pp.180-185)

Petitioner presented to Dr. Salehi on January 3, 2023 and February 15, 2024. During those visits, Dr. Salehi recommended cervical and lumbar surgeries but electing to proceed, at this point, consisting of a C5-6 ACDF. (PX 2, pp. 36-55).

Testimony of Dr. Sean Salehi, Treating Physician

On September 14, 2022. Dr. Sean Salehi testified that he is a board-certified neurosurgeon. Dr. Salehi testified Petitioner reported being injured at work on September 2, 2022 when the tugger he was standing in was rear ended by a forklift. Petitioner reported pain in both shoulders going down his arms into his fingers, left worse than the right. Petitioner also reported low back pain with radiation down to the anterior and posterior thighs. (PX 11, p.p. 1-14).

Dr. Salehi conducted an examination which revealed cervical and lumbar tenderness, limited range of motion with extension and flexion. Dr. Salehi stated Petitioner's cervical spine had limited range of motion particularly with rotation and extension. (PX 11, p.m. 15-16). After reviewing the MRIs, Dr. Salehi diagnosed low back pain, cervicalgia, cervical spondylosis, and lumbar spondylosis. (PX 11, p.m. 15-16). Dr. Salehi testified he found no evidence of symptom magnification and that, he believes, Petitioner's complaints were consistent with the MRIs and the physical examinations. Dr. Salehi testified Petitioner has axial pain in the cervical and lumbar regions which correlates with the MRIs. (PX. 11, p.p. 36, 78).

Dr. Salehi testified the cervical MRI dated September 16, 2022 showed mild cervical kyphosis with the apex at the C3-4 level, significant bilateral C3-4 foraminal stenosis and bilateral C5-6 foraminal stenosis and moderate right sided C6-7 foraminal stenosis. Dr. Salehi testified the lumbar MRI dated September 16, 2022 showed T2 signal loss of the L5-S1 disc without height loss, moderate T2 signal alteration of the L4-5 disc without any other degenerative changes, moderate bilateral facet arthropathy at L4-5 and L5-S1, moderate to significant foraminal stenosis on both sides of L4-5 and L5-S1, mild central herniation at L5-S1 which in combination with facet arthropathy had resulted in moderate bilateral lateral recess stenosis and moderate bilateral lateral recess stenosis at L4-5. (PX 11, p.p. 17-18).

Dr. Salehi testified he previously evaluated Petitioner on December 1, 2020 after an August 9, 2020 motor vehicle accident. Dr. Salehi testified, at that time, Petitioner reported neck pain that radiated into both shoulders and down the back with numbness and tingling down in both arms, hands, and fingers. Dr. Salehi testified the cervical spine examination revealed tenderness in the paraspinal and cervical regions and top of the shoulders. (PX 11, p.p. 8-10).

Dr. Salehi testified to reviewing cervical and lumbar MRIs taken on September 7, 2020 which, he said, showed mild bulges at C3-4 and C4-5, significant bilateral uncovertebral joint hypertrophy at C3-4, bilateral foraminal stenosis at C5-6 right more than the left. (PX 11, p.p. 11). For the motor vehicle accident, Dr. Salehi diagnosed cervical spondylosis, lumbosacral spondylosis, traumatic rupture of the intervertebral disc of the lumbar spine. Dr. Salehi opined Petitioner's symptoms, at that time, were related to the August 9, 2020 motor vehicle accident. (PX 11, p.p. 12).

Regarding Petitioner's work accident of September 2, 2022, Dr. Salehi opined that Petitioner's current conditions are related to his work accident sine Petitioner's symptoms returned after improving or resolving following the 2020 motor vehicle accident. (PX 11, p.p. 16). Dr. Salehi further opined that Petitioner's work accident of September 2, 2022 aggravated his pre-existing cervical and lumbar conditions. (PX. 11, p.p. 19-20).

In support of his opinion, Dr. Salehi testified Petitioner experienced a consistent mechanism of injury which could result in neck and back pain, a temporal connection exists between the onset of Petitioner's symptoms and his work accident, as reflected in the need to go to the emergency room, and Petitioner was able to perform his regular job duties prior to his work accident and that Petitioner's previous symptoms either resolved or were significantly improved such that he was able to perform his job duties. Dr. Salehi testified when you have disc degeneration or spondylosis it takes less force to cause one to become symptomatic again and, in Petitioner's case, the same levels which were previously symptomatic had become symptomatic again. (PX. 11, p.p. 19-20). Dr. Salehi testified Petitioner's cervical pain generator is the kyphosis and the significant disc degeneration at C5-6 which is putting stress on the facet joint at C5-6. (PX. 11, p.p. 21).

Dr. Salehi testified he reviewed and compared Petitioner's 2020 and 2022 cervical and lumbar MRIs[1]. Dr. Salehi testified the 2022 cervical MRI showed a 5-millimeter broad based posterior and right paracentral herniation at C5-6 as well as disc osteophyte complex that indents the anterior aspect of the spinal cord. Dr. Salehi stated the 2022 cervical MRI also showed a 4-

[1] This case proceeded pursuant to Sections 19(b) and 8(a) of the Act with Petitioner seeking prospective medical treatment consisting of an anterior discectomy and fusion at C5-6. No prospective medical treatment has been recommended for the lumbar spine. As such, issues involving Petitioner's current lumbar spine condition, after November 21, 2020 (the date of Respondent's Section 12 examination), and lumbar spine prospective medical treatment are not being addressed at this time and are, therefore, reserved.

millimeter disc herniation at C3-4. Regarding the 2020 cervical MRI, Dr. Salehi testified that it showed a 3-millimeter osteophyte at C5-6 with a bulky 6-millimeter right foraminal osteophyte as well as a 2–4-millimeter disc osteophyte complex at C3-4. (PX 11, p.m. 29-30).

Dr. Salehi opined there were changes between the 2022 and 2020 MRIs. Dr. Salehi opined, based upon his review of the cervical MRIs, that Petitioner's work accident was the type of event resulting in some traumatic transformation of the MRI findings at C5-6. (PX. 11, p.p. 74). Dr. Salehi testified Petitioner's prior motor vehicle accident as well as his subsequent work injury were both sufficient mechanisms of injury to cause his cervical spine to become symptomatic. (PX. 11, p.p. 32). In support of his causal opinion Dr. Salehi testified he was not aware of any other traumatic injuries between Petitioner's last injection in 2021 through his September 2, 2022 work injury. (PX11, p.p. 32). Dr. Salehi further testified Petitioner's prior symptoms had pretty much resolved in 2021 reflected by the fact that he did not receive any additional treatment in 2022. Dr. Salehi noted Petitioner was doing well with no ongoing pain until his September 2, 2022 work accident. (PX. 11, p.p. 33). Dr. Salehi testified he allowed Petitioner to return to work as of April 18, 2023 due to Petitioner's financial needs but that he was not at MMI. (PX. 11, p.p. 36, 78).

Dr. Salehi recommended cervical spine surgery consisting of an anterior discectomy and fusion at C5-6. (PX. 11, p.p. 23, 74). Dr. Salehi testified the medical treatment Petitioner received was reasonable, necessary and causally related to his September 2, 2022 work accident. (PX. 11, p.p.)

Dr. Salehi testified he disagrees with Dr. Graft's opinion that Petitioner's condition has no relationship to his work accident. (PX. 11, p.p. 33). Dr. Salehi testified Dr. Graft did not consider what was happening with Petitioner between the two accidents and that Petitioner was not experiencing symptoms between the two accidents. (PX. 11, p.p. 33).

Testimony of Dr. Carl Graf, Section 12 Examiner

Dr. Carl Graft, a board-certified orthopedic surgeon, examined Petitioner pursuant to Section 12 of the Act. (RX 3). Dr. Graf testified he first examined Petitioner on November 21, 2022. He testified to obtaining a history, performing a physical examination, and reviewing pre- and post-accident medical records and radiographic studies. (RX 3, p.p. 10-30). Regarding the cervical spine, Dr. Graf diagnosed cervical disc degeneration at C5-6 with upper extremity radiculopathy. (RX 3, p.p. 34). At that time, Dr. Graft noted Petitioner had previous conditions so

he withheld his causation opinion until reviewing Petitioner's prior medical records. (RX. 3, p.p. 34-35).

Dr. Graf agreed some of Petitioner's medical treatment was reasonable and medically necessary such as the CESI and the initial course of physical therapy plus one additional month of physical therapy. (RX 3, p.p. 35-37). Dr. Graf believed the cervical spine treatment and pain management treatment through November 21, 2022, the date of his examination, was reasonable and medically necessary. (RX 3, p.p. 35-39). However, Dr. Graf opined the radiofrequency ablations and nerve blocks were not reasonable. (RX. 3, p.p. 37). Dr. Graf opined Petitioner was not at MMI for the cervical spine but was for the lumbar spine and that Petitioner could return to light duty work for the cervical spine and full duty work for the lumbar spine. (RX. 3, p.p. 37-42).

Regarding the lumbar spine, Dr. Graf testified Petitioner had subjective complaints of low back radiating pain which he could not objectively substantiate. Dr. Graft opined it was possible Petitioner suffered a lumbar strain but due to the myriad of inconsistencies and an MRI which, he said, showed no evidence of a disc herniation that he could not substantiate Petitioner's lumbar spine complaints. (RX. 3, p.p. 39-40).

Dr. Graf performed a second Section 12 examination on February 24, 2023. (RX. 3, p.p. 42). At that time, Petitioner reported bilateral shoulder and triceps pain as well as pain in the ulnar aspect of the bilateral arms with numbness in the bilateral hands. (RX. 3, p.p. 45). Dr. Graf also noted that Petitioner reported thoracic spine pain and low back pain with bilateral leg pain. (RX 3, p.p. 45-46). Dr. Graf testified Petitioner complained of pain and numbness throughout his entire body, from the neck to the toes. (RX. 3, p.p. 46).

Regarding the cervical spine, Dr. Graf diagnosed Petitioner with vague and diffuse complaints of pain which, he said, encompassed nearly the entire body and could not objectively substantiated. (RX. 3, p.p. 60). Dr. Graf opined Petitioner's cervical condition was pre-existing and bore no relation to his claimed injury. (RX. 3, p.p. 60). Dr. Graf testified Petitioner's complaints were the same after his work accident as the prior motor vehicle accident. (RX. 3, p.p. 61). Dr. Graft noted Dr. Salehi's diagnosis and treatment recommendations, which include surgery, were the same after both Petitioner's motor vehicle accident and work accident. (RX. 3, p.p. 61).

Dr. Graf opined all the cervical medical treatment was not related to Petitioner's work accident and the cervical medial branch blocks were neither reasonable or medically necessary.

(RX. 3, p.p. 62). Dr. Graf also opined the recommended cervical surgery was neither reasonable nor medically necessary. (RX. 3, p.p. 63).

In support of his opinions, Dr. Graf testified Petitioner's pain complaints were from his head to his toes and included both the upper and lower extremities. Dr. Graft testified Petitioner had a negative Spurling's maneuver and that he was unable to reproduce Petitioner's cervical radiculopathy. (RX 3, p.p. 63). Regarding the cervical spine, Dr. Graf opined Petitioner could return to work full duty from the work injury but that he could have restrictions due to his pre-existing condition. Regarding the lumbar spine, Dr. Graf opined Petitioner was at MMI and could return to work full duty. (RX 3, p.p. 63-64).

On cross-examination, Dr. Graf testified the two MRIs (*i.e*. dated September 16, 2022 and September 17, 2020) were very similar in nature but were read by two different MRI machines at two different facilities. (RX. 3, p.p. 97). Despite this fact, Dr. Graf opined there were no significant changes of the size of the disc bulges and the neuroforaminal at all levels. (RX. 2, p.p. 97-98).

Dr. Graf acknowledged not reviewing any medical records showing that Petitioner's conditions were symptomatic from November 28, 2021 through the date of his work accident, but that, he believes, Petitioner's condition was symptomatic because he was referred for a surgical consultation at that October 28, 2021 visit. (RX. 3, p.p. 89).

Petitioner's Testimony as to his Current Condition and Work Status

Petitioner testified since his work accident he continues to experience pain in his neck, back, and legs. (T.28). Petitioner rated his current pain level as 9 out of 10. (T.28). Petitioner described his pain as shooting with tightness. (T.28). Petitioner testified since his work accident he has been unable to play with his son, play basketball, or ride a bike. (T.31, 71). Petitioner testified he continues to take Vicodin four times a day and that he would like to proceed with the surgery recommended by Dr. Salehi. (T.32).

As to his current work status, Petitioner testified he was released to return to work full duty as of April 20, 2023 due to financial necessity. (T.74, 77, PX. 2, RX. 14). Petitioner testified he tried to return to work on a trial basis but Respondent would not accept his release. (T.75-77).

The Arbitrator finds Petitioner to be a poor historian but that his testimony is otherwise credible regarding the description of his work accident and the absence of significant cervical and/or lumbar spine symptoms from October of 2021 through September 2, 2022, the date of his work injury.

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.

The Arbitrator finds Petitioner proved by the preponderance of the evidence he sustained an accidental injury that arose out of and in the course of his employment with Respondent on September 2, 2022. Petitioner testified he was operating a tugger when the tugger was rearended by a forklift. Petitioner reported the accident and immediately sought medical treatment. The medical records reflect a history consistent with Petitioner's trial testimony. No evidence was presented conflicting with Petitioner's testimony.

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 incorporates the Conclusions of Law in Sections C into this Section. The Arbitrator finds Petitioner has proven by the preponderance of the evidence that his current cervical condition is causally connected to his work injury of September 2, 2022, as set forth more fully below.[2]

Dr. Salehi diagnosed Petitioner as suffering from cervical spondylosis, lumbar spondylosis, and low back pain. (PX. 11, p.p. 16). Dr. Salehi opined Petitioner's September 2, 2022 work accident aggravated his preexisting cervical and lumbar spinal conditions. (PX. 11, p.p. 19-20, 35). Employment need only remain a cause, not the sole cause or even the principal cause of claimant's condition. *Rotberg v. Industrial Comm'n*, 361 Ill.App.3d 673, 682, 297 Ill.Dec. 568,

[2] The Arbitrator also finds Petitioner has proven by the preponderance of the evidence that he sustained a lumbar spine injury which arose out of the course and scope of his employment but issues regarding Petitioner's current lumbar spine condition and prospective lumbar spine treatment will not be addressed at this time since the only prospective medical treatment being currently recommended involves only the cervical spine at that time.

838 N.E.2d. 55 (2005). Dr. Salehi acknowledged that Petitioner was involved in a 2020 automobile accident which aggravated his preexisting cervical and lumbar spine conditions. (PX. 11, p.p. 32). However, Dr. Salehi, who treated Petitioner after the 2020 motor vehicle accident, testified that Petitioner's lumbar and cervical spine symptoms improved or resolved prior to his September 2, 2022 work accident. (PX. 11, p.p. 16). Petitioner testified to stopping medical treatment as of October 28, 2021 because he felt better. (T.34). Petitioner also testified to returning to work and performing full duty work from October 28, 2021 through September 2, 2022. (T.35). The Arbitrator notes no medical records were submitted into evidence showing that Petitioner underwent either cervical or lumbar spine medical treatment from October 28, 2021 through September 2, 2022.

Dr. Salehi opined Petitioner's September 2, 2022 work accident aggravated his preexisting cervical spine condition. (PX. 11, p.p. 35). Dr. Salehi testified when one has disc degeneration or spondylosis, it takes less force to cause that condition to become symptomatic again at the same levels which were previously symptomatic. (PX. 11, p.p. 20). In support of his causation opinion Dr. Salehi testified the mechanism of injury was consistent with Petitioner's symptoms, a temporal connection existed between Petitioner's symptoms and his work accident, Petitioner was able to perform his regular job duties from October of 2021 through the date of his September 2, 2022 work accident, which, he testified, supports that Petitioner's symptoms had either resolved or significantly improved. (PX. 11, p.p. 20, 32-33). Dr. Salehi testified he compared the cervical MRIs from 2020 and 2022 and found changes. (PX. 11, p.p. 30). Dr. Salehi testified he found no evidence of symptom magnification and he also found Petitioner's complaints consistent with the MRI findings and the physical examinations. (PX. 11, p.p. 40).

The Arbitrator finds the opinions of Dr. Salehi to be more persuasive than the opinions of Dr. Graf, who performed the Section 12 examinations. Dr. Graf opined Petitioner's current cervical spine condition was not related to his work accident because Petitioner had a similar diagnosis, complaints, and treatment recommendations after the prior motor vehicle accident. (RX. 3, p.p. 61). Dr. Graf believed Petitioner's conditions remained symptomatic after his October 2021 treatment date through the date of the September 2, 2022 work accident since Petitioner was referred for a surgical consolation on that October 28, 2021 treatment date. (RX. 3, p.p. 89). Dr. Graf acknowledged he was not aware of any medical records showing that Petitioner's symptoms continued to persist from October of 2021 through September 2, 2022. No medical records were

submitted into evidence showing that Petitioner's cervical spine symptoms continued to be symptomatic from October 2021 through September 2, 2022, the date of his work injury. Petitioner testified that his symptoms resolved prior to his September 2, 2022 work injury which, the Arbitrator finds, consistent with the medical histories Petitioner provided to both Drs. Graf and Salehi. After the motor vehicle accident, Petitioner returned to work and he was able to perform his full work duties until his September 2, 2022 work injury. The testimony of the employee, if not impeached or rebutted, is sufficient to support an award. *Phoell Manufacturing Co. v. Industrial Comm'n*, 54 Ill. 2d. 1119, 295 N.E.2d 469 (1973); *Sahara Coal Co. v. Industrial Comm'n*, 66 Ill.2d 353, 362 N.E.2d 343 (1977). The Arbitrator finds the causation opinion of Dr. Graf to be based, in part, upon speculation or surmise since he believed that Petitioner's cervical condition continued to be symptomatic through his September 2, 2022 work accident. 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).

The Arbitrator also finds Petitioner's cervical spine condition to be causally related to his work accident of September 2, 2022 based upon the "chain of events" theory. An accidental injury need not be the sole causative factor nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill being. Proof of prior good health and a change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Granite City Steel Co. v. Industrial Comm'n*, 97 Ill.2d 402 (1983), *Land of Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d. 582 (2nd Dist. 2005). Proof of an employee's state of good health prior to the time of injury, and the change immediately following the injury, is competent as tending to establish that the impaired condition was due to the injury. *Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d. 244, 356 N.E. 2d. 28 (1976).

In this case, Petitioner had a preexisting condition and surgery was discussed but Petitioner decided to return to work not pursue surgery only to sustain a subsequent work accident resulting in Petitioner electing to proceed with surgery. The facts in this case are similar to the facts in the case of *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC.

In *Schroeder* the claimant received a surgical recommendation for a preexisting low back condition but she decided to return to work and not proceed with the recommended surgery. (*Id*. at 2). Thereafter, the claimant injured her low back at work, was unable to work, and elected to undergo the previously recommended surgery. (*Id*. at 3). In that case, the Commission applied the chain of events theory finding that the claimant's condition deteriorated after her work accident which was sufficient to prove a causal nexus between the claimant's condition and her work accident. On appeal, the employer argued the claimant's pain levels were the same before as after the work accident and same surgery was recommended before as after the work accident. (*Id*. at 7). The Court in *Schroeder*, citing *Sisbro v. Industrial Comm'n*, held when faced with a situation where an accident is claimed to have aggravated a preexisting condition it is well established that an accident need not be the sole or primary cause, the work accident only needs to be a cause of the claimant's condition. (*Sisbro*, Inc., 207 Ill. 2d. 193, 205 (2003)). The Court further held the existence of a 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*. at 7). The Court found it was undeniable that the claimant had a significant back condition before the accident and her ability to work deteriorated after the work accident. (*Id*.). The Appellate Court, in *Schroeder,* held the facts supported an inference that the work accident accelerated the need for surgery since the claimant was able to work before the accident and declined the surgery, but after the work accident she was unable to work and elected to proceed with the surgery. (*Id*. at 8).

In the instant case, Petitioner had a preexisting condition and he elected to return to work without pursuing surgery but after returning to work Petitioner sustained a work accident and after being unable to work Petitioner decided to pursue surgery. In this case just as in *Schroeder,* the employer disputed the claim arguing the pain levels and surgical recommendations were the same before as after the work injury. The Arbitrator finds it a reasonable inference that Petitioner's condition deteriorated after the work accident because, after the work accident, Petitioner was unable to work and he decided to pursue surgery. 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.

With respect to issue "G" Petitioner's earnings, the Arbitrator finds as follows:

Petitioner claims his earnings should be calculated using a bits and parts formula and he also worked mandatory which should be included in the average weekly wage calculation while Respondent claims that Petitioner's earnings should be based upon the 52-week period preceding the date his injury and overtime was not mandatory.

Section 10 of the Illinois Workers' Compensation Act provides as follows:

> *The compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately proceeding the date of injury, illness, or disablement excluding overtime, and bonus divided by 52; but, 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 of the 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted… 820 ILCS 305/10.*

The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence he worked mandatory and regular overtime and that the "weeks and parts" method for calculating AWW should be used. As to the weeks and parts method, Petitioner failed to prove he missed more than 5 or more calendar days of work during the period of 52 weeks ending with the last day of his last full pay period immediately preceding the injury date. As to working regular and mandatory overtime, Petitioner testified he worked both mandatory and voluntary overtime but he was unable to quantify the number of mandatory overtime hours worked per week and that overtime was mandatory and regular. Petitioner testified the manager would ask if he could stay and work a few more hours and when asked, Petitioner would say "sure". (T.37). The Arbitrator finds the overtime Petitioner worked was discretionary, not mandatory, since Petitioner could choose not to work overtime.

Petitioner's earnings for the 52 weeks preceding his injury totaled $37,555.55, excluding overtime, and, pursuant to Section 10 of the Act, his is average weekly wage is $722.22.

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 incorporates the Conclusions of Law in Sections C and F into this Section. 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, as set forth more fully below.

Dr. Salehi testified the medical treatment Petitioner received was reasonable, necessary and causally related to his September 2, 2022 work accident. (PX. 11, p.p. 37). Dr. Salehi testified he found no evidence of symptom magnification and that he found Petitioner's complaints consistent with the MRIs and the examination findings. (PX. 11, p.p. 40). Dr. Salehi testified Petitioner's pain is axial pain for both the cervical and lumbar spines which correlates with the MRIs. (PX. 11, p.p. 40). Dr. Salehi testified Petitioner's cervical spine pain generator is the kyphosis and the significant disc degeneration at C5-6 which is putting stress on his facet joint at C5-6. (PX. 111, p.p. 21). Dr. Salehi testified Petitioner's lumbar spine pain generator appears to be coming from disc pathology based upon the lumbar MRI. (PX. 11, p.p. 21).

Dr. Graf acknowledged Petitioner's cervical spine medical treatment including pain management treatment and cervical epidural steroid injections were reasonable and medically necessary through October 21, 2022, the date of his first examination, except of the radio frequency ablations and nerve blocks which he opined were neither reasonable nor medically necessary. (RX. 3, p.p. 35-37). On February 24, 2023, after reviewing Petitioner's prior medical records and conducting a second Section 12 examination, Dr. Graf opined that Petitioner's cervical spine condition as well as the medical treatment was not related to his work accident. (RX. 3, p.p. 62).

The Arbitrator finds the opinions of Dr. Salehi to be more persuasive than the opinions of Dr. Graf. As the treating physician, Dr. Salehi was afforded a greater opportunity to exam Petitioner, to assess Petitioner's symptoms, and to evaluate Petitioner's complaints. Dr. Graf was hired by Respondent as an expert and only examined Petitioner on two occasions. Given Petitioner's preexisting conditions and that Dr. Salehi had the opportunity to examined Petitioner before and after his work injury, it is appropriate to afford greater weight to the treating physician's opinions and Respondent offers no compelling reasons which justify affording

greater weight to Respondent's expert. See *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL. App. (2d) 121283WC; see also *International Vermiculite Co., v. Industrial Comm'n*, 77 Ill.2d 1, 4 (1974), *Sears v. Rutishauser*, 102 Ill. 2d. 402, 407 (1984).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence the cervical and lumbar medical treatment he received was related to his work injury, reasonable and medically necessary to cure or relieve him from the effects of his injury. As such, Respondent shall pay the medical bills identified in Petitioner's Exhibits 1 through 10, pursuant to Sections 8(a) and 8.2 of the Act and subject to the fee schedule.

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

The Arbitrator incorporates the Conclusions of Law in Sections C, F and J into this Section. 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).

Petitioner seeks prospective medical treatment consisting of a cervical anterior discectomy and fusion at C5-6 surgery recommended by Dr. Salehi. The Arbitrator finds Petitioner proved by the preponderance of the evidence that he is entitled to the prospective medical treatment recommended by Dr. Salehi which consists of a cervical anterior discectomy and fusion at C5-6, as set forth more fully below.

As stated above, the Arbitrator found the opinions of Dr. Salehi to be more persuasive than those of Dr. Graf. Dr. Salehi testified the cervical surgery is needed to address Petitioner's ongoing symptoms which have persisted since his September 2, 2022 work injury. (PX. 11, p.p. 37). Dr. Salehi opined the recommended surgery is reasonable, necessary, and related to Petitioner's work injury. (PX. 11, p.p. 37). Dr. Salehi testified Petitioner has cervical axial pain which is consistent with the findings of the MRIs and examinations. Dr. Salehi testified he found no evidence of symptom magnification. (PX. 11, p.p. 40). As such, Respondent shall pay for the cervical anterior discectomy and fusion surgery at C5-6 recommended by Dr. Salehi including reasonable and necessary attendant care 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 Arbitrator incorporates the Conclusions of Law in Sections C, F, J and K into this Section. Petitioner seeks TTD benefits from September 2, 2022 through April 3, 2024 representing 82 6/7 weeks. Respondent paid TTD benefits from September 14, 2022 through March 11, 2023 representing 25 4/7 weeks. Respondent is seeking a credit in the amount of $468.72 for a TTD overpayment. (Arb. Ex. #1).

Dr. Salehi took Petitioner off work on September 14, 2022. (PX. 2, p.p. 11). On November 22, 2022 Petitioner was permitted to perform desk work with no overhead work, bending, twisting, lifting, pushing, or pulling greater than 10 pounds. (PX. 2, p.p. 19). On January 3, 2023, Dr. Salehi again took Petitioner off all work. (PX. 2, p.p. 29). On April 4, 2023 Petitioner was allowed to return to restricted work with similar to the restrictions previously issued by Dr. Salehi. (PX. 2, p.p. 34). On April 20, 2023 Petitioner was released to return to work full duty on a trial basis with the ability to apply ice to his neck and back every 2 hours as needed. (PX. 2, p.p. 35). Petitioner testified he attempted to return to full duty work for financial reasons and that he took the work status note to Respondent who wouldn't accept it. (T.84). On May 17, 2023, Dr. Salehi again took Petitioner off all work. (PX. 2, p.p. 39). Petitioner testified he has not been paid TTD benefits since March of 2023. (T. 39).

Petitioner testified he never returned to work after his September 2, 2022 work accident. (T.38). On cross examination, Petitioner acknowledged being placed on light duty by the hospital but that he couldn't handle it. (T.50-51). A review of the TTD payment logs indicate that Petitioner was paid benefits from September 14, 2022 through March 11, 2023 totaling $13,253.16. (RX. 2).

"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).

The Arbitrator finds that Petitioner's condition has not stabilized. Dr. Salehi has taken Petitioner off work and recommended surgery. Petitioner testified he hasn't worked and Respondent hasn't submitted evidence showing that Petitioner has worked.[3] The Arbitrator finds Petitioner has not worked since September 14, 2022 and that he has been unable to work since that time. The Arbitrator finds Petitioner has proven by the preponderance of the evidence that he is entitled to TTD benefits from September 15, 2022 through April 3, 2024, the date of the trial. As such, Respondent shall pay Petitioner TTD benefits from September 15, 2022 through April 3, 2024 for a total of 81 weeks pursuant to Section 8(b) of the Act less a credit in the amount of $13,253.18 for TTD benefits Respondent previously paid.[4]

By: /s/ Frank J. Soto — June 7, 2024
Arbitrator — Date

June 10, 2024

[3] From September 14, 2022 through March 4, 2023 Petitioner was paid TTD benefits despite periods of time being allowed to return to restricted work. It is reasonable to infer that Petitioner requested the full duty release on April 20, 2023 for financial reasons since his TTD benefits terminated as of March 11, 2023. Since his work accident, Petitioner has not been released to return to unrestricted work. Even when Petitioner attempted to return to work full duty for financial reasons, he continued to have restrictions allowed him to ice his neck and back every two hours.

[4] Since Respondent received a credit for all the TTD benefits Respondent paid, the issue regarding a TTD overpayment is moot and need not be addressed since the over payment was included in the TTD credit received by Respondent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010791
Case Name	James Bays v. State of Illinois
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0148
Number of Pages of Decision	20
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	EDWARD CZAPLA
Respondent Attorney	Jake Snowman

DATE FILED: 4/4/2025

/s/Deborah Simpson,Commissioner

Signature

25IWCC0148

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: TPD Credit	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES BAYS,

Petitioner,

vs. NO: 20 WC 10791

ELGIN MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, modifies the Decision of the Arbitrator to award Respondent a credit of $6,082.75 for TPD payments made from October 5, 2023, through November 18, 2023, by agreement of the parties. In all other aspects, the Commission affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

Petitioner, a maintenance equipment operator, sustained a lumbar spine injury while unloading a wheelchair from a vehicle on April 27, 2020. Following his work accident, Petitioner participated in vocational rehabilitation efforts and was able to secure new part-time employment as a parts delivery driver at Brad Manning Ford on October 4, 2023. Petitioner earned $15.00 per hour at Brad Manning Ford until he received a raise to $16.00 per hour in December, 2023. Petitioner worked weekly hours that varied between 15 to 22 with the average being 20.40 hours.

During the time that Petitioner worked at Brad Manning Ford, Respondent's Exhibit 3, which is an indemnity payment ledger, shows that Respondent paid Petitioner TPD benefits in the amount of $6,802.75 during the period of October 5, 2023, through November 18, 2023. Petitioner presented no evidence at the hearing to rebut Respondent's documentation of these TPD payments. As the matter now sits before the Commission, the parties have agreed that Respondent is entitled to a TPD credit for said payments depicted in Respondent's Exhibit 3. The Commission thus modifies the Decision of the Arbitrator to award Respondent a credit of $6,082.75 for TPD payments it made from October 5, 2023, through November 18, 2023.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 9, 2024, is modified as stated herein. For all other issues not specifically modified herein, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED that Respondent shall be given a credit of $6,082.75 for TPD payments it made from October 5, 2023, through November 18, 2023. Said TPD credit is in addition to all other credits awarded to Respondent in the Decision of the Arbitrator.

IT IS FURTHER ORDERED that Respondent pay to Petitioner interest pursuant to §19(n) of the Illinois Workers' Compensation Act, if any.

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

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

April 4, 2025

DLS/mek
O- 3/5/25
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/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010791
Case Name	James Bays v. State of Illinois
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Edward Czapla
Respondent Attorney	Jake Snowman

DATE FILED: 4/9/2024

/s/ Paul Seal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 9, 2024 5.12%

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

April 9, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

JAMES BAYS
Employee/Petitioner

v.

ELGIN MENTAL HEALTH CENTER
Employer/Respondent

Case # **20** WC **010791**

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 **GENEVA**, on **2/26/2024**. 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 **VOCATIONAL REHABILITATION EXPENSES**

FINDINGS

On April 27, 2020, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**92,756.55**; the average weekly wage was $**1,647.17**.

On the date of accident, Petitioner was **49** 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 **$106,088.81** for TTD, $0 for TPD, **$89,284.48** for maintenance, and $0 for other benefits, for a total credit of **$195,337.29.**

Respondent is entitled to a credit of $**106,289.39** under Section 8(j) of the Act.

ORDER

RESPONDENT SHALL PAY PETITIONER THE MEDICAL EXPENSES INCURRED FROM APRIL 27, 2020, TO FEBRUARY 26, 2024, AS IDENTIFIED IN PX.12, PX.13, PX.15, PX. 16, PX.17, PX.18, PX.43, PX.48 AND PX.50 PURSUANT TO SECTION 8.2 OF THE ACT AND THE ILLINOIS MEDICAL FEE SCHEDULE, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO AND INCORPORATED HEREIN:

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $1,098.11/WEEK COMMENCING APRIL 28, 2020, THROUGH AUGUST 13, 2020, AND SEPTEMBER 18, 2020, THROUGH MARCH 30, 2022 MARCH 30, 2022, REPRESENTING 95 2/7 WEEKS.

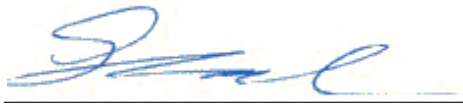
RESPONDENT SHALL PAY PETITIONER MAINTENANCE BENEFITS OF $1,098.11/WEEK FOR 78 6/7 WEEKS COMMENCING MARCH 31, 2022, THROUGH OCTOBER 3, 2023, AS PROVIDED IN SECTION 8(A) OF THE ACT.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS COMMENCING OCTOBER 4, 2023, OF $ 848.11/WEEK THROUGH DECEMBER 3, 2023, AND $831.45 COMMENCING DECEMBER 4, 2023 UNTIL PETITIONER REACHES THE 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.

RESPONDENT SHALL PAY PETITIONER COMPENSATION THAT HAS ACCRUED FROM APRIL 27, 2020, THROUGH FEBRUARY 26, 2024, AND SHALL PAY THE REMAINDER OF THE AWARD, IN ANY, IN WEEKLY PAYMENTS.

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

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



April 9, 2024

Signature of Arbitrator

FINDINGS OF FACT

Petitioner, a 49-year-old, maintenance equipment operator, worked the last 20 years for Respondent, Elgin Mental Health Center. (T.19) As a maintenance equipment operator, Petitioner's primary duties were to drive patients to various locations.(T.20) Petitioner also performed *"food truck"* deliveries, *"box truck"* deliveries and pharmacy deliveries. (T.20-21)

Petitioner returned to full duty work on December 17, 2018, following his original injury at work. (T.46-47, 49-50) Petitioner was released to full duty work in January 2019, by Dr. Richardson. (T.49) Petitioner continued to work full duty/full time for Respondent including overtime until the 2nd accident at work. (T.53).

On April 27, 2020, Petitioner injured his lumbar spine while unloading a wheelchair from the back of the van in Hoffman Estates.(T.55) Wind pushed the van door as Petitioner was unloading the wheelchair, knocking Petitioner down. (T.55) Petitioner landed hunched over the wheelchair. (T.55)

Petitioner was taken by ambulance from Hoffman Estates to St. Jospeh Hospital (PX.9) The history recorded by the Elgin Fire Department paramedic states *"Patient states that he was attempting to remove a wheelchair from the back of the van when he experienced a sharp pain in his back. Patient states he went to his knees on his own and that the only injuries he currently has is the back pain."* (PX.9) Similarly the history recorded at the St. Joseph emergency room states *"Patient states he was moving a wheelchair from the back of a van, twisted and the wheelchair caught on the door. He immediately felt sharp pain right side."* (PX.8 p.43) CT lumbar spine revealed degenerative disc disease L4-L5 with moderate right-sided neural foraminal stenosis. (PX.8 p. 47) Petitioner was restricted from work, prescribed Cyclobenzaprine and a Medrol dose pack, and instructed to follow-up with an orthopedic doctor. (PX.8 p.45)

On April 28, 2020, Petitioner saw Dr. Thompson at Greater Elgin Family Care complaining of burning, diffuse, shooting and stabbing low back pain. (PX.5) The history recorded states *"was at work, tweaked his back taking out a wheelchair and then it fell on him."* (PX.5) Dr. Thompson's impression was *"patient was having an exacerbation of an old back pain."* (PX.5) Petitioner was instructed to see a spine specialist.

On May 5, 2020, Petitioner saw Dr. Carl Graf, an orthopedic spine specialist, complaining of low back pain 9/10. (PX.12 p.64) The history recorded by Dr. Graf states *"he works as a maintenance equipment operator…he claims injury on 4/27/2020. He picked up a patient in*

Hoffman Estates and he is in a wheelchair, but the wheelchair van was being used. He states that he was trying to get the wheelchair out and it got stuck in the back door. He states that he pulled and twisted, and the wheelchair came out and he had severe low back pain."(PX.12 p.64) Examination noted a positive left leg raise along with back pain on the right. (PX.12 p.65) Dr. Graf noted low back and radiating leg pain for which he prescribed a course of physical therapy treatment and a lumbar MRI. (PX.12 p.65) Petitioner was issued *"light duty"* work restrictions. (PX.12 p.66)

Petitioner completed a formal course of physical therapy treatment between June 5 and July 10, 2020. (PX.12 p.46-61). Petitioner returned to Dr. Graf on July 14, 2020, reporting *"some improvement"* with physical therapy with on-going radiating leg pain. (PX.12 p.46). Dr. Graf recommended a lumbar MRI and restricted petitioner from work. (PX.12 pg. 47 and 81).

MRI of the lumbar spine performed on July 21, 2020, revealed:

L1-L2: disc dehydration;

L2-L3: disc dehydration;

L3-L4: mild annular disc bulge;

L4-L5: moderate disc disease with endplate discogenic marrow signal intensity change. Annular disc bulge; and

L5-S1: level likewise without canal or foraminal compromise. (PX.12 p.80)

On August 13, 2020, Dr. Graf discussed the MRI findings with Petitioner which demonstrated moderate multilevel degenerative changes increased at L4-L5 with modic endplate changes. One a disc herniation or nerve root compression. (PX.12 p.44) Petitioner felt he was capable of returning back to work full duty at that time and requested a *"trial"* release. (PX.12 p.44 and 79) (T.61)

Petitioner returned to work on August 14, 2020, and worked through September 17, 2020. (T.61) Petitioner testified he was doing *"okay"* at work driving, but doing the pharmacy and food truck with the lifting and bending, he was going home laying on ice. (T.61) Petitioner testified he experienced difficulty operating the *"food truck", "pharmacy truck",* and *"wheelchair truck".* (T.62)

Petitioner returned to see Dr. Graf on September 18, 2020, complaining of low back pain with work activities. (PX.12 p.44) Dr. Graf noted Petitioner failed an attempt to return to full duty

level work, recommended a course of work conditioning, and restricted Petitioner from work. (PX.12 p.77)

Petitioner completed a course of work conditioning at Illinois Spine Institute between October 5, 2020, and November 20, 2020. (PX.12) On November 25, 2020, Dr. Graf discussed Petitioner's progress with the physical therapist who did not feel Petitioner was ready to return to full duty level work and recommended an additional 2 weeks of work conditioning. (PX.12 p.13)

Petitioner remained restricted from work. Respondent denied approval for the additional work conditioning. (PX.12 p.10) Dr. Graf also discussed lumbar fusion surgery with Petitioner. (PX.12 p.10) On December 9, 2020, Dr. Graf recommended a Functional Capacity Evaluation and continued to restrict Petitioner from work. (PX.12 p.66)

Petitioner completed a *"valid"* Functional Capacity Evaluation at ATI on January 19, 2021. (PX.13) Petitioner demonstrated the ability to work at the ***"light"*** physical demand level while the position of maintenance operator is *"**medium**"*.(PX.13) Petitioner was capable of working 6 hours a day with lifting above shoulder 25.8# occasionally, lifting desk to chair 30.2# occasionally, lifting chair to floor 28# occasionally, carry right/ left 57#/62#; sitting 6 hours, standing 3 hours 35 minutes, walking 3-4 hours moderate distances. (PX.13) Moreover, the physical therapist noted Petitioner's issues with balancing, bending/stooping, crouching, kneeling, neck flexion and rotation along with prolonged sitting and standing. (PX.13)

Petitioner saw Dr. Graf on January 22, 2021, complaining of low back pain constant 3/10 and 8/10 when he gets out of bed. Petitioner also reported radiating pain in both legs. (PX.18 p.140) The FCE results did not allow him to return to his full duty job. (PX.18 p.140) Dr. Graf discussed the lumbar decompression fusion surgery with Petitioner and ordered an updated lumbar MRI. (PX.18 p.482) Petitioner was restricted to the "*light"* work restriction stated in the FCE. (PX.18 p. 141 and 482)

Lumbar MRI performed on February 19, 2021 revealed:

L4-L5: diffuse disc bulge and endplate osteophyte with mild bilateral foraminal stenosis (PX.18 p. 466)

The radiologist's impression was mild multilevel degenerative changes greatest at the L4-5 level. (PX.18 p. 466)

Dr. Graf recommended a facet medial branch block for Petitioner's ongoing low back and radiating leg pain. (PX.18 p.135) On March 16, 2021, Dr. Kumar, interventional pain management,

performed a bilateral lumbar medial branch block at L4-L5, L5-S1. (PX.18 p.131) Petitioner experienced complete relief of pain for 24 hours then the pain returned to baseline. On March 31, 2021, Dr. Graf recommended radio frequency nerve ablation at L4-L5 and L5-S1. (PX.18 p.126) On April 29, 2021, Dr. Kumar performed a left lumbar medial branch radio frequency ablation of L3, L4 and L5. (PX.18 p.122) A second lumbar RFA was performed on May 18, 2021. (PX.18 p.11)

Petitioner returned to Dr. Graf on June 11, 2021, reporting *"some pain improvement"* with the nerve block and ablation. (PX.18 p.116) Dr. Graf released Petitioner back to work with the *"light duty"* work restrictions outlined in the FCE. Dr. Graf referred Petitioner to Dr. Kumar for ongoing pain management. (PX.18 p.117)

Petitioner returned to Dr. Kumar on June 17, 2021, complaining of low back and bilateral leg pain. (PX.18 p.113) Dr. Kumar performed a lumbar epidural steroid injection at L4-L5 on July 1, 2021. (PX.18 p.407) Petitioner reported 50% improvement of his pain for 2 weeks and returned to baseline 6/10. (PX.18 p.108) Dr. Kumar recommended Petitioner follow up with Dr. Graf to see if he is a surgical candidate; if not bilateral L4-L5 transforaminal epidural steroid injections. (PX.18 p.110)

Petitioner saw Dr. Graf on August 4, 2021, complaining of pain in his lower back with numbness in the thighs and calves. Petitioner ***"states that he has ongoing severe low back pain and can no longer tolerate such."*** (PX.18 p.105) Dr. Graf discussed lumbar surgery with Petitioner and ordered a discogram. (PX.18 p.106)

On September 15, 2021, a discogram and post CT lumbar spine were performed. Dr. Graf noted the discogram was concordant at L4-L5 and recommended a transforaminal lumbar interbody fusion, allograft bone and posterior instrumentation. (PX.18 p.98 and 397-399). Dr. Graf continued to recommend lumbar fusion surgery for Petitioner's severe low back and bilateral leg pain. (PX.18 p.93) Petitioner obtained pre-operative surgical clearance at Greater Elgin Family Care Center. (PX.5) Surgery was cancelled and rescheduled multiple times to February 7, 2022, at St. Alexis Medical Center.

Just prior to surgery on February 7, 2022, Petitioner was administered general anesthesia and was initially stable. Petitioner was rolled to the prone position and his O2 saturations dropped to the low 60's. O2 saturation was not improving, and he was given anesthesia administered bronchial dilators. It did take some time for the patients O2 status to return to improve, but he

continued to desaturate when intubated in the 70's. The decision was made not to proceed with surgery and that it was not safe. (PX.16 p.40) The final assessment was acute hypoxic respiratory failure. (PX.16 p.32)

Thereafter, Petitioner completed pulmonary function testing which was normal. (PX.15) Dr. Graf saw Petitioner post-operatively and noted he desaturated significantly. ***"I made it very clear to the patient that this could have ended very differently."*** (PX.18 p.84) Petitioner was advised that a recurrent bronchospasm could be fatal and discussed living with the symptoms and having permanent restrictions. (PX.18 p.84)

Petitioner discussed the matter with his wife and decided not to proceed with the lumbar fusion surgery. (PX.18 p.79) On March 16, 2022, Dr. Graf referred Petitioner to pain management for non-operative treatment and ordered a Functional Capacity Evaluation. (PX.18 p.80) Petitioner remained restricted from all work activity.

Petitioner completed the Functional Capacity Evaluation at ATI Physical Therapy on March 21, 2022. (PX.17) The *"valid"* evaluation demonstrated Petitioner's ability to perform at the ***"light"*** physical demand level working **5** hours per day, **25** hours per week. (PX.17) Petitioner was capable of lifting above shoulder 25.8# occasionally , desk to chair 28# occasionally, chair to floor 25.8# occasionally, carry right/left 57#/57# occasionally, sitting 4 hours 50 minutes, standing 2 hours 20 minutes and walking 2 to 3 hours occasionally. (PX.17) Petitioner reported pain in low back, pressure in low back, weakness in legs, and pulling in low back throughout the assessment along with issues with squatting, kneeling, and crouching. (PX.17) Petitioner did not meet the medium physical demands of a maintenance equipment operator. (PX.17)

Petitioner followed up with Dr. Kumar on March 29, 2022, complaining of low back pain and weakness in his legs. Pain was 8/10. (PX.18 p.75) Dr. Kumar restarted Petitioner on Gabapentin and Meloxicam and ordered a L4-L5 lumbar epidural steroid injection. (PX.18 p.77) On March 30, 2022, Dr. Graf released Petitioner with the permanent **"light"** physical demand restrictions contained in the FCE and referred Petitioner to pain management. (PX.18 p.72 and 318)

On April 27, 2022, Dr. Kumar performed an L4-L5 lumbar epidural steroid injection. (PX.18 p.300) Thereafter, on July 9, 2022, Petitioner received a lumbar transforaminal epidural steroid injection at L4-L5. (PX.18 p.269) Petitioner saw Dr. Graf on October 20, 2022, reporting

60-65% pain improvement for 2.5 months. Petitioner continued to experience low back and bilateral leg pain. (PX.18 p.61)

On October 27, 2022, Petitioner received another transforaminal epidural steroid injection. (PX.18) Petitioner reported 80% relief of low back pain and bilateral radiculopathy. (PX.18 p.52) Dr. Reddy continued to prescribe Gabapentin and Flexeril and ordered an MRI of the right hip. (PX.18 p.54) MRI of the right hip performed on November 22, 2022, revealed mild soft tissue inflammation with minimal gluteus medius tendinopathy. (PX.18 p.259)

On March 7, 2203, Petitioner received another lumbar epidural steroid injection. (PX.18 p.245) A trial course of Lyrica was also prescribed. Petitioner reported 70% improvement of his low back pain with the injection. (PX.18 p.37) Gabapentin was discontinued on May 24, 2023, Petitioner continued taking Lyrica. (PX.18 p.39) Petitioner returned to Dr. Reddy complaining of recurrent low back and bilateral leg pain. (PX.18 p.31) Dr. Reddy continued the Lyrica and ordered an L5-S1 transforaminal epidural steroid injection which was performed on July 13, 2023. (PX.18 p.230).

Dr. Graf ordered an updated lumbar MRI which was completed on July 17, 2023. The MRI revealed:

L1-L2: minimal disc bulge is slightly worse compared to prior exam;

L2-L3: mild disc bulge similar to prior exam;

L3-L4: mild disc bulge similar to prior exam;

L4-L5: stable mild bilateral facet joint osteoarthritis. Stable mild disc bulge without focal herniation; and

L5-S1: stable mild bilateral facet joint osteoarthritis. (PX.18 p.236)

Thereafter, Petitioner saw Dr. Graf on July 11, 2023, to discuss the MRI results. Petitioner continued to complain of ongoing low back and radiating leg pain. (PX.18 p.20) Petitioner was referred to pain management for treatment and may be a candidate for a spinal cord stimulator. (PX.18 p.20) Dr. Reddy continued to prescribe Lyrica and recommended a L4-L5/ L5-S1 medial branch nerve block which was performed on September 21, 2023. (PX.18 p.227)

Petitioner received 80% improvement of his symptoms for 3 days following the injection. (PX.18 p.6) On October 5, 2023, Dr. Reddy recommended a second diagnostic bilateral lumbar medial branch block at L4-S1 to interrogate the facet joints. (PX.18 p.71) Respondent refused to

authorize the injection consequently Petitioner paid for the lumbar injection, which was performed by Dr, Reddy on December 19, 2203. (T.77-78) Petitioner last saw Dr. Reddy on January 4, 2024.

Respondent did not allow Petitioner to return back to work and failed to accommodate his permanent ***"light"*** duty work restrictions. (T.80) Therefore, Petitioner requested a written vocational rehabilitation plan along with vocational rehabilitation and maintenance benefits. The parties mutually agreed upon certified rehabilitation counselor, Steven Blumenthal, who initially met with Petitioner on August 17, 2022. Blumenthal interviewed Petitioner and completed initial vocation evaluation testing, including a transferrable skills and aptitude analysis. (PX.20) Blumenthal noted Petitioner has a **5**-hour work limitation per the FCE and Dr. Graf will not change the permanent restrictions. (PX.19 and 20). Based on the permanent ***"light"*** physical work restrictions issued by Dr. Graf as outlined in the FCE it was Blumenthal's opinion that Petitioner is unable to return to the *"medium duty"* employment as a maintenance equipment operation and has lost his access to this occupation. (PX.20 p.14)

Based on the transferrable skills and aptitude analysis, Blumenthal believed Petitioner could perform the work as a medical record coder, medical record technician, dispatcher, motor vehicle, clerk, general, and auto repair estimator. (PX.20 p.15) Blumenthal noted Petitioner will need computer office skills training to qualify for the majority of office-based positions and recommended a 4-month Vocamotive vocational school along with completion of a Labor Market Study. (PX.20 p.15) Because of Petitioner's singular work history as a mechanic and equipment operator Blumenthal recommended Job Readiness training and Job Placement assistance following the Vocamotive vocational school. (PX.20 p.16)

Thereafter, on September 29, 2022, Blumenthal completed the Labor Market Study. (PX.21) The results indicate that with the completion of the Vocamotive vocational school and completion of the Job Readiness training and Job Placement services, Petitioner would be able to earn between $14.00 hour to $18.00/hour. (PX.21 p.36)

Respondent finally authorized and paid for the computer training program at Vocamotive, which Petitioner started on January 31, 2023. (PX.22) Over the next several months, Petitioner obtained a certificate of achievement in Word 2019 basic, Excel 2019 basic, Outlook 2019, and Windows 10, along with basic keyboarding skills. (PX.23, PX.24, PX.25, PX.26 and PX.27)

Respondent failed to authorize and pay for the sit/stand workstation and ergonomic chair prescribed by Dr. Reddy for Petitioner's at home computer literacy training.(PX.28) Consequently, the vocational counselor paid for the sit/stand workstation and ergonomic chair. (PX.29)

Petitioner completed the computer training program by July 2023. (PX.32). Thereafter, Petitioner met with vocational counselor, Kari Scarbrough, to begin Job Readiness training and prepare a resume. In September, Petitioner transitioned into his Job Search program and began to submit his job search logs. (PX.33 and PX.49). On September 25, 2023, Petitioner was offered a part-time parts delivery driver job with Brad Manning Ford working 18-25 hours/week at $15.00/hour. (PX.34,35)(T.84) The position was consistent with Petitioner's permanent ***"light"*** physical demand work restrictions. (PX.35) Blumenthal recommended Petitioner accept the job offer and he started work with Brad Manning Ford on October 5, 2023. (PX.39 and T.85) Petitioner drives a van delivering small parts (5 to 10 pounds) (T.86,88-89). Blumenthal opined that ***"Bay's current position as a parts delivery driver, with an employer who is accommodating his work restrictions, at a wage of $15.00/hour is representative of what Bay's is capable of earning in the labor market, with the understanding that he was released to work up to 25 hours a week"*** (PX.39 p.3)

On November 30, 2023, Blumenthal prepared a closure report documenting Petitioner's part time parts delivery driver position at Brad Manning Ford.(PX.40) Blumenthal noted that Petitioner ***"has lost his access to his occupation as a maintenance equipment operator and will sustain wage loss from his current capacity to earn $15.00/hour for a twenty-five hour work week, versus what he would currently be able to earn if he were employed under the current Teamsters Local 300 contract for his position at date of injury."*** (PX.40 p.2) It was Blumenthal's opinion that ***"Bays current employment and pay are representative of what he is capable of earning in a stable labor market and is suitable employment for him."*** (PX.40 p.2)

CONCLUSIONS OF LAW

The Arbitrator adopts the Findings of Fact in support of the Conclusions of Law as set forth below:

WITH RESPECT TO ISSUE (F) WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE APRIL 27, 2020 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. Sisbro, Inc. v. 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). When 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' injury. Shafer v. Illinois Workers' Compensation Comm'n, 2011 Ill.App. (4th) 100505 WC. The chain of events principles have been applied where an accident is claimed to have aggravated a preexisting condition. See Schroeder v. Illinois Workers' Compensation Comm'n, 2017 IL.App. (4th) 160192WC.

The Arbitrator has carefully reviewed and considered all medical evidence along with the testimony of the Petitioner. The Arbitrator concludes that Petitioner has proven by a preponderance of the credible evidence that Petitioner's lumbar spine condition is causally related to his work accident of April 27, 2020, as set forth below.

Prior to his accident at work Petitioner was working full time/full duty performing the physical demands of a maintenance equipment operator for Respondent. Petitioner had successfully returned to full duty work following his initial injury at work.

Petitioner aggravated his preexisting lumbar condition on April 27, 2020, unloading a wheelchair from the back of the van at work. The wind pushed the door knocking Petitioner to the ground injuring his lumbar spine. Petitioner sought immediate medical treatment for his low back and was taken by ambulance to the emergency room at St. Joseph Hospital. The history recorded at the hospital states "Patient states he was moving a wheelchair from the back of a van, twisted and the wheelchair caught on the door. He immediately felt sharp pain on the right side." (PX.8 P.43) The same history of injury is contained in the records from Greater Elgin Family Care and Illinois Spine Institute. (PX. 5 and PX.18)

MRI of the lumbar spine revealed an L4-L5 annular disc bulge with protrusion. Petitioner underwent conservative medical treatment which failed to relieve his low back and bilateral leg pain. On June 18, 2021, Petitioner's Application for Occupational Disability was approved by Respondent. (PX.53) A L4-L5 lumbar fusion surgery was recommended which Respondent authorized and approved. Petitioner had an adverse reaction to the anesthesia and surgery was terminated.

Thereafter, Petitioner completed a course of work conditioning and a Functional Capacity Evaluation on March 21, 2022, which demonstrated his ability to work "**light**" physical work 5 hours/day 25 hours/week. (PX.17) On March 30, 2022, Dr. Graf issued Petitioner permanent work restrictions as outlined in the FCE.

Pursuant to Section 12 of the Act, Petitioner was re-examined by Dr. Gregory Lopez on June 18, 2021, following Petitioner's 2nd injury at work. Examination revealed palpation tenderness on the right lower lumbar spine. (RX.5 P.27) Dr. Lopez diagnosed Petitioner with *"chronic low back pain"* and did not believe any further medical treatment was needed. (RX.5 P.27-28)

Dr. Lopez reviewed the July 21, 2020, lumbar MRI and noted disc degeneration with a mild disc bulge at L4-L5. (RX.5 P.26) However, Dr. Lopez failed to review the April 27, 2020 CT films. (RX.5 P.39-41) Dr. Lopez did not review any of Petitioner's physical therapy or work conditioning records. (RX.5 P.42-50) Dr. Lopez did not review either Functional Capacity Evaluation. (RX. 5 P.50) Dr. Lopez did not review the February 19, 2021, MRI film or report. (RX5 P.52) Dr. Lopez did not review the September 15, 2021 discogram or CT scan. (RX.5 P.55) Dr. Lopez did not review any of the medical records from Dr. Graf or Dr. Kumar in 2021. (RX.5 53-55) In fact Dr. Lopez was not even aware that Respondent had authorized and approved the lumbar fusion surgery.

While Dr. Lopez did review the July 2020, lumbar MRI and agreed it demonstrated endplate discogenic signal changes at L4-L5 along with an annular bulge at L4-L5. (rx.5 p.51) Yet, Dr. Lopez merely diagnosed Petitioner with an acute right-sided lumbar strain, an exacerbation of his prior injury. (RX.5 P.56)

The Arbitrator does not find Dr. Lopez' opinions regarding the nature of Petitioner's lumbar spine injury to be credible or persuasive. Dr. Lopez did not review the majority of the diagnostic studies and complete medical records. In fact, Dr. Lopez mischaracterized Dr. Graf's notes several times throughout his deposition testimony.

The Arbitrator finds that while Petitioner has a pre-existing condition in the lumbar spine the April 27, 2020, injury at work aggravated the pre-existing lumbar condition. Petitioner testified to an immediate increase in low back and leg pain following the April 27, 2020, accident at work. The Arbitrator found Petitioner's testimony to be credible and consistent with the medical records admitted into evidence. The Arbitrator notes that Dr. Lopez did not view the subsequent diagnostic studies and compare the actual findings from 2018, 2020 and 2021.

Moreover, Respondent and their various third-party administrators (Tristar, Gallagher Bassett Services, SERS, EZURS, Medinsights) certified and approved all of Petitioner's medical treatment including the February 7, 2022, lumbar surgery. (PX.8 P.96) The Arbitrator finds that there is a clear temporal relationship between the April 27, 2020, injury at work and the immediate aggravation and acceleration of Petitioner's lumbar spine. The Arbitrator notes that Petitioner sustained no trauma to his lumbar spine between the 1st and 2nd injuries at work. (RX.5 P.73) Petitioner reported no trauma to his back since the April 27, 2020, injury at work. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the April 27, 2020, injury at work.

WITH RESPECT TO ISSUE (G) WHAT WERE PETITIONER'S EARNINGS? THE ARBITRATOR FINDS AS FOLLOWS:

Respondent stipulated to an average weekly wage of $1,647.17 which Petitioner concedes, despite some overtime worked by Petitioner. (Arb. Ex. 2) Although Petitioner worked some overtime, he failed to prove the amount of overtime or that it was mandatory.

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 AS FOLLOWS:

The Arbitrator finds Petitioner's current lumbar spine condition causally related to the April 27, 2020, injury at work. The Arbitrator finds the medical treatment provided to be reasonable and necessary. Therefore, the Arbitrator finds that the Respondent shall pay the medical expenses contained in PX.12, PX.13, PX.15, PX.16, PX.17, PX.18, PX.43, PX.48 and PX.50 pursuant to Section 8.2 of the Act and the Illinois Medical Fee Schedule.

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

Petitioner was restricted from all work activities following the April 27, 2020, injury at work. Petitioner attempted to return back to work between August 14, 2020 and September 17, 2020 but was unable to continue the work. Thereafter, Dr. Graf continued to restrict Petitioner from all work activities until he reached maximum medical improvement on March 30, 2022. Therefore, Petitioner is entitled to temporary total disability benefits in the amount of $1,098.11/week commencing April 28, 2020, through August 13, 2020, and September 18, 2020, through March

30, 2022, when he reached maximum medical improvement and was released by Dr. Graf with permanent light physical work restrictions. (PX.18 p.72 and 318) Respondent did not accommodate Petitioner's permanent light work restrictions or allow him to return to work. (T. 73) Consequently, Petitioner demanded vocational rehabilitation along with maintenance benefits.

Thereafter, Respondent acknowledged Petitioner's request for vocational rehabilitation and agreed upon a Steven Blumenthal, as vocational rehabilitation counselor. Petitioner actively participated in the vocational rehabilitation program and accepted a *"suitable"* position of employment as a part-time parts delivery driver on October 4, 2023. (T.85) Therefore, the Arbitrator finds that Petitioner is entitled to maintenance benefits in the amount of $1,098.11/week, commencing March 31, 2022, through October 3, 2023. Respondent is entitled to a credit for the service-connected days issued on April 28,29,30 and May1,2, along with the maintenance benefits issued. (T.207)(RX.19)

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

Regarding the nature and extent of the Petitioner's injury the Arbitrator finds that Petitioner sustained an injury to his lumbar spine that prevented him from returning to his prior position of employment as a maintenance equipment operator. Petitioner was unable to proceed with the lumbar fusion surgery due to an adverse reaction to the anesthesia. Petitioner completed a Functional Capacity Evaluation which demonstrated the ability to work light physical demand 5 hours/day 25 hour/week. (PX.17) Respondent failed to accommodate Petitioner's permanent light work restrictions. (T.73)

In order to qualify for a wage differential award under Section 8(d)(1) of the Act, the claimant must establish, by a preponderance of the evidence: (1) partial incapacity which prevents him from pursuing his *"usual and customary line of employment;"* and (2) an impairment of earnings. 820 ILCS 305/8(d)(1); Albrecht v. Industrial Commission, 271 Ill. App.3d 756, 759 (1995) Based upon the credible evidence presented at trial, the Arbitrator finds that Petitioner is permanently partially incapacitated from working as a maintenance equipment operator and is entitled to a Section 8(d)(1) wage differential.

The parties agreed upon vocational rehabilitation counselor, Steven Blumenthal, to assist Petitioner in finding alternative employment. Petitioner regularly met with Steven Blumenthal and Completed the computer literacy skills program at Vocamotive along with the Job Readiness and Job Training programs. Petitioner accepted a suitable position of employment as a part-time parts delivery driver earning $15/hour. It was Blumenthal's opinion that ***"Bays current employment and pay are representative of what he is capable of earning in a stable labor market*** and is ***suitable employment for him."*** (PX.40 p.2) Petitioner received a raise to $16/hour on December 4, 2023.(PX.41)

At Tristar's request, vocational rehabilitation counselor, Tracy Peterlin, completed a Blind Labor Market Survey and Transferable Skills Analysis on April 28, 2022. (RX.6 p.9) The vocational counselor did not meet with or interview Petitioner. (RX.6 p.12) It was Tracy Peterlin's opinion that Petitioner was employable full time working as a customer service, courier, light delivery driver, regular driver, service advisor and shop supervisor (RX.6 p.16) It was her opinion that Petitioner was capable of making $33,000 to $65,000 a year. (RX.6 p.17)

Tracy Peterlin was not aware of Petitioner's November 11, 2018, injury at work and did not review any of the medical following his initial injury at work. (RX.6 p.21-22) Tracy Peterlin did not review the medical records from St. Alexius Medical Center or Alexian Brothers Medical Center (RX.6 p.27) Tracy Peterlin did not review any of Dr. Kumar or Dr. Raddy's medical records in 2023 or 2024. (RX.6 p.28-29) Moreover, Tracy Peterlin, did not review the March 21, 2022, Functional Capacity Evaluation which limited Petitioner to light work 5 hours a day 25 hours a week. (RX.6 p.29-31)

Tracy Peterlin mistakenly based her opinions on the 2021 Functional Capacity Evaluation and never reviewed the permanent light work restrictions continued in the March 21, 2022, FCE. (RX.6 p. 30-33) She was unaware Petitioner was restricted to work 5 hours a day. (RX.6 p.33,34) In fact, Tracy Peterlin's opinions were based on the July 18, 2021 Section 12 report of Dr. Lopez where he recommended Petitioner to return to full duty work. (RX.6 p.35-36)

Tracy Peterlin acknowledged that Petitioner's medical condition changed subsequent to Dr. Lopez's medical report. (RX.6 p.36) Respondent authorized and approved Petitioner's spinal surgery but because of the reaction to anesthesia, the surgery was terminated. (RX.6 p.36-37) Thereafter, Petitioner underwent a second Functional Capacity Evaluation and was issued permanent light work restrictions for a 25-hour work week. Tracy Peterlin admitted her labor market survey was based on a 40 hours work week despite Petitioner's permanent light 25 hour a week work restrictions. (PX.6 p.39-40)

The Arbitrator does not find the opinions of Tracy Peterlin to be credible or persuasive. She failed to review the Functional Capacity Evaluation completed on March 21, 2022, restricting Petitioner to light work 5 hour day, 25 hour a week. Therefore, the Labor Market Survey is fundamentally flawed. Moreover, the labor market survey completed on April 28, 2020, is a *"snapshot in time"* regarding the labor market. Therefore, the Arbitrator does not find the report prepared 21 months ago to be relevant or consistent with Petitioner's current medical condition.

The Arbitrator is not persuaded by the video surveillance of Petitioner riding a bike and arranging patio furniture. (RX.13) The petitioner was assembling a bike and riding it in his garage. The video was brief, the quality was very dark, and it was difficult to see much of anything. It is of dubious probative value, if any.

The Arbitrator finds that Petitioner's current earning capacity of $16/hour based on a 25-hour work week results in a $400/week earning capacity. ($16/hour x 25 hours = $400/week) Petitioner's prior average weekly wage was $1,647.17 (Arb. Ex 1) The Arbitrator notes that Petitioner has suffered a substantial loss of earnings as a result of his injuries at work. The current hourly rate of pay for maintenance equipment operators is $39.32/hour. (T. 15)

Therefore, Respondent shall pay Petitioner permanent partial disability benefits commencing October 4, 2023 through December 2023, in the amount of $848.11 ($1,647.17 - $375 = $1,272.17 x 2/3 = $848.11) Petitioner received a raise to $16/hour on December 4, 2023. Therefore, Petitioner is entitled to permanent partial disability benefits commencing December 4, 2023, in the amount of $831.45/week until Petitioner reaches age 67 or five years from the date of the final award, whichever is later, because the injuries sustained caused a loss of earning, as provided in Section 8(d)(1) of the Act. ($1,647.17 - $400 = $1,247.17 (2/3) = $831.45)

WITH RESPECT TO ISSUE (M) SHOULD PENALTIES AND ATTORNEY'S FEES BE IMPOSED ON RESPONDENT? THE ARBITRATOR FINDS AS FOLLOWS:

Although the Arbitrator finds that the respondent's section 12 examiner is not persuasive, and the respondent's surveillance video is not determinative of anything, and is of little, if any, probative value; the Arbitrator does not find that the respondent's defense(s) rise to the level of unreasonable, vexatious or dilatory. Penalties and fees are denied.

WITH RESPECT TO ISSUE (O) SHOULD RESPONDENT PAY THE VOCATIONAL REHABILITATION INVOICES OF STEVEN BLUMENTHAL? THE ARBITRATOR FINDS AS FOLLOWS:

Steven Blumenthal was retained as the parties agreed upon vocational rehabilitation counselor. Pursuant to Section 8(a) of the Act, Respondent is responsible to provide Petitioner vocational rehabilitation benefits when they are unable to accommodate Petitioner's permanent work restrictions. The Arbitrator notes that Blumenthal made several requests for payment of his invoices including reimbursement for the ergonomic workstation and sit/stand chair. (PX.28, PX.29, PX.30, PX.31. PX.34. PX.38, PX.40, PX.47) Therefore, the Arbitrator orders Respondent to pay Steven Blumenthal the outstanding invoices for vocational rehabilitation services.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC036307
Case Name	Jason Van Acker v. Village of Lake Zurich
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0149
Number of Pages of Decision	35
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	George Tamvakis
Respondent Attorney	Jigar Desai

DATE FILED: 4/7/2025

/s/Raychel Wesley,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 causal connection, medical, prospective medical, TTD	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASON VAN ACKER,

Petitioner,

vs. NO: 19 WC 36307

VILLAGE OF LAKE ZURICH,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical care, temporary disability, and reimbursement for out-of-pocket medical expenses, and being advised of the facts and law, affirms in part, and reverses in part the Decision of the Arbitrator as stated below, but incorporates the Decision of the Arbitrator for the Findings of Fact, 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).

FINDINGS OF FACT

While the Commission incorporates the Findings of Fact from the Decision of the Arbitrator, we also supplement the facts with additional medical evidence:

The day after the accident, on August 30, 2019, Petitioner visited Dr. Stephen Haggerty, his gastroenterologist, for evaluation and treatment of his obesity. The record does note Petitioner's complaints of all over joint pain. *RX 6, p.64-67*.

On January 7, 2020, Petitioner presented at the Centegra emergency room for back and ankle pain, and ankle swelling which started yesterday. He had not suffered any new injuries since his November 2019 visit. He informed the doctor of his chronic low back pain, left hip pain, and left lower extremity pain, and that he was walking with crutches. The chronic back pain was from a work injury. Pain was causing him to walk funny and his gout to flare up. Petitioner was taken off work for a couple of days. He was given a boot and a knee scooter for his left leg. He was diagnosed with acute gout. *PX 13, p.258-261*. Petitioner testified that his gout is activated by trauma such as twisting an ankle or having issues walking. He stated that with his back pain his gait was off, leading to his left ankle issue.

On January 17, 2020, Petitioner returned to Dr. Schneider at Illinois Bone & Joint and complained of chronic back pain. It was opined his ankle swelling and pain were related to poor gait and compensation for his back pain. He was placed in a boot which made his symptoms worse. Petitioner had no specific hip complaints. He was diagnosed with gout, type II diabetes, morbid obesity, sleep apnea, hypothyroidism, chronic back pain, and hypokalemia. *RX 8*.

On January 21, 2020, Petitioner followed up at Vanderbilt Chiropractic Care, and indicated his low back was doing much better. His left foot and ankle had been more problematic over the past week. *RX* 7. Petitioner testified that his gout was flaring. He was wearing a boot on his left foot. He was either using crutches or a knee scooter to get around. His left knee rested in the scooter while he walked with his right leg. He still weighed over 375 pounds at the time.

CONCLUSIONS OF LAW

I. Causal Connection

In this case, the arbitrator found that Petitioner failed to prove causal connection between his current condition and the instant accident. The arbitrator cited the gaps in medical care, a delayed need for a hip replacement, and the fact that Petitioner continues to work full duty as reasons for denying causation. The Arbitrator found the opinions of Respondent's Dr. Karlsson more persuasive, as treating physician Dr. Basran was unaware of Petitioner's treatment with Dr. Haggerty and Dr. Lin in August and October of 2019. Dr. Basran was unaware Petitioner suffered a gout flare up in late 2019, did not know Petitioner used a scooter for a number of months, but admitted that such usage could further aggravate a hip condition on the opposite leg. He also acknowledged Petitioner's obesity could cause right hip symptoms.

Additionally, Dr. Basran opined the first documented complaints of hip pain were on October 22, 2019 at Illinois Bone & Joint, but that Petitioner did not repeat these complaints until June of 2020 when he phoned Illinois Bone & Joint complaining of increased right hip pain.

Despite the above, the Commission views the evidence differently than does the arbitrator, and finds that the record in its entirety supports a finding of causal connection between the accident and Petitioner's current right hip condition. Case law has held that a preexisting condition does not prevent recovery under the Act if the employment aggravates or accelerates that condition.

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 preexisting 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 ¶26.

Here, on the day of accident, Petitioner indicated on a pre-training form that he had no current injuries. *PX 1*. There is also no evidence that Petitioner was treating for his hip leading up to this date. However, immediately after the accident, Petitioner informed his sergeant that he was sore after the training. Further, the next day, Petitioner complained of all over joint pain when visiting his gastroenterologist. On October 10, 2019, Petitioner complained of chronic back discomfort and stiffness. On October 14, 2019, Petitioner visited his primary care physician for his diabetes. The medical record does not mention back or hip pain. However, Petitioner did not specifically ***deny*** having pain. On October 22, 2019, Petitioner presented to Illinois Bone & Joint complaining of low back pain. The aggregate of these medical records contradicts Respondent's narrative that there was a significant delay between the accident and Petitioner's complaints of any back/hip pain. Petitioner routinely complained of pain in the general area of his hip—with the exception of the October 14, 2019 record—which we find to be understandable—considering the purpose of this visit was metabolic (his diabetes) rather than muscular in nature. We find it feasible that Petitioner would refrain from mentioning muscular pain while treating for a metabolic disorder.

After the accident, Petitioner was treated conservatively with medication, physical therapy, chiropractic care, injections, and was taken off work periodically. Although Petitioner's pain somewhat waxed and waned, it was predominantly consistent, and led to an arthroscopic hip surgery recommendation by Dr. Basran on August 25, 2020. At trial, Petitioner still complained of pain in the same general area which was consistent with the pain he felt after the accident. However, he noted his pain had not subsided and was worsening.

Based on the above, the Commission finds there was actually an immediate onset of pain recorded in medical records after the accident—which was a significant factor considered by Dr. Basran when he offered his causation opinion relating Petitioner's current condition to the accident. Additionally, the Arbitrator relied on the fact that Petitioner continued working after the accident as proof that his current condition was unrelated to any work injury. However, this reasoning is contrary to case law. An employee who continues to work on a regular basis despite his own progressive ill-being should not be punished merely for trying to perform his duties

without complaint. *Durand v. Industrial Commission*, 224 Ill. 2d 53, 70 (2006) (quoting *Three "D" Discount Store v. Industrial Commission*, 198 Ill. App. 3d 43, 49 (1989)). We find the record as a whole supports a finding that Petitioner exhibited ongoing and consistent pain after the instant accident, which was a deterioration of his pre-accident condition.

Further, Petitioner's obesity and flare up of his preexisting gout condition are not dispositive on the issue of causation, as an accidental injury sustained at work does not need to be the sole or primary cause of a claimant's condition. In fact, the physician at Centegra Hospital on January 17, 2020 opined that Petitioner's ankle swelling and pain (gout flare up) were related to his poor gait and compensation for his back pain. We find that the preponderance of evidence supports a finding that Petitioner's gout symptoms are actually secondary to the work accident and ensuing symptomatology in his low back/hip region.

Regarding Petitioner's use of a knee scooter for a left leg condition being the potential intervening cause of his current condition, the Commission declines to find such a cause in the case at bar. Intervening accidents are evaluated under a "but for" standard. Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury. *Vogel v. Illinois Workers' Compensation Commission*, 354 Ill. App. 3d 780, 786 (2nd Dist. 2005). That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant. *Id*. Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. *International Harvester Co. v. Industrial Commission*, 46 Ill. 2d 238, 245 (1970). Thus, when an employee's condition is weakened by a work-related accident, a subsequent accident, whether work-related or not, that aggravates the condition does not break the causal chain. See *Lee v. Industrial Commission*, 167 Ill. 2d 77, 87 (1995).

For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *Global Products v. Workers' Compensation Commission*, 392 Ill. App. 3d 408, 411 (1st Dist. 2009). As long as there is a "but for" relationship between the work-related injury and subsequent condition of ill-being, the first employer remains liable. *Id* at 412.

In order for an intervening accident to break the causal chain herein, it must be proven that the condition would have occurred even if Petitioner had not already been weakened by the instant work accident. We find Respondent has failed to satisfy this mandate, as, quite succinctly, the evidence shows Petitioner's use of a knee scooter (and subsequent increase in right hip pain) were both causally related to the underlying work accident. The Commission initially finds that the use of a knee scooter was recommended because—and thus secondary to—Petitioner's underlying work injury. Petitioner's back/hip pain caused irregularity in his gait, and placed more pressure on his left ankle while he overcompensated for his right sided pain. This overcompensation led to a flare up of his gout, which then led to the recommended use of a scooter for the left leg. But for the work injury, there is no evidence other than speculation that Petitioner would have endured this sequence of events.

Next, we find the evidence supports a finding that the use of the scooter increased the usage and stress placed on Petitioner's right lower extremity. The scooter allowed Petitioner to rest his left knee while his right leg remained weight-bearing. This caused an increase in his right hip symptomatology. Petitioner weighed over 375 pounds at the time, and Dr. Basran opined that this weight placed additional strain on the right hip. Since the need for the scooter was a sequela of the work injury, any resulting symptoms/conditions in Petitioner's right lower extremity from its use are also tied to the causal chain herein.

Likewise, the increase in pain Petitioner suffered after a long car ride on Thanksgiving does not break the causal chain. The Commission finds that but for the work accident, which weakened Petitioner's condition, this aggravation would not have occurred.

Based on the above, the Commission finds that the causal connection opinion offered by Dr. Basran is supported by the totality of the direct evidence. However, while our causal connection determination is predicated primarily on the direct evidence (the expert medical opinion), we note our determination is further corroborated by the circumstantial evidence (chain of events). Quite simply, Petitioner was working full duty with no medical treatment to the area of his body leading up to the accident date, and had no injuries on the date of accident. Subsequent to the accident, Petitioner consistently complained of pain in the area, was taken off work periodically, treated medically, and never had a full resolution of his symptoms. He was eventually recommended for surgery. The Commission finds Petitioner's right hip condition is causally connected to the instant accident.

II. Medical Expenses

Consistent with the reversals of accident and causation above, the Commission finds Respondent liable for all reasonable and necessary medical expenses related to the treatment of Petitioner's right hip. There is no evidence that any treatment provided was unnecessary. Accordingly, the Commission awards all medical expenses incurred from Petitioner's treatment at Vanderbilt Family Chiropractic, Illinois Bone & Joint, and Centegra Northwestern.

Additionally, the Commission orders Respondent to reimburse Petitioner $170.00 for out-of-pocket expenses related to chiropractic care.

Respondent is entitled to stipulated §8(j) credit of $1,716.52 for medical expenses paid by Blue Cross Blue Shield, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

III. Prospective Medical Care

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Industrial Commission*, 294 Ill. App. 3d 705, 711-12 (2d Dist. 1997). Here, Dr. Basran recommended arthroscopic right hip surgery while

finding that Petitioner's current condition of ill-being was causally related to the instant accident. Based on the causation analysis, the Commission agrees and awards this surgery to Petitioner.

IV. Temporary Total Disability

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 Commission*, 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, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990).

Here, Petitioner seeks 2.7 weeks of TTD benefits. We find that after the accident, Petitioner was taken off work by Dr. Cummins on October 22, 2019, and was returned to light duty on October 28, 2019. Petitioner testified to additional days off work due to back pain in December 2019, and January and February of 2020 (See *Request for Hearing*). However, these dates were not accompanied by physician off-work notes.

Accordingly, the Commission finds that Petitioner is entitled to TTD benefits of 6/7ths weeks (October 22, 2019 through October 27, 2019), at a rate of $876.52/week.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 12, 2023, is hereby affirmed in part, and reversed in part for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's current right hip condition of ill-being is causally related to the instant work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay medical expenses for treatment provided by Vanderbilt Family Chiropractic, Illinois Bone & Joint, and Centegra Northwestern. Respondent shall receive §8(j) credit in the amount of $1,716.52 for medical expenses paid by Blue Cross Blue Shield, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent reimburse Petitioner $170.00 for out of pocket expenses paid for chiropractic care.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the right hip surgery recommended by Dr. Basran, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $876.52 per week for a period of 0 & 6/7ths weeks, representing October 22, 2019 through October 27, 2019, 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 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.

April 7, 2025

RAW/wde

O: 2/19/25

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/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC036307
Case Name	Jason Van Acker v. Village of Lake Zurich
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	George Tamvakis
Respondent Attorney	Jigar Desai

DATE FILED: 12/12/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 12, 2023 5.19%

/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
19(b)

JASON VAN ACKER
Employee/Petitioner

v.

VILLAGE OF LAKE ZURICH
Employer/Respondent

Case # **19** WC **36307**

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 **Waukegan**, on **November 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, **8/29/2019**, 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 not** causally related to the accident.

In the year preceding the injury, Petitioner earned $**68,365.44**; the average weekly wage was $**1,314.72**.

On the date of accident, Petitioner was **43** 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 $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**1,716.52** under Section 8(j) of the Act.

ORDER

The testimonial evidence of record of the petitioner and other witnesses proved by a preponderance of the evidence that the petitioner sustained an accident arising out of and in the course of his employment with the respondent and that the respondent had timely and proper notice just after the incident under the Act.

However, the petitioner failed to prove that he is entitled to any temporary total disability compensation. Further, the petitioner failed to prove that his right hip condition is causally related to the August 29, 2019.

Respondent is entitled to a credit for any amounts paid by Respondent's group health insurance plan for Petitioner's medical treatment pursuant to Section 8(j) of the Act.

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

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

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

DECEMBER 12, 2023

Signature of Arbitrator

Jason Van Acker v. Village of Lake Zurich
19 WC 36307

STATEMENT OF FACTS

This case was tried on November 14, 2023 in Waukegan, Illinois. Petitioner claims he experienced injuries to his right hip and low back as a result of his participation in a defensive tactic drill while working for the Village of Lake Zurich. He filed a 19(b) and 8(a) petition seeking authorization for right hip surgery.

FINDINGS OF FACT

Petitioner, Jason Van Acker, works for Respondent, Village of Lake Zurich, as a Detective. He has been employed by the Village for over 23 year. (T. 12)

On August 29, 2019, the alleged accident date, Petitioner worked for the Respondent as a Day Shift Patrolman. (T. 17) He testified he participated in a defense tactics training drill involving ground fighting training on August 29. (T. 17-18)

Petitioner testified he felt fine prior to his participation in the training drill. (T. 18) He confirmed he filled out a form prior to his participation confirming he did not have any pre-training injuries. (T. 19-20, Px. 1)

He testified he participated in a ground fighting drill with Officer Pilaski. He testified he was on the top position and Officer Pilaski was on the ground. (T. 21) Petitioner was trying to keep Officer Pilaski on the ground, and Officer Pilaski's role was to try to get Petitioner off him. (T. 21-22)

He testified Officer Pilaski was able to perform a "hip toss and a roll", and get on top of the Petitioner. Petitioner testified he tried to ground fight to get Officer Pilaski off him. He stated the incident lasted a "couple of minutes." (T. 22) He confirmed twice the incident lasted "a few minutes" on further questioning by his attorney. (T. 23)

He testified he tried to get Officer Pilaski off of him by twisting and trying to hip toss him. (T. 23) He testified that on the date of the incident he weighed 375 pounds and was surprised he could not throw Officer Pilaski off of him. (T. 24)

He testified that the drill was discontinued. He testified Officer Pilaski reached out his had to help him off the ground. Petitioner stated his hand slipped and he went back and landed hard in his low back area. (T. 24)

He testified that following the conclusion of training he felt embarrassed. He testified he went "straight to the road, put my gun belt back on and my duty equipment and went to my squad car and back on the street." On questioning as to whether he felt any physical symptoms, he testified "I just felt the hard landing and everything, I just felt something was not right, with not being able to throw him with my experience and everything." (T. 26)

He alleged he had increasing pain that day. He testified he was on the street patrolling and he started to get "full body pain, mainly in my back legs and hip." (T. 26) He testified his

pain got so bad on August 29 that it was "very difficult" to still be on duty. He testified he did not return to the Village for roll call, and that once his shift ended her performed extra traffic detail at Lake Zurich High School. (T. 27)

He testified he told Sergeant Sieber how he was feeling as Sergeant Sieber sent a text message to Petitioner. He testified he told Sergeant Sieber he was sore. He was asked about Petitioner's Exhibit 2, a screenshot of the text messages sent between him and Sergeant Sieber on August 29. He testified the text messages were exchanged approximately 5 hours after the training drill. (T. 28)

Petitioner's Exhibit 2 was reviewed by the Arbitrator. The exhibit confirms Sergeant Sieber sent the following text message to Petitioner at 3:03 pm – "Are you good?" Petitioner responded:

- "Yep
- Why?
- Actually I'm sore after wrestling. Lol (crying emoji face)
- Didn't see you try calling ringer was off.
- I have the HS today."

Sergeant Sieber responded:

- "I didn't see you come in. That makes sense.
- Me too a little." (Px. 2)

Petitioner testified he was experiencing soreness and pain in his back, leg and hip on August 30. He testified he was in a lot of pain. (T. 30) Petitioner testified he had another conversation with Sergeant Sieber the following day, August 30. (T. 30) Petitioner alleged he was working on August 30. He testified he told Sergeant Sieber on August 30 he was still in a lot of pain. He could not recall if he spoke with Sergeant Sieber of the phone or in person. (T. 32)

He testified he provided notice of his alleged August 29 accident on October 22 via email to Sergeant Sieber, Deputy Chief Robert Johnson and Deputy Chief David Anderson. (T. 32-33, Px. 3). He confirmed that he wrote in his email, "I didn't document it before because it seemed to be just muscle soreness from activity that I never seemed to get relief from." (T. 33, Px. 3)

He testified that around August 29, 2019 he could not specifically recall being under the care of any other medical providers. He subsequently testified he was seeking bariatric surgery for a gastric bypass around August 2019. (T. 34) He acknowledged he had an appointment with his bariatric surgeon on August 30. Petitioner could not recall whether he hold that medical provider anything about the August 29 accident. (T. 35) He testified his treatment with Dr. Haggerty, his bariatric surgeon, was focused on his bariatric treatment. (T. 36)

Petitioner testified he did not seek any medical treatment for the alleged August 29, 2019 incident through October 22, 2019. He testified he did not seek treatment because he was still able to work. He alleged he continued to have achiness, and that some days were better than others. (T. 37)

He testified his back started to hurt so bad he could not stand and that led him to seek treatment. He testified he sought treatment with Dr. Cummins at Illinois Bone and Joint Institute on October 22, 2019. He testified he told Dr. Cummins he had pain in his back, hip, and legs. (T. 38) He testified he was initially placed off work but later provided with light duty restrictions (T. 40-41).

Petitioner testified he filled out injury reporting paperwork after formally reporting the claimed accident to the Village. (T. 44, Px. 4, 5) He testified he filled out the injury report form on October 28, 2019. (T. 46, Px. 5) He testified this was the first date he returned to work after seeing Dr. Cummins on October 22. (T. 47)

Petitioner testified he underwent chiropractic care at Vanderbilt Chiropractic. He testified he treated only 9 times with the chiropractor. (T. 50) He testified he underwent on-going care at Illinois Bone and Joint. (T. 51-52)

Petitioner admitted he was released to full duty work on November 4, 2019 by Dr. Schneider at Illinois Bone and Joint. (T. 52) He testified he went on a long car ride over Thanksgiving in November 2019 and had increased pain in his back. (T. 52) He testified he missed work after Thanksgiving – testifying that he missed time off and on all the way through the end of 2019. (T. 53)

Petitioner testified he lost time from work between October 22 and October 27, 2019. (T. 55) He testified he was off work on December 2 and 3, 2019, and that this was "most likely" " because I was in pain." (T. 56) He testified he did not work on December 5, which was "most likely" due to pain. (T. 57) He testified he was off work on December 8 and 9, but testified it "could be for a variety of reasons. It could be just because it was around the - - ," but he did not complete his answer as he was cut off by questioning by his attorney. (T. 57-58) He testified he took vacation time on December 8 and 9 as he was sick and "it was probably back pain." (T. 58)

Petitioner acknowledged he was seen in the emergency room at Centegra on January 7, 2020. He testified he was seen for "ankle pain from gout." He testified he was not claiming his gout was caused by the alleged work accident. He testified he has had symptoms from gout since 2018-2019. (T. 60)

Petitioner testified he continued in treatment with Dr. Schneider. (T. 62) he testified he lost time from work on January 16 and 17, 2020. (T. 62) He testified that he lost time due to back pain "in all likelihood." (T. 63-64)

He testified he was seen at the ER again at Centregra on January 17, 2020. He initially could not recall why he went to the ER. (T. 64) He acknowledged he was wearing a boot on his left foot due to gout, and that he was prescribed a knee scooter. (T. 65)

He testified he did not return to Dr. Schneider until February 20, 2020. He testified his treatment was then paused due to him having Covid in May 2020. (T. 66) He testified he treated at Northwestern for his Covid, but also underwent back and right hip x-rays. He testified it was his understanding his right hip x-ray confirmed impingement. (T. 68)

He testified he provided the hip xray results to his doctor and was subsequently referred for an MRI of his right hip. (T. 68) He testified he was then referred to Dr. Basran at Illinois Bone and Joint. He confirmed he underwent the right hip MRI on July 8, 2020. (T. 69)

He testified it was his understanding Dr. Basran interpreted the MRI to reveal a labral tear. (T. 69-70) He confirmed he underwent a hip injection with Dr. Schneider, which provided relief. (T. 72) He testified Dr. Basran recommended surgery as of August 25, 2020. (T. 72)

He testified he has not undergone the surgery proposed by Dr. Basran for over 3 years due to lack of workers compensation authorization. (T. 73) He testified he saw Dr. Basran again on November 23, 2020 and March 9, 2021. (T. 74) He testified he is still in pain as of the date of trial and that he wants to proceed with hip surgery. (T. 77)

He testified that he has since undergone bariatric surgery but did not testify as to a specific date for same. (T. 74)

CROSS-EXAMINATION OF JASON VAN ACKER

On cross-examination, Petitioner acknowledged that he understands how to report a work-related injury given his 23-24 years of experience working for the Village. He testified he was familiar with IRMA paperwork and the Employee Statement of Incident Form. (T. 79)

Petitioner admitted he had another work-related incident on August 14, 2021 when he was knocked to the ground by a suspect. He admitted that he timely filled out an injury report on August 16, 2021 in connection with this incident. (T. 81)

Petitioner admitted that prior to August 19, 2019 he had pre-existing issues with gout. He contradicted his direct examination testimony, admitting he has issue with gout since "I was in college." (T. 82)

With respect to the training drill, he admitted he only participated once and did not participate in the ground fighting drill with anyone else. (T. 83-84) Petitioner admitted on cross-examination that the duration of the drill was less than one minute, contrary to his direct examination testimony that the drill lasted for a few minutes. (T. 84)

Petitioner was asked whether he thought his injury was due to participation in the wrestling drill or the incident where he fell back onto the mat after the conclusion of wrestling. He did not provide a clear answer. He testified:

> "A. There was - - the experience of the back and hip pain was throughout the rest of my shift, to the point where I was having difficulty walking by 3:00.
>
> Q. So at the time you didn't feel anything participating in the training drill?
>
> A. I felt - - like a severe pain?
>
> Q. Yes.
>
> A. Not severe pain, no.
>
> Q. Did you feel any kind of acute or severe pain during this incident where you say you fell backwards?
>
> A. No. It was not in any heavy hurting pain where I was like, oh, my God, something is definitely wrong with me.
>
> Q. So at the time of the incident, you didn't really feel any pain, anything acute?
>
> A. Correct." (T. 85-86)

Petitioner testified he did not specifically recall whether the participants at the training were asked whether they had any injuries as the conclusion of training. He testified normally the trainers would ask if everyone is ok or have employees fill out a form. He admitted he did not report any kind of injury at the conclusion of training. (T. 87) He admitted he did not complete the training form to confirm he did or did not have any injuries. (T. 87, Px. 1)

He testified he continued working after the training drill. He acknowledged the extra high school traffic work he performed required him to be on his feet and waive traffic. (T. 89)

He acknowledged receiving the text message from Sergeant Sieber on August 29. He testified Sergeant Sieber was his supervisor on August 29. (T. 89-90) He could not recall whether any additional text messages were exchanged other than the ones submitted as Petitioner's Exhibit 2. (T. 90-91)

He testified he did return to the station after high school traffic duty on August 29. He testified he changed out of his uniform and went home. He acknowledged he did not ask to fill out an injury report on August 29. (T. 91)

He could not recall whether Sergeant Sieber was at the police department on August 29. He was asked whether he worked on August 30. He was not sure. He acknowledged he had

a medical appointment on August 30 with Dr. Haggerty, his bariatric surgeon. (T. 91) He admitted he could not recall whether he worked on August 30. (T. 92)

He testified that he took "comp time" on August 31 and assumed it was because he had already scheduled time off. (T. 92)

He testified he worked full duty from September 2-5. He testified he worked overtime on September 3 and 4. He testified he took days off due to illness and "comp time" on September 6 and against from September 9-11, 2019. He did not testify he lost time form work due to any issues with his right hip or low back. (T. 93)

He testified he worked full duty on September 12 and 13, and that he worked overtime September 12. He acknowledged that he continued to work full duty through October 17, 2019. (T. 94-95)

He testified he was off work due to either vacation or illness on October 18, 19 and 20. He admitted he worked full duty on October 21 and worked overtime. (T. 95) He admitted that following the August 29, 2019 incident he essentially worked full duty into late October 2019. (T. 95)

He testified that on October 22, 2019, which was 54 days after the August 29, 2019 incident, that he sent an email to the Village alleging injuries as a result of the August 29 incident. (T. 96) He admitted he sent that email "so the Village had formal notice that" he "was alleging an accident." (T. 96)

Petitioner admitted he did not receive any medical treatment due to the alleged August 29 incident until October 22. He was asked whether he saw any medical providers other than Dr. Haggerty, his bariatric surgeon, between August 29 and October 22. He could not recall seeing any other medical providers. (T. 98)

Petitioner was asked why he filled out an injury report form on October 28 (T. 97-98) He testified he asked to fill out the form because it was not filled out when he first notified Sergeant Sieber. He admitted he knew the injury report form needed to be filled out if he felt he had a work-related injury. (T. 98)

He admitted he saw Dr. Haggerty his bariatric surgeon on August 30. He admitted he did not report anything to Dr. Haggerty about the alleged August 29 incident. He admitted his primary care provider is Dr. John Lin. He admitted to receiving treating with Dr. Lin both before and after the August 29 incident. (T. 99)

Petitioner was asked whether he saw Dr. Lin on October 14, 2019, (T. 99) which was before he started treating at Illinois Bone and Joint on October 22. Petitioner testified he did not recall this treatment date. (T. 100)

The records of Dr. John Lin were submitted into evidence as Respondent Exhibit 5. Petitioner was seen by Dr. Lin on October 14, 2019. This was prior to him reporting any

injury to the Village and prior to him seeing Dr. Cummins at Illinois Bone & Joint Institute. Petitioner was seen in connection with his diabetes. He was found to have elevated blood sugar. He reported that he checked his blood sugar and was found to have a level of 450. It was noted he was treating with Dr. Stephen Haggerty for possible bariatric surgery. **Petitioner did not report any complaints of low back pain**.

Petitioner underwent a negative physical examination. He was given diagnoses of type II diabetes, low vitamin D, and high cholesterol. He was also advised on weight loss. It was noted he would follow-up with Dr. Haggerty regarding same.

Petitioner testified as to his initial treatment at Illinois Bone and Joint. He testified he filled out an intake form on October 22. He acknowledged he listed his referring physician as Dr. John Lin, but could not specifically recall whether Dr. Lin referred him. (T. 100-101)

Petitioner admitted he wrote "not reported" in response to a question as to whether the visit was related to an injury. (T. 102, Rx. 4) He was then asked:

> Q. That means you didn't report the injury at work?
>
> A. Correct.
>
> Q. So on this form you indicated that you never reported the injury at work?
>
> A. Correct. (T. 101)

Petitioner admitted he was reporting 10/10 pain to Dr. Cummins on October 22. (T. 104) However, he also admitted that he told Dr. Cummins he was able to continue working full duty. (T. 105) Petitioner was asked whether he told Dr. Cummins that his pain started two weeks prior to October 22 as documented in the records of Dr. Cummins. (T. 105, Rx. 4) He did not have an explanation for why that history was documented in Dr. Cummins' chart note.

Petitioner testified as to the intake form he filled out at ILBJ on November 4. He admitted he wrote that his pain started gradually. He confirmed he only circled his low back on his pain diagram. He admitted it was fair to conclude he was not having any symptoms in his legs or right hip as of November 4. (T. 110) He confirmed he was able to continue working full duty after November 4.

He testified that as of October 22 he had 10/10 pain but that by November 4 he was released to return to work full duty. (T. 111) He admitted he continued to treat with a chiropractor and was seen on November 5, 2019. He admitted he told the chiropractor his low back was doing much better. (T. 111, Rx. 7) He admitted he told his chiropractor on November 12 that he had a little soreness in his low back after snow blowing but had 3 days of no back pain at all. (T. 112)

He admitted he saw Dr. Schneider at ILBJ on December 9 and had increased pain at 5/10. He did not know whether his pain was attributable to snow blowing per his report to his chiropractor. He admitted he told Dr. Schneider his symptoms worsened as of November 30, which was consistent with the time he was travelling for Thanksgiving. (T. 112-113) He admitted he was close to 400 pounds as of November 2019. (T. 113)

Petitioner admitted that when he signed his Application for Adjustment of Benefits on December 17, 2019 that he only alleged injuries to the back and man as a whole. He was asked why his Application was amended to specifically include the right leg in October 2020, but did not know why the Application was amended. (T. 114)

Petitioner acknowledged on-going treatment with the chiropractor. However, he did not recall telling his chiropractor on January 6, 2020 that he was doing better since his last adjustment in December 2019, and that his low back recently seized up with pain down the his left buttock. (T. 114-115) He did not recall telling his chiropractor on January 21 that his low back was doing much better, but did not dispute anything contained in his chart notes. (T. 115)

He admitted that he likely told the chiropractor on January 21 that his left foot and ankle were more problematic over the last week, (T. 115, Rx. 7), which is consistent with the time period Petitioner had a flare up of his gout and sought treatment in the ER at Centegra in January 2020. (T. 60, 64-65) He confirmed that as of January 2020 his back was improving but his gout was flaring. (T. 115-116)

He admitted that in January 2020 he had a gout flare-up and was wearing a boot on his left foot and ankle. He acknowledged the boot is rigid and extends up to his calf. (T. 116) He admitted he was not able to walk normally in his boot. He testified he was also using crutches and a knee scooter. He could not recall when he specifically started using the knee scooter, but acknowledged using one for a few months. (T. 117)

He admitted he used the knee scooter at work. He testified he would have his left foot boot on and rest his left knee on the scooter. (T. 118) He testified he had to propel himself around with his right foot, and admitted he weighed at or more than 375 pounds. (T. 119-120)

He was asked about his visit with Dr. Schneider on January 15. He testified he did not recall discussing his gout with Dr. Schneider. He did not recall Dr. Schneider telling him that his back problems were related to his gout. (T. 120) Petitioner could not recall whether Dr. Schneider told him that he suspected Petitioner's gout was causing mechanical symptoms in his back. He admitted Dr. Schneider was not recommending back surgery as of January 15. (T. 121)

Petitioner was asked about his ER visit to Northwestern McHenry Hospital on January 17. He testified he was seen due to gout and back pain. (T. 122-123) He testified he was also seen in the ER on January 18 due to left ankle pain and swelling. (T. 124)

Petitioner admitted to treating with Dr. Ahmad of Northshore Orthopedics between January and April 2020. (T. 124)

Petitioner admitted that he told Dr. Ahmad as of January 28 that he had left ankle pain from walking strange due to low back pain that started 3 weeks earlier. (T. 125) He admitted he had back pain three weeks prior to January 28, 2020 that caused him to walk funny. He admitted this was consistent with the time he had a flare up in back pain related to his Thanksgiving travels. (T. 125)

He testified as to a February 4 visit with his chiropractor but could not recall that visit. He testified he did not disagree with the records reflecting that "he had hip pain over the weekend, probably from walking." (T. 126, Rx. 7) Petitioner could not recall whether he was still wearing his left foot boot or limping due to gout as of February 4. However, he admitted he did not disagree with the chiropractor's notes confirming he was still limping around with a boot as of February 18. He testified he did not disagree with the chiropractor's notes indicating his back was doing much better as of February 18, 2020. (T. 127) He also admitted he did not disagree with his chiropractic notes confirming he reported his low back was doing much better as of March 19, 2020. (T. 128-129)

Petitioner was asked about his February 20, 2020 visit with Dr. Schneider. He testified he did not disagree with the chart notes indicating that he reported 80-90% improvement, and that any leg symptoms had completely resolved. (T. 129, Rx. 4) He testified he could not recall whether he told Dr. Schneider he had "no pain" but did not have any specific disputes as to that notation. He testified he would not dispute that he was still in a left foot boot as of February 20, which was also confirmed in the February 20 note. Petitioner admitted Dr. Schneider was not recommending any further treatment as of February 20, 2020. (T. 130, Rx. 4)

He testified as to a May 6, 2020 visit with his chiropractor. He testified he did not recall telling the chiropractor that he had a "bit of hip discomfort just for the past few days." (T. 131, Rx. 7) Again, however, he did not dispute that notation. (T. 131)

He admitted he told his chiropractor on May 16, 2020 that he had "a bit of right hip discomfort just for the past few days." (T. 129, Rx. 7)

He confirmed he did not start treating with his hip surgeon, Dr. Basran, until July 2020. He confirmed that through July 2020 he missed minimal time from work and was able to work full duty. (T. 132)

He was then asked to testify as to his last treatment notes with Dr. Schneider as of February 2020 compared to his complaints as of July 2020 with Dr. Basran. Petitioner admitted that he told Dr. Schneider on February 20, 2020 that he had 80-90% improvement. He confirmed the chart note reflects that he had "no pain at this time." He confirmed he rated his pain at 0/10. He confirmed the chart note documents him denying any radicular pain, numbness or tingling. He confirmed he was not taking any medication (T. 133-134, Rx. 4) He testified he reported hip pain at 8/10 to Dr. Basran. (T. 132)

He admitted he saw his chiropractor on August 6, 2020. He admitted he told the chiropractor he had worsening hip pain after sitting. (T. 137, P. 7) He testified prolonged sitting was causing hip pain in 2020. (T. 138)

Petitioner admitted he saw Dr. Schneider to undergo a right hip injection on the referral of Dr. Basran on August 10, 2020. He acknowledged that the chart note confirmed his back pain had resolved. (T. 136) He admitted Dr. Schneider's records reflect a diagnosis of arthritis of the left and right hips. (T. 136-137)

Petitioner testified that he underwent an IME with Dr. Troy Karlsson in February 2021. He testified he has only treating with Dr. Basran twice after the IME – on March 9 and November 9, 2021. He acknowledged he has not had any further treatment to his right hip since November 9, 2021, (T. 138), or over 2 years prior to trial.

Petitioner admitted that he treated in a hospital in connection with a work-related incident in August 2021 when he was knocked to the ground. He admitted he did not return to Dr. Basran after this incident or any other orthopedic surgeons. (T. 139)

Petitioner also admitted on cross-examination that, outside the period of October 22 to 27, he did not have any work restrictions supporting his claim for TTD for any periods after December 2, 2019, (T. 141- 147) with the exception of January 8-10. He alleged he was off due to back pain in connection with his January 7 visit to Centegra. (T. 143-147, Px. 13)

He testified about his treatment at Centegra on Janaury 7, 2020. He admitted he denied any recent trauma when seen at Centegra and that he was being seen for back and ankle pain. He testified his medical conditions as of January 7 were "high cholesterol, hyperthyroidism, herniated disc, diabetes and gout." He admitted he told the nurse at Centegra he had "chronic low back pain, **left** hip pain, and left lower extremity pain and that" he was "using crutches to walk." (T. 147) He could not recall whether he reported any complaints of right hip pain at Centegra on January 7. (T. 148)

TESTIMONY OF GREGORY PILASKI

Detective Gregory Pilaski testified at trial. He has been employed by the Village for 20 years. (T. 156) He testified as to his participation in the defense tactics drill with Petitioner. He testified he was able to flip Petitioner over. He testified he went to help Petitioner off the mat once the drill was over, and that Petitioner went back down. (T. 159-160) He testified petitioner was a third of the way off the ground when their hands separated. (T. 161)

Detective Pilaski testified he could not recall when he first became aware of Petitioner's alleged accident. He testified he did not know for certain, but estimated it was approximately 1 month after the incident on direct examination by Petitioner's counsel. (T. 163) On cross-examination, Detective Pilaski admitted that he had no idea when he first

found out about the alleged accident claim and that it could have been 3 months after the August 29 incident. (T. 164) He testified he would be speculating as to the exact time period he found out about the claimed accident. (T. 165)

Detective Pilaski testified the trainers at the August 29, 2019 drill likely asked whether anyone was injured at the conclusion of training. He testified he had no recollection of anyone reporting any injuries at the conclusion of training. (T. 166) He testified Petitioner did not report any pain to him after he completed the training. (T. 167)

He testified he sent Petitioner a copy of the video showing the August 29 training drill. He testified he sent it to Petitioner on February 21, 2020 at 1:30 pm. (T. 167-168)

TESTIMONY OF ANDREW SIEBER

Sergeant Andrew Sieber testified at trial. He has been employed by the Village for 18 years. (T. 174-175) He testified he was Petitioner's supervisor as of August 29, 2019. (T. 178)

He testified that in his experience, if a police officer has a work-related injury, they fill out IRMA paperwork "in most cases." (T. 179) He testified that it was his experience that if someone has an on-the-job injury, IRMA paperwork is completed. (T. 180)

Sergeant Sieber testified as the text messages exchanged with Petitioner on August 29. He testified he thought Petitioner's text about being "sore" meant Petitioner was a little sore from the training drill. Sergeant Sieber testified he was also sore. (T. 182)

He testified as to the email Petitioner sent on October 22, and noted Petitioner alleged he was told about the alleged accident on August 30, 2019. He testified he had no recollection of speaking with Petitioner on August 30, (T. 183)

Sergeant Sieber confirmed he was present during the training drill. He testified the trainers asked at the conclusion of the training whether anyone was injured. He confirmed no one reported any injuries. (T. 191) He testified he first became aware Petitioner was alleging injuries as a result of the August 29 training on October 22. (T. 192)

He testified as to the text messages between himself and Petitioner on August 29. He testified that Petitioner did not ask him or anyone else to fill out an injury report form on August 29. He testified he was not aware of petitioner asking anyone about injury reporting paperwork until October 22, 2019. (T. 193)

Sergeant Sieber testified he had no recollection of any instance between August 29 and October 22 when Petitioner reported having on-going back or hip pain. He testified he was not aware of any work restrictions between August and October 22, 2019. (T. 194)

He testified he did not prepare an injury report before October 22 because "the injury wasn't reported to me." (T. 195) He testified that when Petitioner reported the injury on October 22, he directed Petitioner to fill out an Employee Statement of Incident Form.

Sergeant Sieber testified he had no recollection of speaking with Petitioner on August 30. He testified he did not exchange any further text messages with Petitioner. He testified Petitioner did not work on August 30. He did not recall receiving any phone calls from Petitioner on August 30. (T. 196) He testified that it Petitioner had called him to report an injury on August 30 he would have started the IRMA paperwork related to injury reporting. (T. 197)

Sergeant Sieber testified as to the formal Case Report he prepared on October 22, 2019. He testified Petitioner admitted to him that he did not report the injury sooner because he thought it was muscle soreness. (T. 198, Px. 3, Rx. 2) He noted Petitioner admitted this in his October 22 email providing formal notice of the alleged accident. (T. 198) With respect to the October 22, 2019 case report he testified it was prepared within 60 days of the incident and that if he had recalled any kind of discussion with Petitioner on August 30, he would have noted that in his report. (T. 201)

He testified that through October 22, 2019, it was his recollection Petitioner was in his normal state of health and had no issues as a result of the training on August 29. (T. 200) Sergeant Sieber also testified as to Petitioner's timecards from August 2019 (submitted as Rx. 2), and testified the records confirm Petitioner did not work on August 30, 2019. (T. 208-209)

TESTIMONY OF BRADLEY HOOPS

Sergeant Bradley Hoops testified at trial. He has been employed by the Respondent since 1996. (T. 211)

Sergeant Hoops testifies that he would fill out an IRMA injury report if he wanted the Village to know he had a possible work-related injury. (T. 218) He testified he did not know when he because aware of Petitioner's claimed injury. (T. 226-227)

MEDICAL TREATMENT

Prior to Petitioner providing notice of his alleged accident on October 22 via email to the Village, he underwent medical treatment between August 29 and October 22. These records are significant as they fail to document any issues with low back or right hip pain.

Petitioner was seen by Dr. Haggerty on August 30, 2019, which was one day after the alleged August 29, 2019 accident date. Petitioner was seen for evaluation and treatment of his obesity. He continued to report gradual weight increase. Of significance, petitioner did not report any complaints of back pain. His musculoskeletal examination, however, documented that petitioner had "all over joint pain." However, there were no specific documented complaints of any work accident or back pain as a result of same. (Rx. 6)

Even more significant is that Petitioner was seen by Dr. Lin, his primary care provider, on October 14. Petitioner was seen due to poorly managed diabetes. The record is negative for

any reporting of a possible work injury or any complaints of low back or right hip pain. Petitioner was diagnosed with type II diabetes, low vitamin D, and high cholesterol (Rx. 5)

The records of the Illinois Bone & Joint Institute confirm treatment starting on October 22, 2019. Petitioner indicated that he was seen on the referral of Dr. Lin, but Dr. Lin' s records from October 14 do not document any referrals for back pain. (Rx. 4) Petitioner did not have any explanation for why he listed Dr. Lin as his referral source.

The records confirm Petitioner was alleging symptoms in his back. He filled out intake paperwork asking whether his visit was related to an injury and petitioner confirmed that it was "not reported." He did allege that his injury was due to a "work injury." He confirmed he was not off work and that there was no pending legal action in connection with his alleged injury. (Rx. 4)

He alleged severe pain going up to 10/10. Petitioner reported past medical history significant for a vasectomy, a right knee surgery, and four hernia repairs. (Rx. 4)

Petitioner was assessed by Dr. Craig Cummins on October 22, 2019. He complained of low back pain. He reported it started two weeks prior, which is not consistent with an onset date of August 29, 2019. He alleged radiating pain into his bilateral buttocks. He was diagnosed with low back pain. Petitioner was placed off work. (Rx. 4)

Petitioner began treating at Vanderbilt Chiropractic on October 29, 2019. Petitioner was complaining of neck pain and low back pain. He reported he had pain for the last several weeks and that it started on August 22, 2019. He reported an onset due to a ground fighting training drill. (Rx. 7)

Petitioner returned to Illinois Bone and Joint on November 4, 2019. Petitioner filled out a new patient neck and back history form. He alleged that his pain started on August 27, 2019, which is inconsistent with an August 29, 2019 accident date. Petitioner confirmed prior problems with his back, neck, legs, and arms before the accident date. He denied any prior history of back surgery. (Rx. 4)

He alleged his symptoms started gradually. He did not provide any history of how he was injured. In response to the question "If suddenly, was it due to an injury?" petitioner checked "no." (Rx. 4)

Petitioner alleged his pain was worst first thing in the morning. He alleged sneezing and coughing made his pain worse. He alleged pain levels at the time of his assessment at **1/10** only in his back. He did not circle any areas outside of his middle low back on his pain diagram. (Rx. 4)

He was assessed by Dr. David Schneider on November 4, 2019. This record documented that petitioner's pain started two months prior. Petitioner denied any "injury or trauma." The record indicated petitioner was working light-duty but wanted to be released to full-

duty work. Petitioner also confirmed treatment with a chiropractor. He confirmed his shooting pains had resolved. (Rx. 4)

His examination was negative. Other than lumbar paraspinal tenderness and tenderness to palpation over the PSIS and sciatic notch, he was diagnosed with lumbar radiculopathy. He was released to return to full-duty work as of November 5, 2019. (Rx. 4)

Petitioner continued treating at Vanderbilt Chiropractic. On November 5, 2019, petitioner reported that his low back pain was getting much better. He reported that he was cleared for full duty work. (Rx. 7)

On November 12, 2019, petitioner reported that his back was sore due to snow blowing his driveway, but also confirmed that he had three days of no back pain at all as of November 12, 2019. He was also seen on December 2, 2019 with complaints of low back pain. He reported that he traveled a lot over the Thanksgiving weekend and had increased pain as a result. He was also seen on December 9, 2019 and reported an increase in his low back pain over the weekend. (Rx. 7)

Petitioner was seen again by Dr. Schneider on December 9, 2019. He alleged increased pain at 5/10. Petitioner alleged his symptoms were aggravated by sitting and walking. He was taking Tramadol for pain control. He alleged a worsening of his symptoms on November 30, 2019. (Rx. 4) Based on Respondent's attendance records, (Rx. 2), petitioner was not working as November 30 was a weekend. He had worked full-duty from November 25 through November 29, 2019 during the preceding week. (Rx. 2)

Petitioner's exam was negative. He was referred for an MRI of the lumbar spine based on his diagnosis of lumbar radiculopathy. He was restarted on Prednisone and Tramadol. He was given light-duty restrictions. (Rx. 4)

Petitioner continued treating at Vanderbilt Chiropractic. On December 16, 2019, he reported low back achiness and soreness, but confirmed it was much improved. He also reported ongoing low back pain on December 23, 2019, but alleged stiffness only. He also reported improvement on January 6, 2020, but also noted that when his low back "seized up," he had hip and leg pain with radiating pain down the back of his leg. (Rx. 7)

An MRI screening form was filled out by the technologist on January 13, 2020. The handwritten notes indicate petitioner had low back pain and bilateral hip pain. They indicate "no injury no surgery." (Rx. 4)

Petitioner underwent the lumbar MRI on January 13, 2020. It did not reveal any central canal stenosis or neural foraminal narrowing. Petitioner had mild lumbar spine spondylosis. He had a posterior annular tear at L4-5 with a small broad-based diffuse disc bulge. He a broad-based diffuse disc bulge with bilateral paracentral extension of a disc at L5-S1 with mild bilateral facet osteoarthritis. (Rx. 4)

Following the MRI, petitioner was seen by Dr. Schneider on January 15, 2020. Petitioner was alleging significantly high pain at 10/10 with radicular symptoms down his left leg. He denied any numbness and tingling, but alleged pain radiating down his leg. He was taking Norco for pain relief. (Rx. 4)

Petitioner had a significantly antalgic gait, which Dr. Schneider noted this appeared to be due to a pre-existing ankle and foot problem. Dr. Schneider noted the MRI results. Petitioner was diagnosed with lumbar radiculopathy, spinal stenosis, and **chronic gout due to a renal impairment in the left ankle and foot**. Petitioner was prescribed Gabapentin. (Rx. 4)

Dr. Schneider noted petitioner has "ankle and/or back pain." He noted petitioner's MRI findings did not really support petitioner's subjective complaints. He noted petitioner may have a "chemical radiculitis compounded by his diabetes." He noted petitioner' s gout may be causing the chemical problem in Petitioner's back and recommended petitioner follow-up with his podiatrist for same. He also recommended epidural steroid injections, and confirmed that the MRI did not indicate any surgical concerns. (Rx. 4)

He was seen at Centegra/Northwestern McHenry Hospital on January 17, 2020 in the emergency room. He reported a two-week onset of left ankle pain and swelling associated with gout. He denied any trauma or inciting event. He was alleging pain at 5/10. He denied that any other joints were involved. He reported that he came to the emergency room because he was unable to bear weight on his left ankle. (Rx. 8)

He reported he was seen at Illinois Bone & Joint for his "chronic back pain," and at that time Illinois Bone & Joint told him his ankle swelling and pain were related to poor gait and compensation for his back pain. **He reported he was placed into a boot, which made his symptoms worse**. Petitioner also reported that he had the flu recently with four days of diarrhea. Of significance, petitioner was not reporting any specific hip complaints as of January 17, 2020 during his admission. (Rx. 8)

On examination, petitioner had left lower extremity swelling around his ankle. He had tenderness at his medial and lateral malleolus. He was diagnosed with, among other things, gout, type 2 diabetes, morbid obesity, sleep apnea, hypothyroidism, chronic back pain, and hypokalemia. It was recommended he treat with an orthopedist. He was advised to maintain his blood sugars. (Rx. 8)

Petitioner returned to McHenry Hospital on January 18, 2020. Petitioner was seen again in the emergency room with complaints of left ankle pain and swelling. It was noted his x-rays were negative. He denied that Prednisone helped his pain. He reported he was given a boot by a foot and ankle surgeon, which only aggravated his symptoms further. He alleged difficulty weight bearing. Petitioner reported that on the morning of January 18, he was doing better with decreased swelling. He reported improvement in his ankle. He did not report any hip complaints. He was not reporting any active back complaints. (Rx. 8)

Petitioner was seen by a foot/ankle specialist at Northshore Orthopedics, Dr. Jamal Ahmad, on January 28, 2020. Petitioner reported he was walking "strange" due to low back pain that started only 3 weeks earlier. He did not report any history of his August 2019 work accident. He was advised to wear a CAM boot and underwent a left ankle injection. (Rx. 11)

Petitioner continued treating at Vanderbilt Chiropractic. On February 4, 2020, the chiropractor documented right hip complaints. Petitioner reported improvements in his low back condition. **Petitioner reported pain over his hip over the weekend "probably from walking."** On February 18, 2020, petitioner reported his low back pain was getting much better. **He was noted to still be limping due to a "boot"** and was hoping to get out of the boot in the near future. On March 19, 2020, petitioner confirmed again that his low back was doing much better and he was hoping to get back to active duty. (Rx. 7)

Petitioner was seen by Dr. Schneider on February 20, 2020. He had not undergone an epidural steroid injection, but reported significant relief at 80%-90%. He denied any pain as of February 20. He denied any radicular symptoms. He confirmed that he was still wearing a boot for bone marrow edema in his left foot. Petitioner reported he was not taking any medication for pain control. (Rx. 4)

His examination was negative. His diagnoses were unchanged. Dr. Schneider noted petitioner's **back pain had resolved** and recommended petitioner follow-up in six months. Petitioner was released to full-duty work and effective February 21, 2020. (Rx. 4)

Petitioner was also seen by Dr. Ahmad, his foot/ankle doctor, on February 20. He also reported to Dr. Ahmad that he was doing better. Dr. Ahmad referred Petitioner for physical therapy. He was allowed to wean off his CAM boot (Rx. 11)

He was seen via telehealth by Dr. Ahmad on April 23, 2020. He confirmed he was improved. Dr. Ahmad indicated Petitioner no longer had to wear an ankle brace and again referred Petitioner for physical therapy. (Rx. 11)

Petitioner returned to Vanderbilt Chiropractic on May 6, 2020. **He complained of discomfort in his right hip "for past few days."** No specific history as to the onset of why that pain was documented, but this appears to be a new complaint starting in February of 2020 as of February 4, 2020 and continuing on May 6, 2020. (Rx. 7)

On May 30, 2020 petitioner underwent an x-ray of his right hip. The indication for the x-ray was right hip pain "without history of trauma." The x-ray revealed possible acetabular impingement. (Rx. 4)

He was first assessed by Dr. Basran on July 2, 2020. He alleged his pain started on August 20, 2019, which is not the actual accident date. He alleged pain at 8/10. He alleged pain in his groin. He denied any back pain, neurological, or radicular complaints. (Rx. 4)

Dr. Basran noted the x-ray findings from May 30, 2020 were consistent with impingement. He diagnosed right hip impingement and a possible labral tear. He recommended petitioner undergo an MR arthrogram. (Rx. 4)

Petitioner was seen by Dr. Basran on July 14, 2020. He alleged pain at 5/10. He was not taking any medication for his pain. He alleged hip pain, but also reported most of his pain was in the posterior/lumbar area. He denied any radicular complaints. (Rx. 4)

On examination, he had a positive impingement sign. He did not have any tenderness. He had good range of motion. Dr. Basran noted petitioner's diagnostic imaging was consistent with a labral tear and impingement but noted petitioner's symptoms may be coming from his lumbar spine. He recommended petitioner undergo a right hip injection for diagnostic and therapeutic purposes to determine whether or not his hip was his pain generator. (Rx. 4)

Petitioner returned for an injection on August 10, 2020. He was seen by Dr. Schneider. Dr. Schneider took an updated history. He noted petitioner previously treated with him for back pain, but that his back pain had now resolved. Petitioner described buttock pain that was radiating to the side of his legs. Dr. Schneider was of the impression that petitioner was describing an upper buttock issue more than a hip issue. Nevertheless, he performed the injection into the right hip. He noted petitioner had an antalgic gait as well on examination and that petitioner had tenderness to palpation over the lateral greater trochanter bursa. He diagnosed osteoarthritis of the bilateral hips and lumbar radiculopathy. (Rx. 4)

Petitioner returned to Vanderbilt Chiropractic on August 6, 2020. Petitioner reported his right hip was worsening. He alleged increased pain after sitting for long periods of time. He also reported that he had undergone a recent MRI of his hip. (Rx. 7)

Petitioner was seen again by Dr. Basran on August 25, 2020. Petitioner reported a complete resolution of his symptoms in his right hip for three days following his injection. He reported his symptoms were gradually returning, his examination findings were unchanged. Petitioner wanted to proceed with an arthroscopy. (Rx. 4)

Petitioner underwent an IME with Dr. Karlsson on February 8, 2021. Petitioner alleged his right hip and back were injured on August 29, 2019. He reported he was doing a training drill. He alleged he was flipped off from the top position and landed on his back and right hip. He alleged he "knew something was wrong." (Rx. 3) Of significance, he did not report any history to Dr. Karlsson of falling back onto the mat after the training drill.

Dr. Karlsson reviewed the medical records. He also reviewed the video from the incident. He noted petitioner rolled onto his left side and back. He noted petitioner's hip did not appear to go in any extreme position. He reiterated that petitioner clearly goes onto his left hip first. He noted petitioner did not appear to be in any pain, wincing, or in agony at all. (Rx. 3)

Dr. Karlsson diagnosed petitioner with obesity, mild hip osteoarthritis, and a labral tear based on petitioner's verbal report of his MRI findings. He indicated there did not appear to be any mechanism of injury that would have caused the labral tear in connection with the August 29, 2019 defensive tactics training drill. He noted petitioner did not come down hard onto his right leg or have it forcefully twisted. He noted petitioner pretty much rolled over keeping his hip in one position as he rolled over and landed onto his left hip. He also noted petitioner did not appear to be in any pain. (Rx. 3)

He did not believe petitioner's right hip condition was related to the defensive tactics training drill. He noted petitioner did not have any hip complaints early in his treatment. He concluded petitioner was continuously capable of working full duty, and petitioner confirmed that he was working full duty. (Rx. 3)

Dr. Karlsson also noted petitioner has arthritis in his hip. He noted petitioner has a "pincer deformity," which he noted was not the result of any injury but was the result of the anatomy of petitioner's hip. He noted that these factors in addition to petitioner's obesity predisposed him to labral tears. He believed Petitioner had a labral tear on a degenerative basis. He also had concerns about petitioner proceeding with a hip arthroscopy given his morbid obesity. Nevertheless, he indicated this was a reasonable course of treatment. (Rx. 3)

Petitioner next followed-up with Dr. Basran on March 9, 2021. He denied any improvement in his right hip. He alleged ongoing pain. He brought his IME report to Dr. Basran for review. (Rx. 4)

Petitioner wanted to discuss his mechanism of injury on August 29, 2019. He alleged that he was involved in a training drill and was on top of another officer. He reported the officer underneath flipped him from that position and petitioner felt immediate pain. (Rx. 4) The arbitrator again finds it significant that Petitioner did not report any history of falling back onto the mat after the drill.

Dr. Basran diagnosed right hip pain. He reviewed the IME report. He noted Dr. Karlsson concluded petitioner's hip condition was not causally related to the alleged work accident. Dr. Basran continued to recommend surgery. Petitioner's BMI was also discussed. Petitioner indicated he would proceed with bariatric surgery. (Rx. 4)

Petitioner was not seen again by Dr. Basran for 8 months. He was seen on November 9, 2021. He was seen regarding his hip. He reported 10% improvement following his bariatric surgery. He was alleging pain at 5-7/10. Petitioner reported he had lost 100 pounds. He alleged his right hip pain was limiting his activities. (Rx. 4)

On examination, petitioner walked with a normal gait. He had positive impingement findings. Dr. Basran continued to diagnose a labral tear. He continued to recommend surgery. (Rx. 4)

DEPOSITION OF DR. BASRAN – PETITIONER'S EXHIBIT 11

Dr. Basran testified on May 4, 2022. He testified that he focuses on arthroscopic management of hip, shoulder, and knee injuries. (Px. 11)

He testified regarding his December 2021 narrative report. He testified it was his understanding petitioner was participating in a training drill when he felt something wrong with his right hip. Dr. Basran testified that he had not reviewed a video from the incident, but petitioner's attorney forwarded the video to Dr. Basran on the date of the deposition for his review. The video of the incident was subsequently reviewed during the deposition.

With respect to his overall diagnosis, he testified petitioner had a right hip labral tear with impingement. He testified this diagnosis was causally related to the August 29, 2019 training incident. He testified the basis for his opinion was the history provided by Petitioner, his examination, the video that he had only reviewed on May 3, 2022, and Petitioner's diagnostics. He also testified it was significant that Petitioner did not have pain before the August 29, 2019 incident. He testified petitioner's treatment to date was reasonable and necessary.

On cross-examination, Dr. Basran confirmed that Petitioner reported an immediate onset of symptoms in his right hip during the training incident. Dr. Basran testified that the immediate symptom onset reporting was significant as it relates to his opinions regarding causation.

Dr. Basran acknowledged there was no way to tell based on the MR arthrogram findings whether petitioner's right hip labral tear was acute or degenerative. He acknowledged that petitioner's pre-existing arthritis and cam and pincer impingement could have caused a labral tear, but was not able to opine as to whether or not the right hip labral tear pre-existed the August 29, 2019 alleged accident.

Dr. Basran testified that he assumed, based on the history Petitioner reported, that Petitioner had immediate complaints of right hip pain following the incident. He acknowledged that he had not reviewed any records outside of the Illinois Bone & Joint records, which start on October 22, 2019 when Petitioner was seen by Dr. Cummins.

Dr. Basran was questioned about the August 30, 2019 records of Dr. Haggerty, petitioner's bariatric surgeon. Dr. Basran was asked whether he would question causation if Petitioner's medical records from August 30 failed to document complaints of right hip or low back pain. **Dr. Basran testified that it would cause him to question causation**.

Dr. Basran was also questioned about petitioner's treatment with Dr. Lin on October 14, 2019. Dr. Basran acknowledged that it would cause him to question his opinions as to causation if Petitioner did not have complaints of right hip pain on October 14, 2019 when seen by Dr. Lin.

Dr. Basran was also completely unaware of Petitioner's non-work-related left foot conditions including gout and ankle problems. Dr. Basran was not aware that Petitioner had gout or pre-existing left foot and ankle problems. He was not aware that Petitioner was using a rolling scooter in connection with his left foot complaints in late 2019 and early 2020.

Dr. Basran acknowledged that usage of that scooter, and Petitioner using his right lower extremity more, could have caused him to further aggravate a pre-existing right hip labral tear. He also acknowledged that Petitioner's obesity would place additional strain on the right hip, which is a weight bearing joint, and that his right hip symptoms could have been related to his significant obesity.

Dr. Basran acknowledged that when Petitioner was seen by Dr. Schneider on February 20, 2020 he was not reporting any pain. He acknowledged that Petitioner did not report any complaints of right hip pain when seen by Dr. Schneider on February 20.

He noted he first assessed Petitioner on July 2, 2020 via telehealth. He noted the accident date listed in his chart note was incorrect. He confirmed that Petitioner was alleging pain at 8/10, despite his prior reporting of a complete resolution of symptoms with Dr. Schneider as of February 20, 2020.

He testified he diagnosed impingent and a possible labral tear. He testified that petitioner's impingement could have been aggravated by normal activities of everyday living. He acknowledged that petitioner's obesity could have placed a role in the development of his impingement.

He testified he agreed with Dr. Schneider's prior diagnosis that Petitioner has osteoarthritis of the bilateral hips. He testified Petitioner's osteoarthritis was present prior to the August 29, 2019 accident.

He testified that after seeing Petitioner on August 25, 2020, he did not see Petitioner again until March 2021. He acknowledged Petitioner had undergone an IME with Dr. Karlsson and that he reviewed the report.

He testified that when petitioner returned to see him on March 9, 2021, he had denied any improvement, but also confirmed he was not taking anything for his pain. Dr. Basran confirmed that Petitioner wanted to discuss the history of the injury again with him and therefore he provided an updated history in his chart note.

Dr. Basran acknowledged that Petitioner reported he "felt something was wrong with his hip when he landed." Dr. Basran acknowledged that petitioner was reporting an immediate onset of symptoms into his right hip when the accident occurred. He testified that he would have expected Petitioner to have complaints of right hip pain when seen by his medical providers given the history he received from Petitioner. **He testified he would question causation if Petitioner did not make any complaints of right hip pain through mid-October of 2019 to any of his medical providers.**

He acknowledged that he was paid for his narrative report. He acknowledged that he did not have a job description to review. He acknowledged that petitioner could continue working full duty while he awaited right hip surgery.

He testified that an antalgic gait due to foot/ankle problems can aggravate a pre-existing hip condition such as a labral tear. He acknowledged that petitioner was significantly obese and that obesity can increase the risk of having labral tears in the bilateral hips given that the hip is a weight bearing joint.

Dr. Basran acknowledged that the only time petitioner had documented complaints of right hip pain before he first treated him in July 2020 was when Petitioner was first seen at ILBJ on October 22. Dr. Basran acknowledged that after October 22, 2019 Petitioner did not have any reported complaints of right hip pain in any of his subsequent Illinois Bone & Joint records until June of 2020 when Mr. Van Acker called Illinois Bone & Joint Institute and alleged increasing right hip symptoms and wanted a hip surgery consult.

DEPOSITION OF DR. TROY KARLSSON – RESPONDENT EXHIBIT 3

Respondent's expert, Dr. Troy Karlsson, testified on August 22, 2022. Dr. Karlsson testified that the three most common body parts he treats are knees, hips, and shoulders, of which he does both office and operative work.

Dr. Karlsson testified Petitioner reported a history of being injured while participating in the defensive tactics training drill. Petitioner did not report any history of subsequently falling back onto the mat and that potentially causing his symptoms.

Dr. Karlsson testified that he performed an orthopedic examination of petitioner. Dr. Karlsson testified that petitioner reported a height of 6'4 and a weight of 380 pounds, indicating that petitioner is significantly overweight.

Dr. Karlsson testified that he reviewed a number of records and a video of the incident in connection with his examination. Dr. Karlsson testified that the video showed that petitioner was kneeling over another participant who was in the supine position or lying down on the mat. Dr. Karlsson testified that petitioner had one knee on each side of the other participant who was on the mat, and the person on the mat reversed their position, getting on top of petitioner by moving petitioner to his left so that he came down onto his left hip and then he rolled onto his back. Dr. Karlsson testified that the participant who was initially in the lower position then had a hold on petitioner's thigh as he rolled onto his left side and back, and the hip did not seem to go to any extreme position. Dr. Karlsson testified that petitioner's hip was maintained at about 45 degrees of flexion and slight abduction throughout the entire maneuvering. (P11)

Dr. Karlsson testified that, based on his review of the video, petitioner clearly came down onto his left hip first and then rolled onto his back. Dr. Karlsson testified that, based on his review of the video, petitioner did not yell out in pain or exhibit any pain behavior. Dr.

Karlsson testified that petitioner and the other participant seemed to be laughing and joking throughout the video and there was no evidence that there was any significant pain at that time. Dr. Karlsson testified that he reviewed a number of medical records, and his summary of that review was documented on Pages 4-7 of his report. Dr. Karlsson testified that petitioner alleged an accident date of August 29, 2019. Dr. Karlsson testified that the first date of treatment, according to the medical records that he reviewed, was on August 30, 2019. (P12)

Dr. Karlsson testified that it seemed petitioner was seeing a physician regarding bariatric surgery. Dr. Karlsson testified that petitioner had been previously scheduled for gastric bypass surgery, but had cancelled, and had no complaints of hip pain at that time and no listing of any recent injury in his history. Dr. Karlsson testified that he next reviewed a record from October 14, 2019 with Dr. Lin of Internal Medicine. Dr. Karlsson testified that petitioner was being seen for diabetes and had been to the emergency room for high blood sugar. Dr. Karlsson testified that there was no mention of a recent injury or of any back or hip pain at this visit. Dr. Karlsson testified that petitioner's extremity exam was listed as normal with no joint deformities, edema, or skin discoloration. Dr. Karlsson testified that petitioner's station and gait were normal, meaning he was standing and walking normally. (P13)

Dr. Karlsson testified that, based upon the history he obtained from petitioner and his review of the medical records, he diagnosed petitioner with obesity, mild hip osteoarthritis, and a labral tear. Dr. Karlsson testified that he did not believe that any of petitioner's diagnoses were causally related to the August 2019 training incident. Dr. Karlsson testified that his reasoning was that obesity and underlying arthritis were obviously preexisting problems, and on the video there is no evidence of any injury that would cause a labral tear, as he did not come down hard on his right leg, but instead, came down on the opposite leg. Dr. Karlsson testified that petitioner did not have that leg forcibly twisted, but it rolled over in one smooth maneuver. Dr. Karlsson testified that petitioner did not appear to be in any pain in the video during the maneuver or after the maneuver. (P14)

Dr. Karlsson testified that the hip treatment up until the point of his IME was reasonable irrespective of causation. Dr. Karlsson testified that he thought it would be reasonable for petitioner to proceed with an arthroscopic surgery of the right hip. Dr. Karlsson testified that he thought petitioner was capable of working full duty, as petitioner had given him a history that he had been working full duty, and he had no atrophy and walked with a normal gait on physical examination. Dr. Karlsson testified that he thought petitioner had preexisting conditions that could predispose him to labral tearing in the hip. Dr. Karlsson testified that petitioner's obesity would put more stress on the hip joint. Dr. Karlsson also testified that with diabetes there is an increased risk of developing soft tissue injuries. Dr. Karlsson testified that there was a small chance that the gout could predispose him to experiencing labral tearing in the hip, especially if he ever had any gouty inflammation in the hip joint. (P15)

Dr. Karlsson testified that, if petitioner was experiencing gouty inflammation in his left foot following the accident and was using a rolling walker while at work and while

performing activities, that potential gait abnormality could have aggravated a preexisting hip condition. Dr. Karlsson testified that, if petitioner was taking weight off his left foot, there would be an increase in weight placed onto his right side while he was getting around. (P16)

Dr. Karlsson testified that a diagnosis of osteoarthritis would be relevant to a gastric bypass consult because it is one of the things that justifies going through with surgery to lose weight since weight can be related to osteoarthritis. Dr. Karlsson testified that he documented in his IME report that he reviewed the Review of Systems outlined in the record. (P37)

Dr. Karlsson testified that the Review of Systems showed a history of spinal or lower extremity musculoskeletal disease and all-over joint pain and that petitioner's activity was limited by pain. Dr. Karlsson testified that there was no indication in the record of petitioner experiencing some kind of orthopedic injury to his back or right hip the day before. Dr. Karlsson testified that the October 14, 2019 record of Dr. Lin noted extremity exam findings. Dr. Karlsson testified that the findings in that record were listed as normal with no joint deformities, edema, or skin discoloration. (P38)

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (E) Notice and (C) Accident, the Arbitrator makes the following findings of fact and conclusions of law:

The testimony of the petitioner and other witnesses sufficiently establish the accident arising out of and in the course of the petitioner's employment with the respondent.
The petitioner testified to the incident and described what happened in detail.
The respondent's witnesses did not testify differently than did the petitioner. All evidence of record shows that the petitioner injured himself during a training wrestling exercise.

The respondent relies on, quite simply, semantics as to this issue as well as the issue of notice. It is also clear from the entirety of the evidence of record that the petitioner told the respondent about this and texted the respondent about this. Officers Sieber and Hoops both testified that the respondent used different reports for different types of incidents. None of this negates the fact that the petitioner was injured and that the respondent received timely notice under the Act.

In support of the Arbitrator's decision relating to (F) Causation and (K) prospective medical care, the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator notes that the petitioner treated with Dr. Haggerty for bariatric issues. Whether his records contain anything related to his work injury is not dispositive of the issue of accident.

But, given the petitioner's gaps in medical treatment and delayed need for a hip replacement, as well as the fact that he continues to work full duty and has lost no time off of work; the arbitrator finds that the testimonial evidence and the medical records do not prove that his current condition is causally related to his work accident.

The arbitrator finds the opinions of Dr. Karlsson as to causation to be more credible. Dr. Basran has seen Petitioner on a limited basis, notwithstanding his role as a treater. Dr. Basran was unaware of Petitioner's treatment with Drs. Haggerty and Lin in August and October 2019. He was unaware Petitioner had an active gout flare up in late 2019-early 2020. He did not know Petitioner was using a one-legged scooter for a number of months, but admitted usage of that scooter could further aggravate a hip condition on the opposite leg. He also acknowledged that Petitioner's obesity would place additional strain on the right hip, which is a weight bearing joint, and that his right hip symptoms could have been related to his significant obesity.

Dr. Basran acknowledged that the only time petitioner had documented complaints of right hip pain before he first treated him in July 2020 was when Petitioner was first seen at ILBJ on October 22. Dr. Basran acknowledged that after October 22, 2019 Petitioner did not have any reported complaints of right hip pain in any of his subsequent Illinois Bone & Joint records until June of 2020 when Mr. Van Acker called Illinois Bone & Joint Institute and alleged increasing right hip symptoms and wanted a hip surgery consult.

Based on the foregoing, the Arbitrator finds that Petitioner did sustain an accident that arose out of and in the course of his employment on August 29, 2019. The arbitrator finds that the petitioner did not prove causation.

Petitioner's request for prospective medical care is denied.

In support of the Arbitrator's decision relating to (L) TTD benefits the Arbitrator makes the following findings of fact and conclusions of law:

The petitioner testified that his small amount of lost time "was probably" due to his accident. There is no evidence of record proving entitlement to temporary total disability as a result of being authorized off of work for this incident. Compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015153
Case Name	Patricia Miller v. Village of Algonquin
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0150
Number of Pages of Decision	10
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Randall Sladek
Respondent Attorney	Trevor Granberg

DATE FILED: 4/7/2025

/s/Kathryn Doerries,Commissioner

Signature

25IWCC0150

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

☐ 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

PATRICIA MILLER,

Petitioner,

vs. NO: 22 WC 015153

VILLAGE OF ALGONQUIN,

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 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 views the evidence differently than the Arbitrator and, therefore, modifies the Arbitrator's Conclusions of Law regarding Issue (K) as set forth below.

Regarding Issue (K), the Commission vacates the Arbitrator's award for prospective medical benefits for a left thumb CMC arthroplasty and de Quervain's release, and in its place, the Commission awards prospective medical benefits in the form of a CMC joint denervation and wrist denervation with de Quervain's release. The Commission finds that Petitioner obtained three different surgical options from two treating hand surgeons and chose to proceed with the second treater's recommended surgery. The Commission further finds there is evidence that arthroplasty of the CMC joint may fail to cure or relieve Petitioner's symptoms and possibly worsen the condition.

After conservative treatment with Dr. Wellendorf and Dr. Schott at OrthoIllinois, including therapy and three injections, failed to relieve her left wrist pain complaints, Petitioner presented to Dr. Patel at Illinois Bone & Joint for evaluation on January 24, 2023. (PX2 at 3) Dr. Patel noted the presence of crepitus and pain in the CMC joint along with a positive Finkelstein's test. Dr. Patel discussed surgery in the form of CMC joint arthroplasty and de Quervain's release; however, he advised Petitioner to hold off for as long as possible due to her age. (PX2 at 5) Dr. Patel administered steroid injections into the left thumb CMC joint and the extensor compartment.

On February 21, 2023, Petitioner reported no improvement following those injections. (PX2 at 16) Dr. Patel again discussed CMC joint arthroplasty with de Quervain's release as a treatment option; however, at this visit he expressed concerns with "arthroplasty" due to the failed responses to the injections. In his treatment note for this visit, Dr. Patel indicated the failed response was "unusual." (PX2 at 18) Dr. Patel further stated "I am concerned that because the injections did not help *I am unsure whether surgical intervention as it can be beneficial for her she could have even more pain after surgery*." (Emphasis added.) *Id*. Dr. Patel then suggested an alternative option, advising Petitioner that a "left thumb *reconstruction tendon interposition* and de Quervain's release" would be an option to consider. (Emphasis added.) *Id*.

On March 7, 2023, Petitioner continued to complain of persistent left wrist pain and Dr. Patel formally recommended the ligament reconstruction procedure. (PX2 at 31-32) This recommendation signified that Dr. Patel had withdrawn "arthroplasty" from consideration. Dr. Patel's treatment plan memorialized Petitioner's decision: "After understanding the different treatment options, and their risks and benefits, they wish to proceed with the following plan of left thumb ligament reconstruction tendon interposition and de Quervain's release." (PX2 at 32)

Petitioner returned to Dr. Patel on March 31, 2023. At that visit, Dr. Patel commented, "[g]iven that injections did not help, *I am concerned that even doing ligament reconstruction* tendon interposition and de Quervain's release, *her pain may be worse or may not improve*." (Emphasis added.) (PX2 at 45) Petitioner indicated she wanted to consider her options. *Id*.

Petitioner then sought a second opinion from Dr. Rimington on September 28, 2023, also at Illinois Bone & Joint. Dr. Rimington recommended an entirely different type of surgery. Specifically, he recommended a left CMC joint *denervation* and wrist *denervation* with de Quervain's release. (Emphasis added.) (PX2 at 70-72) Dr. Rimington noted that an arthroplasty may possibly be needed in the future but explained that a denervation procedure was the better option in the present because arthroplasty could result in diminished strength. (PX2 at 72) He further explained that a denervation procedure would enable Petitioner to return to full duty work. *Id*. Dr. Rimington's records reflect that Petitioner agreed with this option and wished to proceed.

Respondent argues on review that in the event causation is affirmed, that the award for prospective medical should be modified because the Arbitrator's award was inconsistent with the surgical plan recommended by Dr. Rimington and accepted by Petitioner. The Commission agrees. As described above, Dr. Patel initially discussed arthroplasty but expressed reservations with that type of procedure based on Petitioner's age and the failed injections. Dr. Patel then recommended ligament reconstruction with a de Quervain's release and later expressed reservations with that procedure. Dr. Rimington noted that arthroplasty may possibly be needed in the future and

provided a sound medical rationale for his recommended denervation procedure, writing the following in his one and only treatment visit note of September 28, 2023:

> I explained to her that there is a risk that she would require thumb CMC arthroplasty with ligament interposition in the future *however this may affect her strength and her ability to perform her job* [whereas with] the denervation procedure she should be able to return to full duty work. I discussed this all with her and answered all of her questions and she would like to proceed with the surgery. (Emphasis added.) (PX2 at 72)

Under Section 8(a) of the Act, an employer's liability for medical benefits is limited to medical treatment which is reasonably required to cure or relieve from the effects of the accidental injury. 820 ILCS 305/8(a) (West 2020). Based on Dr. Patel's documented concerns and reservations, the Commission finds Petitioner failed to prove that CMC joint arthroplasty at the left thumb is medically reasonable and necessary. The Commission further finds that the left CMC joint denervation and wrist denervation with left de Quervain's release, as recommended by Dr. Rimington, is medically reasonable and necessary.

IT IS THEREFORE ORDERED BY THE COMMISSION that the award for prospective medical benefits in the form of a left thumb CMC arthroplasty and de Quervain's release is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay prospective medical benefits in the form of a left CMC joint denervation and wrist denervation with left de Quervain's release, as provided under §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.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*.The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 7, 2025

KAD/swj
O21825
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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	22WC015153
Case Name	Patricia Miller v. Village of Algonquin
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitratoin
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Randall Sladek
Respondent Attorney	Trevor Granberg

DATE FILED: 8/7/2024

/s/Gerald Napleton, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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

☐ 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)

Patricia Miller
Employee/Petitioner

v.

Village of Algonquin
Employer/Respondent

Case # **22** WC **15153**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Woodstock**, on **3/7/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **2/2/22**, 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 $**81,865.96 @ 42 weeks**; the average weekly wage was $**1949.18**.

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

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

Respondent shall be given a credit of $**6,565.66** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**6,565.66**.

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

ORDER

Respondent shall approve and pay for the left thumb CMC arthroplasty and deQuervain's release as provided in Section 8(a) and 8.2 of the Act.

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

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

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

/s/ Gerald W. Napleton
Signature of Arbitrator

August 7, 2024

FINDINGS OF FACT

Petitioner, a police officer for the respondent for over 22 years, was injured on February 2, 2022 while attempting to handcuff an individual. (T6-7) In the process, the individual fell on top of petitioner's left hand and wrist. (T7) Petitioner reported the injury to her supervisor, finished her shift, and elected to go home without medical care that evening. (T8-9). Petitioner signed a medical refusal form on the date of her injury. RX4. The following morning Petitioner called her deputy chief and advised him of ongoing pain and swelling in her left wrist. Petitioner was instructed to seek treatment at OrthoIllinois – Injury Express. (T9-10)

She was seen that day, February 3, 2022, by Dr. Wellendorf and was taken off of work, gave Petitioner a splint, and prescribed meloxicam. After an MRI, Dr. Wellendorf diagnosed deQuervain's disease, a ganglion cyst of the volar aspect of the wrist and arthritis of the CMC joint of the left thumb. Over the next month, Dr. Wellendorf issued a series of steroid injections which provided only minimal relief. He referred petitioner to Dr. Schott within the same practice.

Dr. Schott evaluated petitioner on March 10, 2022 for pain in the CMC joint and radial aspect of the left thumb. Petitioner advised Dr. Schott of a previous left-hand injury in 2005 and advised that injections had not provided relief. Dr. Schott recommended therapy and returned the petitioner to light duty. Through her visit with Dr. Schott on July 14, 2022, petitioner continued to present with swelling, stiffness and weakness in the left wrist and thumb. As of that last visit, Dr. Schott stated there was nothing structural to treat and recommended ongoing bracing, returning to activity as pain allows, work full duty, and follow up as needed. PX1a.

At respondent's request, Dr. Balaram performed a Section 12 examination on July 25, 2022. He noted Petitioner complained of residual pain and swelling at the base of her left thumb, has objective findings of volar radiocarpal wrist ganglion and left thumb CMC arthrosis. No inappropriate illness behavior signs were noted. Dr. Balaram opined that her CMC arthrosis is pre-existing along with some arthritis at the base of the thumb which is a common place for idiopathic onset osteoarthritis. Dr. Balaram stated that Petitioner sustained a radiocarpal sprain when she had her accident. Dr. Balaram did not believe petitioner was a surgical candidate at that time. Petitioner is at MMI and could return to full duty work at that time, per Dr. Balaram. RX1.

Petitioner saw Dr. Schott on November 9, 2022 and complained of pain of 6/10 with activity and 2/10 at rest along with swelling. Dr. Schott recommended Petitioner continue to wear her brace when needed, take Meloxicam once a day, can work full duty, return to activity as pain allows, and to follow up as needed. PX1a.

Petitioner chose to see Dr. Patel at Illinois Bone and Joint on January 24, 2023, where she complained of sharp, throbbing, and achy pain in her left wrist which is aggravated by activity, position change, and repetitive motion. Dr. Patel noted the MRI revealed mild degenerative changes at the basal joint, degenerative changes of the first CMC joint, and a small volar radial scaphoid ganglion. A repeat steroid injection was performed and surgery consisting of deQuervain's release and CMC arthroplasty was discussed but given her age it was suggested that she wait. Dr. Patel did not restrict Petitioner from work. Petitioner followed up with Dr. Patel again in February and March with similar complaints and similar discussions.

Dr. Balaram performed a second Section 12 examination on March 14, 2023. Dr. Balaram's impression was left thumb first dorsal compartment tenosynovitis and left thumb CMC arthritis. Dr. Balaram stated Petitioner sustained a temporary exacerbation of her pre-existing arthritis which resolved and that her left thumb CMC arthritis and tendon issues are a natural progression of her CMC arthrosis. RX2. Dr. Balaram noted that Petitioner's subjective complaints correlate with CMC arthritis and deQuervain's tenosynovitis and match her objection radiograph findings. Dr. Balaram believes Petitioner would be a surgical candidate based on her radiographs but, again, the condition is pre-existing and not work-related. RX2. Petitioner is still at MMI regarding her injury.

Petitioner continued treatment with Dr. Patel through August 8, 2023. As of the last visit, she reported she was 0% better and continued to have pain from 3-7/10 in severity which was sharp, shooting, and achy in nature. Swelling and discomfort remain. Dr. Patel noted some possible mild swelling and grinding on examination. Dr. Patel discussed treatment options with Petitioner, including surgery. Petitioner was to follow up with symptoms worsen or fail to improve. Petitioner continued to work full duty.

Petitioner sought another opinion with Dr. Rimington, also of Illinois Bone and Joint, on September 28, 2023. The petitioner described pain with gripping, grasping, and twisting. Upon examination and discussion, Dr. Rimington recommended a thumb CMC arthroplasty and deQuervain's release. He advised that surgery may not relieve all of petitioner's pain but that she could expect to return to full duty 2-3 months post-surgery.

Petitioner testified that she sought another opinion after Dr. Patel as she was concerned about proceeding with surgery and its potential efficacy. T. 43. A different surgical approach was discussed with Dr. Rimington but the possibility of a CMC arthroplasty and lingering symptoms remained. T. 44.

On November 2, 2023 Dr. Balaram authored another Section 12 report stating that although Petitioner is a candidate for a procedure for her arthritis, it is not causally related to her work incident of February 2, 2022. Dr. Balaram opined that the joint denervation procedure recommended can provide relief with CMC arthrosis though a natural progression is expected. Dr. Balaram echoed his previous opinions which remain unchanged.

Petitioner testified to experiencing pain during activity and has difficulty turning things. She also experiences numbness and shooting or aching pains in her hand when sitting. She works her full duty job and last saw her doctor in September of 2023. She has reported no new injuries to her left hand, wrist, or thumb.

Respondent presented the testimony of Sergeant Stenger, petitioner's Sergeant and supervisor for the last five months. (T50) Sergeant Stenger has known Petitioner for 20 years, 16 of which with the Respondent. He testified that he believes Petitioner can perform all of her job duties as a patrol officer and that Petitioner has worked consistently. Sergeant Stenger testified that Petitioner would complain to him from time to time about wrist pain and also stated that he has also observed her wearing a brace though it has not impacted her job performance. (T52)

CONCLUSIONS OF LAW

The only issues in dispute per the signed Request for Hearing/stip sheet (AX1) are causation and prospective medical.

The Arbitrator finds the testimony of Petitioner to be credible. Petitioner had a prior medical issue in her hand in 2005 but did not seek recent medical treatment for her hand until her accident on February 2, 2022. Petitioner provided credible histories of her injury and subjective complaints to her treating doctors. It is incumbent on Petitioners in claims as these to prove an injury aggravated or accelerated a pre-existing disease to the extent that the claimant's current state of ill-being can be attributed to the work-related injury. See *Sisbro v. Industrial Comm'n,* 207Ill.2d 193, 205-206 (2003). Petitioner's credible and unrebutted testimony indicates she was asymptomatic in her left wrist and hand prior to the accident at issue. Petitioner credibly testified to the mechanism of her injury which involved an arrestee falling on her hand after a struggle. Petitioner's histories and ongoing complaints are corroborated by the medical records in evidence.

The Arbitrator does not find Dr. Balaram's opinion that Petitioner suffered only a temporary sprain to her wrist to be convincing. The Arbitrator is persuaded by the totality of the evidence in the record, notably the Petitioner's credible testimony of the mechanism of her injury, her ongoing subjective complaints, and their corroboration in the medical records. Accordingly, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the February 2, 2022 work injury.

Next, concerning the issue of future medical, the Arbitrator must address a threshold matter. Respondent has alleged that Petitioner exceeded her choice of two physicians under Section 8(a) of the Act.

Petitioner testified that she was advised to seek treatment at OrthoIllinois by Deputy Markham the day after her injury. Respondent argues that Petitioner's testimony is contradicted, and accordingly, that Petitioner lacks credibility as evidenced by Petitioner having signed a medical refusal form the day of her injury and that Petitioner's 19(b) petition does not indicate that she had received treatment from an employer-selected medical provider. Respondent did not offer any evidence to dispute that Deputy Markham advised Petitioner to seek treatment at OrthoIllinois. It is noted that if OrthoIllinois were to be considered Petitioner's first choice then her treatment with Dr. Rimington would fall outside of her two choices.

The Arbitrator finds that the initial referral by Deputy Markham on behalf of the Respondent to Ortho Illinois makes OrthoIllinois a Respondent's choice of physician. The Arbitrator does not find Petitioner initially declining treatment and then waiting one day to seek treatment at OrthoIllinois somehow transforms this choice from one of Respondent's to one of Petitioner's. Petitioner then sought additional doctors to address her ongoing issues.

Lastly, having found in favor of the Petitioner on the issue of causation, the Arbitrator finds that Respondent shall authorize and pay for the left thumb CMC arthroplasty and DeQuervain's release as prescribed by Dr. Rimington. Dr. Balaram agrees that Petitioner is a surgical candidate but opines that the need is not related to her injury. Petitioner testified credibly as to her ongoing issues and the medical records demonstrate consistent conservative medical treatment which has not alleviated Petitioner's concerns. Accordingly, taking the record as a whole into consideration, the Arbitrator awards the CMC arthroplasty and orders Respondent to pay for such along with any necessary and related post-surgical care pursuant to Section 8(a) and Section 8.2. of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001235
Case Name	Daniel Conklin v. Flowserve
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0151
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Daniel Haygood

DATE FILED: 4/7/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL CONKLIN,

Petitioner,

vs. NO: 24 WC 01235

FLOWSERVE,

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 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. 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 27, 2024, is hereby affirmed and adopted.

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

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

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

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

April 7, 2025

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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	24WC001235
Case Name	Daniel Conklin v. Flowserve
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Daniel Haygood

DATE FILED: 8/27/2024

/s/ Jessica Hegarty, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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
19B ARBITRATION DECISION

Daniel Conklin,
Employee/Petitioner

v.

Flowserve,
Employer/Respondent

Case # **24** WC **001235**

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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Geneva**, on **July 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. ☐ 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 **July 8, 2023**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**76,310.00**; the average weekly wage was $**1,467.50**.

On the date of accident, Petitioner was **64** years of age, married with **0** dependent children.

Petitioner has not received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0** 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

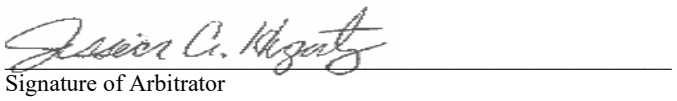
Respondent shall pay reasonable and necessary medical expenses of $157.00, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Petitioner is entitled to prospective medical treatment, including a reverse total shoulder arthroplasty for his left shoulder, consistent with the recommendations of Dr. Murphy, and all necessary and related pre- and post-surgical treatment.

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

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

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



Signature of Arbitrator

August 27, 2024

STATE OF ILLINOIS	)	
	)	SS
COUNTY OF KANE	)	

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DANIEL CONKLIN,	)	
	)	
Employee/Petitioner,	)	
	)	No: 24 WC 001235
	)	
v.	)	Arbitrator Hegarty
	)	
FLOWSERVE CORPORATION.	)	
	)	
Employer/Respondent.	)	

ADDENDUM TO THE DECISION OF ARBITRATOR

This matter proceeded to hearing on July 31, 2024, in Geneva, Illinois, before Arbitrator Jessica Hegarty pursuant to Section 19(b) of the Workers' Compensation Act (herein the "Act") (820 ILCS 305/1 et seq. (West 2006).

The disputed issues are causal connection, Respondent's liability for the medical bills, and whether Petitioner is entitled to prospective medical treatment (Arbitrator's Exhibit "Arb" 1).

STATEMENT OF FACTS

On July 8, 2023, Daniel Conklin (herein referred to as "Petitioner") was 64-years-old and had been employed by Flowserve Corporation (hereinafter referred to as "Respondent") for approximately 20 years.

Petitioner testified that prior to July 8, 2023, other than normal aches and pains, he had no prior left shoulder problems. He had full range of motion in his left shoulder, no left shoulder work restrictions, and had undergone no prior medical treatment.

Respondent does not dispute that on July 8, 2023, Petitioner sustained a work-related accident (Arbitrator's Exhibit "Arb" 1). Petitioner testified that in the course of his work duties, he was trimming off some excess cardboard with a utility knife when he took a step backward, tripped on a broken board, lost his balance, and fell to the ground, landing on his left side and left shoulder. After the fall, Petitioner noticed that his shoulder did not want to move very well.

On the accident date, July 8, 2023, Petitioner presented to Edward Occupational Health in Bolingbrook where he reported a history of standing on a skid when he stepped backward, lost his balance and fell onto his left shoulder. (Petitioner's Exhibit "PX" 2, p. 9). Petitioner also reportedly struck his lumbar back and right posterior hip when he fell. Dr. Kathleen Kelley noted Petitioner's complaints of pain at an 8 out of 10 in his left shoulder, right buttocks, and right lower back. Petitioner complained of pain when lifting his left arm. He denied any prior surgery or left arm injury. (Id.). On examination, soreness over the anterior aspect of the humeral head of the left shoulder was noted. (Id., at 9). Passive abduction of the shoulder caused pain at 30 degrees and active abduction caused pain at 20 degrees. Pain with external rotation of the shoulder was noted along with pain over the posterior lateral right hip and generalized tenderness in the low lumbar back and sacrum. Dr. Kelley noted lumbar range of motion was limited to 60 degrees of flexion and 10 degrees of extension before eliciting pain. (PX 2 at 10; PX 3 at 5.) There were no fractures evident on x-ray, osteoarthritic changes were observed about the AC joint. (PX. 2, pgs. 7-12). Petitioner was assessed with left shoulder and hip contusions and a lumbar strain. (Id., at 10.) He was discharged with instructions to ice his shoulder, take over-the-counter pain medications, and modified work restrictions were noted. (Id.)

On July 12, 2023, Petitioner presented to orthopedist Dr. Brian Murphy at Duly Health Care in Naperville following a July 8, 2023, work accident when Petitioner slipped and fell onto his left shoulder. Petitioner complained of significant difficulty and pain with left shoulder range of motion in any direction. On exam, Dr. Murphy noted weakness with testing of the supraspinatus and the infraspinatus along with pain with abduction and forward flexion beyond 90°. Per his review of the previous X-rays, Dr. Murphy noted evidence of profound rotator cuff dysfunction and noted concern over a finding at the inferior rim of the glenoid which might represent a fracture. Dr. Murphy ordered an MRI for further evaluation of the glenoid, labrum, and rotator cuff and restricted Petitioner from any left arm lifting or overhead work. (Transcript "T" pgs. 12-13; PX. 4, pgs. 111-115).

On July 19, 2023, Petitioner underwent an MRI of his left shoulder at Edward Hospital, that revealed: 1. A large retracted full-thickness tear of the rotator cuff involving the supraspinatus and infraspinatus tendons at their humeral insertion; 2. A small focal tear of the superior glenoid labrum; 3. Moderate to marked degenerative hypertrophy at the acromioclavicular joint, with resulting encroachment on the underlying soft tissues which the radiologist noted could be associated with a clinical impingement syndrome; 4. No evidence of acute glenoid fracture was evident. (PX 3, p. 4).

On July 21, 2023, Dr. Murphy reviewed the MRI noting a rotator cuff tear with evidence of atrophy of the supraspinatus which indicated a portion of the pathology was chronic in nature. Dr. Murphy noted that Petitioner likely had "an acute on chronic event". Petitioner reported improvement with his left shoulder range of motion although the motion that remained was limited and painful. On exam, the doctor noted weakness of the supraspinatus tendon and the "empty can" position. Petitioner could abduct and flex to roughly 60 degrees. Dr. Murphy prescribed four weeks of physical therapy. If no improvement was appreciated, surgical options would be considered. Petitioner's prior work restrictions were continued. (T., p. 14; PX. 4, pgs. 93-96).

On August 30, 2023, Dr. Murphy noted Petitioner had been attending physical therapy. Petitioner had minimal pain and improved motion although significant limitations persisted in the left shoulder. On examination, continued deficits in range of motion with weakness in the supraspinatus and empty can testing

were noted. Dr. Murphy diagnosed a traumatic complete tear of the left rotator cuff. Dr. Murphy opined that Petitioner had "seen minimal improvement with active motion of the shoulder with therapy." Based on Petitioner's MRI findings, Dr. Murphy opined that Petitioner had a "very poor prognosis" for repair of the rotator cuff without surgery. He advised reconstructing the shoulder via a reverse total shoulder arthroplasty procedure. Petitioner agreed to proceed with the proposed surgery. Prior work restrictions were continued. (T. pg. 14; PX. 4, pgs. 82-86).

On December 27, 2023, Dr. David Saper performed a medical records review at Respondent's request. The doctor reviewed Petitioner's occupational health initial records, MRI films, and orthopedic records from Dr. Murphy. Dr. Saper opined that Petitioner's fall was "an acute exacerbation of underlying substantial massive left rotator cuff tear." (RX 1, p. 48.). Dr. Saper noted there was no evidence that landing on the shoulder caused an acceleration beyond a normal progression of Petitioner's pre-existing permanent left shoulder pathology. At most, Petitioner had sustained a temporary exacerbation of his underlying chronic pathology which would be limited to about 6 to 12 weeks of pain. Concerning treatment for Petitioner's condition, Dr. Saper agreed that Dr. Murphy's recommendation of reverse total shoulder arthroplasty was indicated but unrelated to the accident. Dr. Saper deemed Petitioner at MMI and could return to work full duty. (RX1 50.)

On January 25, 2024, Petitioner followed up with Dr. Murphy with persistent functional limitations in his left shoulder. Dr. Murphy continued to recommend a reverse total shoulder arthroplasty. (PX. 4, pgs. 60-63).

On April 10, 2024, Petitioner presented for an in-person examination with Respondent's Section 12 physician, Dr. David Saper. On examination, Dr. Saper noted "substantial crepitus with any range of motion of the left shoulder" and active forward flexion of "only about 120 degrees," with active external rotation limited to 30 degrees and internal rotation "just about the sacrum." Dr. Saper noted Petitioner had "substantial weakness and dysfunction with rotator cuff testing". None of Dr. Saper's causation opinions changed. He agreed that a reverse total left shoulder arthroplasty was indicated, unrelated to Petitioner's work-related fall. (RX 1, pp. 42-45).

Petitioner continued to treat with Dr. Murphy, including an evaluation of his hands for unrelated carpal tunnel, which in turn produced a recommendation for carpal tunnel surgery. (PX 4, p. 34.) Petitioner was taken off of work for two weeks for said surgery. (T. 16; PX 7, p. 21.)

Deposition of Dr. Brian Murphy

On May 16, 2024, the evidence deposition of Dr. Brian Murphy was conducted. Dr. Murphy graduated medical school in 1999 and completed his residency and a fellowship in hand and upper extremity surgery at the University of Chicago in 2005, whereupon he began practicing at M&M Orthopaedics. In 2007, Dr. Murphy became board certified in orthopedic surgery and was re-certified in 2017. (PX 7, Ex. 1.)

Dr. Murphy testified that he had been treating Petitioner for unrelated carpal tunnel syndrome prior to his work accident. (Id., p. 9.)

Dr. Murphy opined that the work accident aggravated the preexisting tear in Petitioner's left rotator cuff. (Id., p. 17.) The doctor noted that Petitioner's left shoulder was asymptomatic prior to the work accident and that

his function significantly worsened after the accident. Furthermore, Petitioner never returned to his asymptomatic baseline status following his work accident. (Id.)

Although there was some form of preexisting tear, Dr. Murphy noted it was not possible to ascertain know how far Petitioner's tendons had retracted prior to the July 19, 2023, MRI, or to quantify what portion was chronic versus acute. (Id., p. 27.) Dr. Murphy testified: "Again, I don't have a way, and I don't know of anybody else that does, to truly state what the degree of retraction looked like or even what the rotator cuff looked like, you know, prior to an injury such as this versus afterwards." (Id, p. 28.) A pre-accident ultrasound or advanced imaging study of the shoulder prior to the accident would be required to make such a determination. (Id., p. 27.)

Dr. Murphy found the mechanism of injury, falling onto the left shoulder, was adequate to contribute to the aggravation of Petitioner's condition.

Dr. Murphy testified that a reverse total shoulder replacement surgery was a "great option" for treating Petitioner's condition and he continued to recommend that Petitioner undergo the procedure. (Id., pp. 15-16.) Dr. Murphy noted that Dr. Saper agreed with him regarding Petitioner's treatment and proposed surgery. (Id., p. 20.).

On cross examination, Dr. Murphy agreed that the July 8, 2023, post-accident x-rays revealed osteoarthritic changes. He agreed that he sees patients of similar age to Petitioner with shoulder arthritis. (Id., pp. 23-24). The post-accident x-rays and MRI showed no acute fractures. Furthermore, Dr. Murphy agreed that the MRI showed greater than 50% atrophy of the supraspinatus. (Id., pg. 25).

Deposition of Dr. David Saper

On May 31, 2024, the evidence deposition of Dr. David Saper was conducted. (RX1.) Dr. Saper graduated from medical school in 2010 and completed his residency in 2015. (Id., pp. 5-6.)

Regarding his interpretation of Petitioner's post-accident MRI, Dr. Saper agreed with Dr. Murphy that it showed a rotator cuff tear including the supraspinatus with glenoid retraction and atrophy that had turned part of the muscle into fat from lack of use of a long period time. (Id., pgs. 8-9). Dr. Saper opined that the retraction was medial to the glenoid which indicated a chronic tear. (Id., pg. 9). He opined that the mechanism of injury was insufficient to cause the type of chronic tear and degeneration seen in the shoulder. (Id., pg. 10).

Dr. Saper testified that if a pre-accident MRI existed, he was certain the pre-accident MRI would show "the same result" as the post-accident MRI. (Id., p. 11.) Dr. Saper testified that Petitioner's fall exacerbated the underlying chronic pathology in Petitioner's left shoulder and such exacerbation would be limited to 6-12 weeks of pain. (Id., pp. 20-21.)

On cross-examination, Dr. Saper agreed that Petitioner had no known symptoms in his left shoulder before the accident, that he became symptomatic after the accident, and that Petitioner did not return to baseline post-accident. (RX1 23-24.)

Petitioner's testimony

Petitioner testified he continued working for Respondent and performed the same job duties post-accident although he adhered to his left shoulder restrictions and required more help from coworkers to perform his job duties. (T. pp. 21-22.) Petitioner continued working for Respondent until he was taken off work for his unrelated carpal tunnel surgery. (Id., p. 16.) He is now off work to take care of his mother, unrelated to this accident. (Id.)

Petitioner testified that he would like to proceed with the surgery proposed by Dr. Murphy. (Id., p. 16.)

CONCLUSIONS OF LAW

F. Whether the current condition of ill-being in Petitioner's left shoulder is causally related to his accident on July 8, 2023.

Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Industrial Comm'n, 37 Ill. 2d 123, 127 (1967).*

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 63-64 (1982)*

In cases involving a preexisting condition, an employee's recovery depends on the employee's ability to 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. *Sisbro, Inc. v The Industrial Commission, 207 Ill. 2d 193, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).* Although 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. *Id. at 205.* The issue is whether the disability alleged arose proximately from the pre-existent pathology alone or whether the condition was aggravated by the trauma and made worse to the point of deterioration and disability. (Id.).

The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705*. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S., 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003).*

In this case, the preponderance of evidence including Petitioner's credible and unrebutted testimony, the medical records in evidence, the credible opinions and testimony of Dr. Murphy, and the chain of events, supports a finding in favor of Petitioner on this issue.

Prior to July 8, 2023, Petitioner had never undergone treatment for his left shoulder. His testimony regarding his pre-accident left shoulder condition is unrebutted. He had full range of motion and the ability to lift his

left shoulder up and to the side before his accident. On the accident date, he had no overhead work restrictions. He was physically capable of performing his regular work duties as a pump mechanic which required him to lift and assemble industrial pump components and he worked for Respondent, without incident, in relation to his left shoulder, for 20 years prior to his accident.

The accident in this case is undisputed. Petitioner's testimony that he was working on a skid when he lost his balance, fell to the ground, and landed directly on his left shoulder, is unrebutted and corroborated by the histories reported to his medical providers and to Respondent's IME, Dr. Saper. Petitioner sought treatment hours after his accident with complaints of acute left shoulder pain at an 8/10 and he exhibited restricted range of motion in his left shoulder on examination. He was restricted from full-duty work on July 8, 2023, and has not returned to full-duty work since his accident. Dr. Murphy regularly examined Petitioner following the accident noting consistent reduced active range of motion in his left shoulder, with the ability to actively abduct it to only 50 or 60 degrees without significantly relying on the motion of his torso to move his left arm. Likewise, post-accident, Petitioner consistently exhibited significant weakness when his supraspinatus tendon was tested as well as in the "empty can" test. The chain of events in this case, without any medical opinions, is sufficient circumstantial evidence to establish a causal relationship between Petitioner's work-related fall and his current condition of left shoulder pain and disability.

Regarding the medical opinions in this case, Respondent's IME, Dr. Saper, agreed with Dr. Murphy that Petitioner suffered an "acute on chronic" exacerbation of an underlying massive left rotator cuff tear.

Dr. Saper's opinion that the work-related fall resulted in only a temporary exacerbation is unsupported by the facts in this case, most notably, Dr. Saper's own examination of Petitioner's left shoulder 9 ½ months following the accident, far beyond the 6–12-week time he related to the accident.

At Dr. Saper's evidence deposition, he admitted to knowing very little about Petitioner's pre-accident baseline including Petitioner's work duties, whether his duties required Petitioner to lift and carry anything, or if Petitioner had been working full duty before the accident. (RX 1 18-19.) Ultimately, Dr. Saper admitted on cross-examination that Petitioner was asymptomatic prior to the accident, symptomatic following the accident, that he remains symptomatic, and did not return to baseline following his accident:

Q: And the actual mechanism of injury was that he fell on his shoulder, is that correct?

A: That's true.

Q: After the incident, the patient became symptomatic, correct?

A: True.

Q: Previous to the injury, he had no symptoms, correct?

A: That we know of, true.

Q: Did he go back to baseline preinjury after the injury? Meaning did he go -- was he again asymptomatic and free of pain after the date of accident?

A: It appears not. (RX 1, pp. 23-24).

The above testimony on cross-exam establishes a chain of events showing that Petitioner was asymptomatic prior to the accident and symptomatic following the accident. Dr. Saper agrees that Petitioner has not returned to his pre-accident, baseline status and that Petitioner's left shoulder requires surgery. His conclusions regarding the 6–12-week timeframe for recovery is unsupported by any evidence most notably, his own examination.

Dr. Saper's opinions regarding the results of a pre-accident MRI, is speculative and has no basis in fact. Likewise, Dr. Saper's opinions regarding the insufficiency of the mechanism of injury (i.e. a fall directly onto the left shoulder) fails to consider the chain if events. In addition, the doctor misstates Petitioner's burden of proof as Petitioner is not expected to prove that his accident was the sole causative factor, or even the primary causative factor in his current condition of ill-being. Dr. Saper has no evidence that Petitioner's current condition arose proximately from his pre-existent pathology alone.

Accordingly, the Arbitrator does not attribute any weight to Dr. Saper's conclusions that the accident in this case was related for only 6-12 weeks following the accident.

The Arbitrator relies on the opinions of Petitioner's treating orthopedic surgeon, Dr. Murphy as his findings are substantiated by the chain of events and the MRI Petitioner underwent less than 2 weeks following his accident. Dr. Murphy's causation opinions and analysis of Dr. Saper's reasoning are logically sound:

> *In reviewing Dr. Saper's report, he states it is unclear if the claimant had any prior issues with the shoulder. Per the records that were provided to him as well as per the medical records from my prior treatment of the patient, he did not have any issues with the left shoulder prior to the work-related accident. The IME reports that this would be an exacerbation of an underlying chronic pathology. Dr. Saper states the exacerbation should resolve in 6 weeks.*
>
> *Of note, this has not resolved to this point in time. An exacerbation by definition would be a return to the baseline prior to the original incident. As the claimant had no issues with the shoulder prior to his work injury and has not returned to his baseline and still has significant dysfunction of the shoulder over 8 months out from his injury, this would be defined as an aggravation of an underlying chronic condition, and would be an acute on chronic change in his condition, as I had stated in my previous notes. (PX4 18.)*

Regarding Petitioner's preexisting condition, Dr. Murphy noted that studies have shown a chronic degenerative rotator cuff tear, evident on MRI imaging, can exist in human being without any corresponding symptoms:

> *[W]e know that there are patients as we age the rotator cuff becomes thinner and will actually tear or essentially peal [sic] off the humeral head, the ball of the shoulder.*

> *So, they have done studies where they will take 100 patients age sixty, age seventy, age eighty, they have no symptoms, they're completely asymptomatic, have excellent function of the shoulder, and they'll do MRIs on them and they will see in some cases substantial rotator cuff tears, but these patients are able to have a fully functional shoulder. (PX7 30.)*

The Arbitrator finds Dr. Murphy's opinions in this case reasonable and well-substantiated by his factual analysis.

Based on the preponderance of credible evidence in this case, including the credible, unrebutted testimony of Petitioner, the credible opinions of Dr. Murphy, the chain of events, and the treating medical records, the Arbitrator finds that Petitioner has sustained his burden on this issue.

J. Whether the medical services provided to Petitioner were reasonable and necessary.

Respondent submitted a payment ledger showing medical expenses were paid through the date of the medical records review report authored by Dr. Saper. Petitioner paid $157.00 out-of-pocket. No other related balance remains. (AX1; PX2; PX3; PX4; PX5; PX6; T 24.) The Arbitrator finds all medical services provided to Petitioner for his left shoulder following his July 8, 2023, accident reasonable and necessary. Respondent shall pay reasonable and necessary medical expenses of $157.00.

O. Prospective Medical Treatment

The Arbitrator has found a causal connection between the current condition of ill-being in Petitioner's left shoulder and his accident on July 8, 2023. Given that fact, there is no credible dispute regarding the necessity of the treatment recommended by Dr. Murphy, which is a reverse total arthroplasty. Dr. Murphy opined that Petitioner had a very poor prognosis if he does not undergo the recommended procedure. In his IME report and at his deposition, Dr. Saper testified that Petitioner would benefit from the recommended procedure. Petitioner testified that he wishes to undergo the recommended surgery.

Based on the preponderance of credible evidence in this case, the Arbitrator finds that Petitioner is entitled to prospective medical treatment, including a reverse total shoulder arthroplasty for Petitioner's left shoulder, consistent with the recommendations of Dr. Murphy and all necessary and related pre- and post-surgical treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC021596
Case Name	Brian Bronke v. R.R. Donnelly
Consolidated Cases	12WC021597; 13WC024555;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0152
Number of Pages of Decision	35
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Emilie Miller

DATE FILED: 4/8/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN BRONKE,

Petitioner,

vs. NO: 12WC021596

R.R. DONNELLY,

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 causation, medical expenses, nature and extent, penalties and attorney's fees, and being advised of the facts and law, affirms and adopts, with the following changes, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's finding that Petitioner failed to prove he is permanently and totally disabled. However, we clarify the sequence of events relating to Dr. Brandon, Petitioner's primary care physician. Dr. Brandon's records reflect that Petitioner's first visit to "establish care" was on March 3, 2021. *Px4 at 2, T2.485; Id. at 440, T2.916; Id. at 596, T2.1081.*[1] There was no visit with Dr. Brandon on May 9, 2021, so we strike those references on pages 8 and 20 of the Decision. As discussed below, Petitioner did see Dr. Brandon on May 9, 2022.

On December 16, 2021, in conjunction with Petitioner's application for Social Security disability, Dr. Brandon completed a Physical Residual Functional Capacity Questionnaire and wrote that Petitioner had been "with Duly since 2/25/21." *Px4 at 568, T2.1051.* In the Questionnaire, Dr. Brandon indicated Petitioner was able to walk one city block without rest, sit

[1] The electronic transcript in this case was uploaded in CompFile as two separate PDF files. The page numbers cited as "*T1*" refer to Volume 1 and "*T2*" refers to Volume 2.

for 30 minutes at a time, stand for 15 minutes at a time, stand/walk a total of less than two hours a day and sit for "about 2 hours" a day. *Px4 at 568-570, T2.1051-53*. Dr. Brandon also estimated that Petitioner would likely be absent from work "more than four days per month." *Id. at 570, 1053*.

On May 9, 2022, Petitioner saw Dr. Brandon who noted, "He is asking about an FCE [Functional Capacity Evaluation] for RTW," however an FCE was not ordered on that date. *Px4 at 205, T2.681*. The FCE was eventually ordered by Dr. Brandon on September 30, 2022. *Px4 at 40, T2.516*. Petitioner underwent the FCE on October 10, 2022. *Rx7, T2.3028*.

The FCE indicated Petitioner was "functionally employable at this time" and "recommended that client is placed in a position that allows him to alternate between sitting and standing." *Id*. The report stated, "Client demonstrated capabilities and functional tolerances to function within the high end of light to low end of the medium physical demand level with the heaviest weight able to lift within the demand level is 20# from floor to waist and 25# from 12" to waist and 25# from waist to shoulder." *Id. at T2.3029*.

With assistance from vocational counselors at Vocamotive, including Ms. Kari Stafseth-Zamora, Petitioner was able to obtain an employment opportunity with KSM Electronics for a "light assembly position that allowed employees to alternate between sitting and standing" with a starting wage of $18.00 per hour. *Rx9 at 136, T2.3340*.

Ms. Stafseth-Zamora testified that Petitioner requested that his start date be delayed until March 27, 2023 "so he could take a vacation" but he ended up starting on March 22nd. *Rx8-6/27/23 at 13, T2.3145*. We note that Petitioner testified he didn't really take a vacation but "wanted to veg out and stay home a few days before I started my new job." *T1.67-68*. We believe this is significant and reflects Petitioner's lackadaisical attitude toward starting his new job.

Petitioner attended the KSM job for one day on March 22, 2023. *Rx9 at 136, T2.3340*. Ms. Stafseth-Zamora testified that Petitioner's position as an assembler at KSM was within the physical requirement guidelines outlined by his FCE and that Petitioner was terminated from that employment based on his absenteeism. *Rx8-6/27/23 at 27, 3159*. Petitioner testified that he was unable to perform the KSM job since it caused him pain and he could not return the next day. *T1.33-34*. He argues "the FCE did not address, and did not dispute, that [he] would need unscheduled time off work to recover from his flares from work" (*P-brief at 5*). However, we find that Petitioner's argument is not based on any valid, current medical opinion.

Dr. Brandon completed the Functional Capacity Questionnaire for Social Security disability purposes in December 2021, almost ten months prior to the FCE, which was performed on October 10, 2022. We find that the opinions contained in Dr. Brandon's 2021 Questionnaire were superseded by the FCE. Petitioner never returned to Dr. Brandon to obtain restrictions that differed from the physical capabilities listed in the FCE nor is there any post-FCE medical opinion to support Petitioner's claim that his condition would require unscheduled absences from work. Therefore, we find that Petitioner simply refused to return to an accommodating job that

was within his physical capabilities. We agree with the Arbitrator's finding that Petitioner failed to prove that he is permanently and totally disabled.

We next address the Arbitrator's analysis of the five permanency factors in §8.1b(b) of the Act. With regard to factor (i), we find that Dr. Mather provided an AMA rating in his December 10, 2018 report, which was prior to Petitioner's final cervical surgery on December 7, 2020 and his FCE on October 10, 2022. Therefore, Dr. Mather's AMA rating is invalid and we give this factor no weight.

The Arbitrator gave factor (ii) "great weight" and noted that Petitioner was employed in a heavy position at the time of his injury and currently had "light demand level" restrictions. However, Petitioner's vocational counselor, Ms. Stafseth-Zamora, testified that Petitioner's pre-injury position required physical capabilities at a medium level. *Px12 at 25, T2.2275*. Petitioner's current restrictions, per the FCE, are "within the high end of light to the low end of the medium physical demand level." *Rx7, T2.3029*. We also point out that the FCE results include restrictions related to Petitioner's current lumbar spine and left shoulder conditions, which the Arbitrator correctly found to be not causally related to his work accidents. On November 7, 2022, Respondent's §12 physician, Dr. Gleason, opined that Petitioner's "Restrictions with respect to stair climbing and prolonged walking would be related to his lower back." *Rx5 at 2, T2.2985*. Therefore, Petitioner's permanent restrictions are based, in part, on conditions that are not causally related to his accidents. Petitioner testified that he could not perform security work because he couldn't walk and had problems with stairs. *T1.69*. We find these limitations are due to Petitioner's lumbar condition, which is not causally related to his work injuries. Petitioner also rejected security jobs because he would be required to refuse entry to potentially hostile people who had been terminated and "I didn't sign up for that." *T1.69*. We find that Petitioner's choices and work preferences are unrelated to his work restrictions. The Commission gives this factor moderate weight.

We agree with the Arbitrator's analysis of factor (iii).

Regarding factor (iv), we disagree with the Arbitrator's conclusion that Petitioner sustained a "significant" reduction in earning capacity. Petitioner obtained a job at KSM Electronics earning $18 per hour. He had been earning $20.20 per hour at the time of his first accident which means his reduction in earning capacity is only $2.20 per hour or $88 per 40-hour week. This is only about a 10% reduction in earning capacity, which we would characterize as a "minor" or "moderate" decrease in earning capacity. Although Petitioner's wages at the Securitas job from June 2017 through December 2020 were significantly less ($11.41 per hour) than his job at Respondent ($20.20), after he underwent the FCE and obtained permanent restrictions, he was able to obtain the KSM job earning $18 per hour. We also reiterate that Petitioner self-terminated his job at KSM based solely on his subjective complaints. The job was within his FCE restrictions and Petitioner did not return to any physician to have his permanent restrictions modified. We disagree with the Arbitrator's consideration of the fact that Petitioner is "now currently not working" since he is not working due to his own choice. Due to Petitioner's failure to prove that his job at KSM was beyond his restrictions and our finding that the reduction in his wages was minor, we give this factor "some" weight.

Finally, regarding factor (v), we generally agree with the Arbitrator's analysis but change "several" neck surgeries to "three."

Despite our modifications to the Arbitrator's analysis, as outlined above, we nevertheless agree that Petitioner sustained permanent partial disability to the extent of 70% person as a whole pursuant to §8(d)2 of the Act for the injuries sustained due to his worker's compensation injuries and hereby affirm that award.

Penalties and Fees

The Commission affirms the Arbitrator's award of penalties under §19(l) of the Act. However, we strike the analysis regarding the late or unpaid medical expenses because there is no evidence that Petitioner submitted the unpaid bills to Respondent. We find that Petitioner is entitled to §19(l) penalties based on the pattern of delay in temporary total disability (TTD) payments.

We also affirm the denial of penalties under §19(k) and attorney's fees under §16. However, we add additional analysis to support this finding. The Arbitrator wrote:

> In regards to TTD benefits, the Arbitrator notes that 78 of the 186 payments were delayed anywhere from 6 days to 3 years, with the average appearing to be around a month or two in delay. In other words, 42% of the payments were not paid in a timely manner nor in a manner which is explainable from the record.

Dec. 23.

Respondent's benefit payments exhibit was admitted into evidence (*Rx1*) and Petitioner's brief contains a summary of those payments to support his claim that there were extensive delays in payment. The entries that allege the lengthiest TTD delays are:

[Payment Dates	Date Sent	TTD Amount	Alleged Delay]
…			
11/19/14 - 12/7/15	5/23/2016	$30,134.67	"168 day delay"
5/7/14 - 11/7/14	5/23/2016	$14,518.01	"563 day delay"
6/11/13 - 4/23/14	5/23/2016	$24,955.28	"3 year delay"

P-brief at 15.

The Commission notes that on June 4, 2013, Dr. Ross opined that Petitioner was at maximum medical improvement for the lumbar spine and could return to full duty work." *Dec. 2., Px3, T2.81*. Petitioner testified that he did, in fact, work between June 9, 2013 and May 3, 2014. *T1.21*. On May 23, 2016, Respondent issued a check for TTD from June 11, 2013 through April 23, 2014. *Rx1 at 88-89, T2.2750-51*. However, Petitioner was not entitled to TTD for that period of time because he was working. Therefore, there was no "3 year delay" in that payment.

We next address the checks that were issued for the periods of "5/7/14 – 11/7/24" and "11/19/14 – 12/7/15." On March 6, 2014, after comparing the November 11, 2012 and November 27, 2013 cervical MRIs, Dr. Mather opined that Petitioner's cervical condition was not related to the June 11, 2013 work injury. *Px16A-DepX2, T2.2478*. On December 7, 2015, Dr. Mather authored a report, which is not in evidence but which he referenced during his deposition on January 28, 2016. He testified, "I felt that he had significant degenerative disc disease at C5-6-7 and based on the records it appeared to be nonoccupational." *Px16B at 10, T2.2502*. Therefore, we find that Respondent had a good faith basis to dispute TTD for those relevant periods based on Dr. Mather's opinion.

The benefit payment records reflect that, on May 23, 2016, Respondent issued the three checks (as indicated above) for TTD from June 11, 2013 through December 7, 2015. *Rx1 at 88-89, T2.2750-51*. It is unclear why Respondent reversed its position and accepted Petitioner's cervical condition at that time, but we note that Petitioner visited Dr. Kolavo on May 22, 2016. *Px11 at 120, T2.2144*. Dr. Kolavo opined that Petitioner "has residual or progressive and recurrent foraminal stenosis at C5-C6 on the left [where] previous foraminotomy has been performed [which] is contributing to his symptoms." *Id*. He recommended a "revision anterior decompression and takedown of his old fusion removal of instrumentation and revision foraminotomy and lateral recess decompression on the left at C5-6. The segment should then be refused and re-instrumented…" *Id*. Again, while it is unclear whether Respondent's decision was influenced by Dr. Kolavo's report, it issued the TTD checks the next day.

We point out another line from Petitioner's spreadsheet that incorrectly inflates the average delay in payment:

[Payment Dates	Date Sent	TTD Amount	Alleged Delay]
…			
12/15/17 - 12/28/17	2/15/2018	$600.58	"1 year delay"

P-brief at 14. The Commission finds that this was only a 2-month delay (not 1 year).

We find that most of the TTD payments were made timely and the ones with the most significant delays are explainable from the record, which results in a much lower "average" late payment. While we do not condone any delays, we exercise our discretion under §19(k) and §16 of the Act and find that Respondent's behavior, under the circumstances of this case, was not unreasonable or vexatious.

Clerical Errors

Although we affirm the Arbitrator's Decision, we correct the following clerical errors:

1) Throughout the Decision, we strike the references to "Dr. Masynk" and replace with "Dr. Masnyk" to reflect the correct spelling. *See e.g., Px1 at 628, T1.750 and throughout Px1*.

2) On page 4, in the first full paragraph, we clarify that Petitioner followed up with Dr. Kolavo on June 19, 2015 (not June 22, 2015). *Px11 at 194; T2.2219.*

3) On page 8, in the fourth paragraph, we clarify that Petitioner presented to Dr. Brandon on May 9, 2022 (not 2021). *Px4 at 205; T2.681.* We also strike the second sentence and replace it with: "Dr. Brandon ordered various labs and studies and told Petitioner to return in one month. (*Px4 at 209-210; T2.685-86*). On September 30, 2022, Dr. Brandon ordered the FCE. *(Px4 at 40-41; T2.516-17).*"

4) On page 10, after the first sentence in the first paragraph under the "Dr. Steven Mather" section, we replace the citation to "PX7" with "(*Px16A-DepX4, T2.2484).*"

5) On page 13, in the second full paragraph, and on page 21, in the third full paragraph, we clarify that Ms. Stafseth-Zamora opined Petitioner was employable with wages falling between $13.00 and $17.00 per hour. *Rx8 at 8, T2.3140*; *Rx9, T2.3309*.

6) On page 15, in the second paragraph under the "Lumbar Injury" section, we replace "June 4, 2023" with "June 4, 2013" to correct the year in the third and fourth sentences.

7) On page 21, in the fourth full paragraph, we change the word "decompression" to "depression."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2023 is hereby affirmed and adopted with the clarifications and corrections noted above.

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

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

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

April 8, 2025

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 2/18/25
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC021596
Case Name	Brian Bronke v. R.R. Donnelly
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Emilie Miller

DATE FILED: 10/3/2023

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

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **LASALLE**)
L

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Brian Bronke
Employee/Petitioner
v.

R.R. Donnelly
Employer/Respondent

Case # **12** WC **21596**

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 28, 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 **8(a) rights to future medical**

FINDINGS

On **May 14, 2012**, 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 partially*** causally related to the accident.

In the year preceding the injury, excluding overtime, Petitioner earned $**40,570.05**; the average weekly wage was $**780.19**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **2** 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 $**150,350.18** for TTD, $**55,256.97** for TPD/ wage differential, $**15,548.49** for maintenance, and $**0** for other benefits, for a total credit of $**221,155.64**.

ORDER

Respondent shall pay reasonable and necessary medical services related to Petitioner's back through June 4, 2013, pursuant to the fee scheduled as provided in Section 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Respondent shall pay directly to Petitioner all reasonable and necessary medical services related to Petitioner's neck, carpal tunnel syndrome and vocational charges pursuant to the fee schedule as provided in Section 8(a) and 8.2 of the Act. Petitioner's left shoulder and psychological treatment is denied. Respondent shall receive credit for amounts paid.

Respondent shall pay Petitioner $468.11/week for a period of 350 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused 70% loss of use of the person as a whole.

Respondent shall pay Petitioner temporary total disability benefits of $520.13/week for 314 5/7 weeks, commencing May 26, 2012 through June 3, 2013; May 4, 2014 through June 8, 2017; and December 6, 2020 through November 2, 2022 as provided in Section 8(b) of the Act. Respondent shall get credits for amounts paid.

Respondent shall pay Petitioner temporary partial disability/wage differential benefits for 182 1/7 weeks, commencing June 9, 2017 through December 4 2020, as provided in Section 8(a) of the Act. Respondent shall get credits for amounts paid.

Respondent shall pay Petitioner maintenance benefits of $520.13/week for 23 6/7 weeks, commencing November 23, 2022 through April 19, 2023, as provided in Section 8(a) of the Act. Respondent shall get credits for amounts paid.

Respondent shall receive credit for amounts paid as reflected above and in RX1.

Respondent shall pay to Petitioner penalties of **$10,000.00**, as provided in Section 19(l) of the Act. All other Penalties are 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.

OCTOBER 3, 2023

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Bronke,	)
	)
Petitioner,	)
	)
v.	)
	)
R.R. Donnelly ,	)
	)
	)
Respondent.	)

FINDINGS OF FACT

This matter proceeded to hearing on June 28, 2023 in Ottawa, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing on three separate cases (Arb. Ex. 1, 2, 3).

Brian Bronke (hereinafter referred to as the "Petitioner") worked as a machine operator and bindery mechanic for R.R. Donnelly (hereinafter referred to as the "Respondent") since 2009. (T.10-11).

On May 14, 2012, Petitioner testified he was moving a piece of heavy equipment weighing about 300-400 pounds and his back went out on him. (T.13). Petitioner initially sought treatment at Tyler Medical Clinic with Dr. Long and was diagnosed with a lumbar strain and placed on light duty. (PX7, p.3). Petitioner testified he began missing work at that point. (T.14). Subsequently, Petitioner sustained a second accident on May 26, 2012. At the time Petitioner was at home when his left leg out gave out, and he fell fracturing his clavicle (collarbone) and several ribs. Petitioner also began complaining of neck pain. (T.14-16).

Petitioner followed up with Dr. Long on May 29, 2012 noting his back symptoms were improved. He noted that he fell at home and went to the ER. Petitioner was referred to an orthopedic for his left clavicle fracture and was to monitor his lumbar spine. He was off work. (PX7, p.5-6). Petitioner presented to Dr. Patari on June 4, 2012 who recommended nonoperative care. Petitioner was recommended an abdominal binder and a home exercise program. *Id.* at 9-10. Petitioner's clavicle and rib fractures were treated conservatively with physical therapy; however, he continued to experience low back pain. On July 26, 2012, Petitioner followed up with Dr. Long. The Doctor noted it was 10 weeks since the original injury and recommended an MRI of the lumbar spine. Petitioner was to continue with physical therapy. *Id*. at 29.

Petitioner underwent an MRI on August 7, 2012 which revealed a L4-5-disc protrusion. (PX7, p.95). Petitioner followed up with Dr. Long on August 9, 2012 for an evaluation of his lumbar spine with left lower extremity radiculopathy. The Doctor noted Petitioner had a L4-L5 disc protrusion and referred Petitioner to Dr. Ross. Petitioner remained on restrictions. *Id.* at 37.

On August 22, 2012 Petitioner presented to Dr. Ross. Petitioner previously treated for a left L4-5 microdiscectomy about 10 years ago. Dr. Ross went over Petitioner's condition and diagnosed him with

lumbar radiculopathy most likely due to his spondylosis, disk bulge and foraminal stenosis at the L4-5 and/or L5-1 level. Petitioner was recommended a trial of a Medrol Dosepak followed by an injection. Petitioner was placed on restrictions. (PX3, p.44).

Petitioner continued with physical therapy. On September 24, 2012, Dr. Patari placed Petitioner at MMI for his left clavicle injury releasing Petitioner to full duties for that injury. (PX7, p.56).

Petitioner followed up with Dr. Ross on November 13, 2012. Petitioner had undergone two transforaminal cortisone injections with temporary improvement. Given the failure, he would suggest foraminotomies at L4-5 and L5-S1. Petitioner also had left arm numbness which was suspicious for cubital tunnel syndrome. (PX3, p.41).

The EMG/NCV was performed on November 21, 2012, identifying mild right carpal tunnel syndrome, but not conclusive for cubital tunnel syndrome or cervical radiculopathy. (PX3 p.146).

On December 3, 2012, Dr. Ross authored a note indicating Petitioner should undergo an MRI of his cervical spine and EMG of the left arm due to his increasing neck pain. (PX3, p.40).

The cervical MRI was done on December 11, 2012 revealing cervical spondylosis. There was also spinal cord compression at C6-7 with altered cord signal, either myelomalacia or edema, associated with disc protrusions at C5-6 and C6-7. (PX3 p.90).

On December 12, 2012, Dr. Ross performed a re-exploration of the lumbar spine with a left L4-L5 hemilaminotomy, lysis of adhesions, micro discectomy, foraminotomy and L5-S1 hemilaminotomy in foraminotomy. Postoperative findings were identified as a recurrent lumbar disc herniation and foraminal stenosis at L4-5, and spondylosis with foraminal stenosis at L5-S1. (PX1 p.4185). Post-operatively Petitioner was placed in physical therapy. *Id.* at 57.

Petitioner followed up with Dr. Ross on December 26, 2012 reporting significant improvement in his back and left leg symptoms. Petitioner was recovering well from back surgery. Petitioner was recommended a brief three-week course of physical therapy before proceeding with his neck operation. (PX3, p.39). Petitioner resumed therapy on January 3, 2013. (PX7, p.57). Petitioner continued to follow up with Dr. Ross. Petitioner was improving in terms of his back but was recommended a cervical diskectomy and fusion. (PX3, p.32-38). On June 4, 2013, Petitioner returned to Dr. Ross. Petitioner had made an excellent recovery from his back injury and surgery. Dr. Ross opined he was at maximum medical improvement for the lumbar spine and could return to full duty work. He noted his neck was more problematic. Dr. Ross disagreed with the Section 12 examiner's opinion regarding causation for the neck. Dr. Ross noted that although it was clear Petitioner had some degenerative arthritis in his neck that predated his work injury, in his opinion, the fall on May 26, 2012 caused the symptoms in his neck and arm. For treatment of Petitioner's neck Dr. Ross recommended an anterior cervical discectomy and fusion at C5-6 at C6-7. Petitioner was able to return to work full duty on a trial basis at a light/medium level. He should ask for help to lift anything over 35 pounds. (PX3, p.30).

While working on June 11, 2013, Petitioner sustained a third accident. Petitioner reported that on June 11, 2013 he was moving a 200 to 300 lb. machine on wheels when he experienced increased pain in his neck down his left arm. (T.18).

Petitioner returned to Dr. Ross on June 27, 2013 indicating he was moving equipment at work and developed increased pain in his neck and left shoulder. Petitioner was to continue with therapy and was recommended an EMG. (PX3, p.28). Petitioner returned to Dr. Ross on July 24, 2013 with worsening pain. Petitioner was to undergo an EMG. *Id.* at 27.

The EMG/NCV was performed on August 2, 2013 and showed bilateral median nerve compression at the wrists consistent with carpal tunnel syndrome, as well as suggestion of C6-7 radiculopathy on the left. (PX1).

In an August 13, 2013 follow up, Petitioner noted he was working with a 25-pound restriction. Dr. Ross still recommended a C5-6 and C6-7 anterior cervical diskectomy and fusion. He was to return. (PX3, p.26). Petitioner followed up again on September 12, 2013 noting he was worse after working multiple 12-hour days. Petitioner was still recommended surgery and was to follow up. *Id.* at 25. Petitioner was then referred for an updated MRI of his cervical spine. The MRI was completed on November 27, 2013 and confirmed the prior disc herniations at C5-6 and C6-7, as well as facet arthropathy on the right at C3-4. *Id.* at 76.

Petitioner returned to Dr. Ross again on January 13, 2014. Petitioner still remained significantly symptomatic from his C5-6 and C6-7 cervical disk herniations. Petitioner was pending surgery and could continue working with a 25-pound lifting restriction. (PX3, p.24). Petitioner had his final visit with Dr. Ross on February 25, 2014. Petitioner was having difficulty getting approval for surgery. Petitioner was taking a lot of ibuprofen to complete his shift. *Id.* at 22.

The workers' compensation carrier would not authorize the surgery, so Dr. Ross referred Petitioner to Dr. Kolavo to perform the surgery under group insurance. (T.19).

On May 8, 2014, Dr. Kolavo performed an anterior cervical discectomy, osteophytectomy and fusion at C5-6 and C6-7 with instrumentation. Post-operative diagnosis was herniated cervical disk with cervical spondylosis, cervical spinal stenosis, and persistent left upper extremity radiculopathy. (PX1, p. 3966)**.**

Post-operatively, Petitioner was referred by Dr. Kolavo for pain management with Dr. Hanna for his neck. Petitioner began pain management on December 15, 2014. Dr. Hanna recommended cervical epidural steroid injections, a series of which were subsequently administered beginning December 15, 2014. (PX1, p.3878-3915). Petitioner eventually underwent a lumbar myelogram confirming a central disc protrusion superimposed on mild to moderate diffuse disc bulge at L4-5, mildly narrowing the left neural foreman and moderately narrowing the right foreman (PX1, p.3777). He also underwent a cervical myelogram confirming an incomplete fusion at C6-7 and C5-6. (PX1, p. 3779).

After reviewing the scans, Dr. Kolavo recommended a posterior cervical decompression and fusion to address Petitioner's failed fusion. Petitioner's surgery was completed on March 30, 2015. (PX1, p.3513). Post-operatively, Petitioner complained of left arm and hand numbness. Further investigation confirmed a diagnosis of left carpal tunnel syndrome with no cervical involvement and Petitioner was referred to Dr. Keisler for further consultation who confirmed Petitioner's carpal tunnel syndrome of the left hand and recommended surgery. (PX1, p.3396). The carpal tunnel release was performed on June 4,

2015, resulting in an improvement (but not resolution) in the pain, numbness and tingling in the hand. (PX1 p.3333, 3317).

Petitioner followed up with Dr. Kolavo on June 22, 2015. Petitioner underwent a left carpal tunnel release, with resolution of the pain in his hand but persistent numbness in the median nerve distribution. He also reported a new problem of right buttock and right leg pain beginning three weeks prior without specific injury. Petitioner reported that he was unable to walk long distances or stand up straight without pain. It was noted Petitioner had prior back issues in the past, but mostly left sided. Petitioner also reported persistent left trapezius pain and left triceps pain. Dr. Kolavo diagnosed Petitioner with a herniated lumbar disc and persistent cervical radiculitis and recommended physical therapy for both the arms and back. Dr. Kolavo also confirmed Petitioner's cervical problem was still causally related to his work injury of record. He did not provide a causal opinion related to Petitioner's new complaints of right sided back and leg pain. (PX11, p.193).

On June 25, 2015 Petitioner was admitted to the hospital for low back pain radiating down the right leg for the past week. Petitioner stated he was unable to walk at home. He denied any recent injury or fall. (PX1, p.3161). Dr. Miskiewicz performed a pain consultation, assessing the problem as right lumbar radiculopathy, a L4-5 disc herniation and spinal stenosis. *Id.* at 3170. Dr. Kolavo also examined Petitioner, noting a couple of weeks of worsening right leg pain without any new injury triggering the symptoms. The pain traveled from the right low back into the buttock, posterior and lateral thigh and the going down laterally below the knee. *Id.* at 3171. A lumbar MRI was reviewed showing a right central dick herniation compressing the shoulder of the L5 nerve root and some other degenerative changes. A left lateral disc herniation at L5-S1 encroached in the foramen and L5 nerve root, but Dr. Kolavo read that herniation as not clinically significant. Petitioner was diagnosed with a herniated L4-5 disk and was to undergo an injection. *Id.* at 3172. A lumbar epidural steroid injection markedly improved his symptoms, and he was discharged from the hospital. *Id.* at 3182.

Dr. Hanna saw Petitioner on August 6, 2015, noting a dramatic improvement from the previous ESI but a return in pain levels to a 6/10 level. (PX1 p.3060). Dr. Hanna performed a second ESI at L5-S1. *Id.* at.3062-3. This injection resulted in a 25% overall improvement. *Id.* at 3052. A third epidural steroid injection was done on August 31, 2015, but this injection provided no long-term improvement. *Id.* at 3024, 3014.

As of September 11, 2015, Petitioner reported to Dr. Kolavo persistent significant numbness in his left hand. Dr. Kolavo noted that mechanical shoulder pain seemed to be a component of Petitioner's disability and referred him for a shoulder evaluation. It was also noted Petitioner's lumbar symptoms were persisting and he was undergoing injections for his back with Dr. Hanna. (PX11, p.169). Petitioner's left shoulder was evaluated by Dr. Sterba on September 24, 2015. Dr. Sterba noted Petitioner may have injured his left shoulder at work when moving a heavy piece of equipment. Dr. Sterba diagnosed Petitioner with impingement syndrome and recommended therapy and subacromial injection, which was administered the same day. (PX1, p. 2977 and 2985).

Petitioner followed up with Dr. Kiesler came on October 19, 2015. Petitioner still complained of numbness in the left hand but was using the hand more normally each day. Given the severity of the carpal tunnel syndrome, Petitioner may have incomplete relief of symptoms. Petitioner was to continue with grip and upper extremity strengthening. He should return on an as needed basis. (PX1, p.2960-2961).

On October 23, 2015, Petitioner followed up with Dr. Kolavo with persistent left arm pain. Dr. Kolavo referred Petitioner for an updated EMG/NCV to further investigate his report of left upper extremity symptoms. (PX1, p.154-155).

Petitioner returned to Dr. Kolavo on February 9, 2016 with ongoing complaints of left arm symptoms. Petitioner also reported some ongoing numbness in his left hand despite his carpal tunnel release. Regarding his neck, Dr. Kolavo noted Petitioner had a recent flareup of pain that required the use of Norco transiently but had been able to stop it. Dr. Kolavo recommended a Functional Capacity Evaluation to confirm Petitioner's final return to work restrictions. (PX11, p.141).

The Functional Capacity Evaluation was put on hold pending updated orders from Dr. Kolavo for a cervical myelogram. Petitioner's cervical myelogram was completed on March 24, 2016 and confirmed, C3-4 facet arthropathy resulting in moderate to severe right neural foraminal stenosis and C4-5 disc bulge resulting in mild central canal stenosis and moderate right neural foraminal stenosis due to uncovertebral and facet atrophy. (PX11, p.134).

Following his myelogram, Petitioner returned to Dr. Kolavo on April 18, 2016. Dr. Kolavo noted Petitioner continued to report left upper extremity symptoms and suggested he follow-up with Dr. Kiesler. After reviewing Petitioner's myelogram, Dr. Kolavo confirmed options for Petitioner to include continuing with chronic pain management versus considering a revision ACDF at C5-6 on the left. Dr. Kolavo noted Petitioner had a large hypertrophic bone spur at C5-6 that was contributing to his symptoms. He also noted worsening foraminal stenosis. He also discussed the possibility of incomplete relief of symptoms. Petitioner was to remain off work and not undergo a FCE at this time. (PX11, p. 127).

On June 28, 2016, Petitioner returned to Dr. Kolavo and confirmed he did not wish to proceed with surgery. Dr. Kolavo recommended an evaluation by Dr. Oken at Marianjoy and recommended a Functional Capacity Evaluation. (PX11, p.110).

Petitioner's FCE was completed on July 5, 2016 and confirmed Petitioner was capable of work in a medium physical demand level. (PX1, p. 1484). Dr. Kolavo released him within the FCE findings. (PX1 p.2813).

Respondent was unable to accommodate, so Petitioner was placed in vocational rehabilitation. Petitioner eventually secured a job at Securitas. While Petitioner was working, Petitioner continued to seek treatment for his neck with Dr. Hanna and Dr. Kolavo. On October 10, 2017 Petitioner returned to Dr. Kolavo for a follow up to his anterior and posterior cervical surgery. He had not been seen for over 15 months. Petitioner noted gradual worsening of neck pain but had never been symptom free. Dr. Kolavo recommended Petitioner switch to prescription doses of ibuprofen to supplement with Tylenol. He should also obtain a cervical MRI and return in two weeks. (PX1, pp.2788-2790).

The MRI revealed postsurgical changes in areas of foraminal narrowing similar to the previous MRI scan, with the most prominent findings on the left at C5-C6. (PX1 p.2777-8).

Petitioner followed up with Dr. Kolavo on October 31, 2017 noting he was having issues with burning central mid thoracic and upper thoracic pain. Petitioner's MRI showed foraminal stenosis which was fairly severe on the left at C5-C6. He recommended an EMG/NCV of the left upper extremity along

with a pain consultation and epidural steroid injections targeting C5-C6. He also was recommended a thoracic MRI. (PX1 p.2763-64).

Petitioner was also sent for therapy. The EMG/NCV was performed on November 13, 2017, revealing moderate cubital tunnel syndrome, as well as residual carpal tunnel symptoms and mild C5-C6 radiculitis. (PX1 p.2744-5, 2750). Petitioner was recommended a follow up with Dr. Kiesler for the hand/arm and for the previously recommended cervical injection therapy. *Id.* at 2741.

Petitioner restarted treatment with Dr. Hanna on January 3, 2018. (PX1, p.2718). Petitioner underwent treatment to include cervical epidural steroid injections, medial branch blocks, facet blocks, and radiofrequency ablation. (PX1, p. 2692, 2660, 2595-6).

Petitioner returned to Dr. Kolavo on July 17, 2018 noting Petitioner's problems were very complicated. Dr. Kolavo noted further surgery would not likely affect his axial neck pain symptoms. Dr. Kolavo recommended a second opinion evaluation. (PX1, p.53).

Thereafter, Petitioner saw Dr. Masynk, a neurosurgeon for further evaluation. Petitioner first saw Dr. Masynk on August 2, 2018. Dr. Masynk ordered another cervical myelogram. (PX1, p. 2412-16). Petitioner's cervical myelogram was completed on August 30, 2018 and confirmed postsurgical changes at C5-7 with complete fusion, moderate osteophytic ridging asymmetrical to the left at C5-6, and mild degenerative changes throughout the remainder of the cervical spine. *Id.* at 2632 – 2363. Based on the cervical myelogram, Dr. Masynk recommended a posterior left C5-C6 removal of hardware followed by hemi laminectomy, foraminotomy, facetectomy for nerve root decompression. *Id.* at 2356. This was the same surgery Dr. Kolavo had proposed back in April of 2016. *Id.* at 2847.

While awaiting surgery Petitioner continued to undergo pain management treatment with Dr. Hanna for his neck. On March 13, 2019, Petitioner underwent left cervical radiofrequency ablation (PX1, p. 2259) and a right cervical radiofrequency ablation on April 17, 2019. (PX1, p. 2198).

On May 13, 2019, Petitioner was seen by Dr. Hanna and reported low back pain on the right greater than left but pain down to the left leg. Petitioner was also noted to be complaining of ongoing neck pain, 60% better after radiofrequency ablation. (PX1, p. 2150). Dr. Hanna diagnosed Petitioner with low back pain with left sided sciatica and recommended a trial SI joint injection. *Id.* at 2151. Petitioner returned on June 17, 2019 and was ordered a repeat MRI. The MRI was completed on July 15, 2019, compared to Petitioner's 2015 study, it confirmed a slightly more prominent than previous large diffuse disc bulge at L5-S1. *Id.* at 2108.

Based on the MRI, Dr. Hanna recommended additional lumbar transforaminal steroid injections. (PX1, p. 2074). Those injections were subsequently administered on September 19, 2019, October 14, 2019, and November 11, 2019. (PX1, p. 2039, 1993, 1943). Petitioner also underwent additional cervical medial branch blocks on April 22, 2022 and radiofrequency ablation on July 20, 2020. (PX1, p.1771).

Petitioner followed up with Dr. Kolavo on June 23, 2020. Petitioner was taking Norco and was complaining of dizziness and headaches. Dr. Kolavo did not think the cervical spine would cause these issues. His leg pain remained significant. Dr. Kolavo sent him for another cervical MRI. (PX1, p.1735-1736). The July 13, 2020 cervical MRI showed the same issues as the 2015 MRI, including impingement

on the right C4 root. (PX1, p.1717). Dr. Kolavo declined to operate on the cervical spine and Petitioner requested a referral to Dr. Ross or Dr. Masynk. (PX1 p.1703-4)

Petitioner's cervical surgery was completed on December 7, 2020 and included a left posterior open C5-6 hemilaminectomy and foraminotomy for nerve root decompression, removal of C5-7 posterior instrumentation, and exploration of fusion. (PX1, p. 1265). Post-operatively Petitioner was returned to physical therapy and was discharged as of March 30, 2021. *Id.* at 785. He also continued to treat with Dr. Hanna for his back and underwent SI joint injections on March 29, 2021. *Id.* at 811.

Petitioner also reported frequent falls due to weakness in his legs, along with pain in his left shoulder. Dr. Masynk referred Petitioner for an MRI of his left shoulder which was completed on March 30, 2021 and confirmed a full thickness rotator cuff tear involving the distal supraspinatus tendon and subscapularis tendon. (PX1, p. 775).

Petitioner was then referred by Dr. Masynk to Dr. LaBelle for his left shoulder. Dr. LaBelle noted that upon presenting for evaluation Petitioner reported a nine-year history of shoulder pain. Dr. LaBelle diagnosed Petitioner with a nontraumatic rotator cuff tear, impingement syndrome, and AC arthritis and recommended surgery. (PX1, p.715-720).

Petitioner last saw Dr. Masynk on May 11, 2021 for complaints of right buttock pain radiating down the posterior right leg. Petitioner reported some improvement in his back pain with injections but persistent right buttock and leg pain. Dr. Masynk offered Petitioner further surgery to include a redo L4-5 and L5-S1 discectomy. (PX1, p. 632). Petitioner testified he elected not to pursue further surgery for his back. (T. 63). However, Petitioner did continue treating with Dr. Hanna for his neck and back.

Petitioner presented for two Independent Medical Examinations with Dr. Gleason at Respondent's request on July 27, 2021 and November 7, 2022. Based on Dr. Gleason's opinions that Petitioner reached MMI related to his neck and did not require restrictions and that the current conditions of his back and left shoulder were not related to his work accidents, Petitioner's ongoing medical treatment for his back was denied. (RX4 and 5).

On April 2, 2022, an ambulance took Petitioner to the Emergency Room at Northwestern Delnor. (PX1, p.31). Petitioner expressed some suicidal ideation to the nurse. (PX1, p.31) He told the nurse that he "never wants to wake up." He did cocaine so that he could leave this earth and tried to take too many pills so that he could die. (PX1, p.70). The diagnoses included altered status in the setting of cocaine use, acute kidney injury with mildly elevated liver function test results, suicidal ideation, paranoia, and possible underlying psychiatric disorder contributing to his altered mental status, and opioid dependence, with a last recorded opioid refill on December 10, 2021. (PX1, p.62-3). Dr. Patel, a neurologist, reviewed past MRIs, reading the March 4, 2021 cervical MRI as showing progression of degenerative changes at C3-5 since the 2015 MRI, with impingement on the exiting roots on the right side. (PX1, p.75). Dr. Patel's diagnoses included acute psychosis likely due to cocaine intoxication, toxic metabolic encephalopathy was due to opioids and Gabapentin in his central nervous system, and chronic pain disorder- attributed to chronic lumbar and cervical spine disease. (PX1, p.80). The Doctor recommended Duloxetine (antidepressant) for the chronic pain, stopping the insomnia drug (Zalepon), stopping Norco and a psychiatry consult. (PX1, p.80).

Dr. Amber Kazi, a psychiatrist, interviewed Petitioner on April 3, 2022. The diagnosis was delirium versus drug-induced mood disorder with psychosis. (PX1 p.90-93). A licensed clinic social worker interviewed Petitioner on April 3, 2022 with him reporting stressors involving his unemployment, lack of belief in his reports and his divorce. (PX1, p.131). Petitioner noted delusions and his inability to work. The social worker recommended inpatient care, but Dr. Kazi instead recommended medication and a follow up visit in a day or two. (PX,1 p.134). He was told to seek counseling at Braden Counseling Center. (PX1 p.137).

Petitioner did follow up with Braden Counseling from April 8, 2022 through June 24, 2022. (PX13). He expressed difficulty adjusting to a recent divorce, he had been living with chronic pain for a long time and had been out of work. (PX13, p.6). The counselor advised Petitioner to talk with his doctor about the sleep issues and chronic pain. (PX13, p.9) At the final visit on June 24, 2022, he was working on his routine and sleep hygiene. He felt more comfortable with his situation and his physical restrictions. (PX13, p.18).

Medical records from Dr. Hanna confirm treatment of Petitioner for his neck through January 27, 2021 and back through November 22, 2021. (PX1). Per Dr. Hanna's records, Petitioner's treatment was suspended as of November 22, 2021 for his back due to insurance denial.

Thereafter, Petitioner presented to his primary care physician, Dr. Brandon, on May 9, 2021, asking about an FCE for return to work. Dr. Brandon ordered an FCE but confirmed Petitioner would need to submit for several tests to clear him for an FCE first (PX4, p. 182-207).

In conjunction with Petitioner's application for Social Security disability, Dr. Brandon completed a Physical Residual Functional Capacity Questionnaire for Petitioner on December 16, 2021. In that questionnaire Dr. Brandon confirmed treatment of Petitioner since February 25, 2021 for diagnoses including lumbar spondylosis, cervical spondylosis, cervical radiculopathy, hypertension, diabetes, insomnia, frequent falls, coronary disease. As for Petitioner's functional limitations, Dr. Brandon indicated Petitioner was able to walk one city block, sit for 30 minutes, stand for 15 minutes. stand for two hours a day and sit for two hours a day. (PX4, p. 568-570). Dr. Brandon was Petitioner's new primary Care physician. (T.65).

Petitioner's FCE was completed on October 10, 2022 and demonstrated Petitioner's capabilities and functional tolerances within the high end of the light physical demand level to low end of medium physical demand level with the heaviest weight able to lift within the demand level up to 20 lbs. from floor to waist, 25 lbs. from 12" to waist, and 25 lbs. from waist to shoulder. (RX7, p.2). Petitioner was then referred to Vocamotive for vocational rehabilitation on November 3, 2022.

At trial, Petitioner testified that after three months of vocational rehabilitation he found a job at KSM. (T.26). He felt back complaints during the job and afterwards. (T.29-30). He left a message for the new job indicating he was in bed and would not make it to the job. (T.31). He went to the doctor three days later. (T.32). Petitioner testified he continued with vocational rehabilitation for two and a half weeks later. (T.34). His benefits were suspended as of April 29, 2023. (T.34).

Petitioner testified that he falls down frequently. (T.37). He is still able to go grocery shopping, but his daughter will help carry the bags. (T.47). Petitioner testified he continues to experience numbness

in his left hand and fingers, burning and pinching in his neck, and flare-ups of his back pain. Petitioner testified that every two months he experiences a flare in his back pain that requires him to be down for a few days. (T.48-50). Petitioner was awarded Social Security disability earlier this year. (T.53).

On Cross-Examination, Petitioner confirmed after being released for the back he went back to work for Respondent. (T.59). During the last employment with KSM, they requested that he start on Monday but requested to take a vacation. Petitioner clarified he really didn't have a vacation but wanted to veg out and stay home a few days before he started his new job. (T.67).

During vocational rehabilitation, Petitioner also stated he refused security jobs because he had a hard time with stairs and did not want to be in a position to deal with anyone using AR 15s. (T.69). Petitioner noted the first treatment of depression was after his divorce. (T.70).

Deposition Testimony

Dr. Kolavo

The parties proceeded with the evidence deposition of Dr. Kolavo on June 23, 2015. (PX2). Dr. Kolavo is a board-certified orthopedic spine surgeon. (PX2, p.5). He testified to his treatment of Petitioner between April 23, 2014 and the date of his deposition regarding Petitioner's neck pain. Dr. Kolavo testified he began treating Petitioner on referral from Dr. Ross. Dr. Kolavo testified that in his opinion Petitioner's neck condition was causally related to his work accidents and led to his need for neck surgery. (PX2, p. 7-8). Dr. Kolavo further testified the need for the treatment was related to the June 11, 2013 work injury. (PX2, p.10). Dr. Kolavo noted Petitioner had to undergo a subsequent operation which was also related. (PX2, p.14). At the time of his deposition, Dr. Kolavo testified Petitioner was still healing for his second neck surgery and had persistent reports of arm symptoms. Dr. Kolavo testified that with respect to the carpal tunnel syndrome, he believes it could have been aggravated by the neck surgery. It was a cause-and-effect situation. (PX2, p.17). Dr. Kolavo testified that Petitioner had developed some new lumbar complaints. He did not know whether the lumbar complaints were related to Petitioner's work accidents as Petitioner had recovered from his lumbar fusion performed by Dr. Ross. (PX2, p.20).

Dr. Mark Hanna

The parties proceeded Dr. Mark Hanna's evidence deposition on July 28, 2022. (PX6). Dr. Hanna is a board-certified anesthesiologist and pain management specialist. Dr. Hanna testified to his treatment of Petitioner between December 15, 2014 and July 28, 2022 (the date of his deposition). Over six years of treatment, Dr. Hanna provided epidural injections, medication management and ablations. (PX6, p.7). Dr. Hanna testified when Petitioner first presented to him on December 15, 2014, he reported symptoms only related to his neck. (PX6, p. 9-10). Dr. Hanna indicated he was pretty certain about the history of the neck but did not recall the low back being talked about at the time of the accident. (PX6, p.9-10). He opined as it relates to Petitioner's neck, it was his opinion the treatment he rendered to him was causally related to his May 14, 2012 work accident. (PX6, p.10, 27). Dr. Hanna testified the basis for his opinion is the story and history provided to him by Petitioner. Dr. Hanna testified he last treated Petitioner for his neck on January 27, 2021. (PX6, p.27).

During direct examination, after being shown Dr. Ross's note of August 22, 2012, noting Petitioner reported low back pain after pushing a cart at work on May 14, 2012, Dr. Hanna testified that

it was his opinion it was more likely than not that his treatment of Petitioner's back was related to his work accident. (PX6, p.18-19).

Dr. Hanna predicted Petitioner would need ongoing radiofrequency ablations, normally twice a year, epidural injections a couple times a year if he is experiencing radicular pain. (PX6, p.20). Ablations would address the neck pain itself. But a stimulator could be warranted for the neck if radicular pain was involved into the arm. (PX6, p.24). Dr. Hanna thought that all of this treatment would be related to the work injuries. (PX6 p.25).

On Cross-Examination, Dr. Hanna opined that his low back causation opinion was only from the reviewing one note from August 22, 2012 from Dr. Ross. (PX6, p.28). He confirmed this was the only information he had seen relative to Petitioner's treatment and first saw the same during the deposition. (PX6, p.29). Dr. Hanna testified he did not give any weight to the fact Petitioner had been released by Dr. Ross following his back surgery as of June 4, 2013 after reporting virtually no back pain. (PX6, p. 33). Dr. Hanna testified Petitioner did not report any symptoms to him related to his back until June 17, 2019 but had undergone a lumbar epidural steroid injection in 2015 with his partner. (PX6, p.37). Dr. Hanna noted his notes indicated Petitioner saw his partner in 2015 for an epidural steroid injection. He continued to find causation based on the information Dr. Ross provided. (PX6, p.41). The Doctor clarified his opinions are based upon a reasonable degree of pain management certainty which is not the in the school of an orthopedic spinal surgeon. (PX6, p.43).

Dr. Steven Mather

The Parties proceeded with Dr. Steven Mather's deposition on September 14, 2014. (PX16A), January 28, 2016 (16B) and June 27, 2019 (PX16C). Dr. Mather is a board-certified orthopedic surgeon who works on the spine. Dr. Mather examined Petitioner on April 22, 2013 with a report generated on April 25, 2013. (PX7). Dr. Mather opined Petitioner had non occupational spondylosis and left arm cubital tunnel syndrome. (PX16A p.8-9). He related the low back injury to the May 14, 2012 work accident but did not relate the cubital tunnel or the neck to the work accidents. (PX16A p.9). Dr. Mather saw Petitioner again on October 21, 2013 diagnosing him with cervical radiculitis, suspecting a disc herniation versus stenosis. (PX16A p.12). The updated MRI was the same as the old MRI, so although surgery was warranted, it was not related to the accident. (PX16A p.15). Dr. Mather admitted on cross before he saw the new MRI, he related the radiculopathy to the June 11, 2013 accident. (PX16A p.19).

Dr. Mather testified a second time regarding his December 7, 2015 Section 12 report. (PX16b, p.7). Dr. Mather testified that he felt Petitioner had significant degenerative disc disease at C5-6-7 and based on the records it was nonoccupational. (PX16B, p.10). Dr. Mather noted the May 14, 2012 injury would not cause or aggravate Petitioner's neck condition. (PX16B, p.13). He did admit, however, that pushing a heavy machine could cause stress across the neck. (PX16B p.14) Up to the point of the June 11, 2013 accident, Petitioner did not have obvious episodes of radiculopathy. (PX16B p.21). Dr. Mather disputed whether a new herniated material was seen in the neck. He thought the findings were all old, calcified injuries. (PX16B p.28). Dr. Mather admitted that Drs. Ross, Kolavo and the radiologists all read the November 27, 2013 MRI as showing herniated material at C5-6, C6-7. (PX16B p.37-38). Dr. Mather admitted the June 11, 2013 accident may have briefly aggravated the preexisting condition in the neck, subjectively only. (PX16B p.41). Dr. Mather noted if there was a causal relationship, the June 11, 2013 would more likely be the instigation of the injury which led to the surgery. (PX16B, p.46). He further

testified if there was a causal relationship, the neck injury and subsequent surgeries are related to the June 11, 2013 accident. (PX16B p.47-48). He thought Petitioner could return to work with no restrictions, but he would have difficulty with overhead in cervical extension all day which Petitioner did not do at work. (PX16B p.50-51). On Re-Direct, Dr. Mather testified his opinion had not changed from his December 7, 2015 report. (PX16B, p.54).

Dr. Mather testified a third time on June 27, 2019. (PX16C). He opined Petitioner was status post fusion, C5-6-7, which had become solid and status post left carpal tunnel release. He felt Petitioner had some ongoing functional pain which was subjective complaints without clinical or objective findings. (PX16C, p.20). He opined surgery was reasonable. He further indicated the medial branch blocks, the epidural steroids, and radiofrequency ablations were not necessary. He found Petitioner should be placed with 40-pound lifting restriction. (PX16C, p.25). He further opined Petitioner reached maximum medical improvement. (PX16C, p.32). Lastly, he provided an AMA rating of 8 percent. (PX16C, p.35). He further indicated he did not want to change any of this prior opinions. (PX16C, p.41).

Dr. Mather did not agree with the plan to go in and remove the hardware and bony ridging. Dr. Mather thought Petitioner needed a 40 lb. limit on his lifting with no overhead lifting. (PX16C p.74-75). Dr. Mather objected to the pain management treatment from Dr. Hanna because it did not correct the problem. (PX16C p.81). He admitted the pain management treatment would provide temporary relief. (PX16C p.82). He believed Dr. Hanna was practicing outside evidence-based medicine. (PX16C, p.90). Dr. Mather had no idea why the surgeons wanted to go back in and work on C5-6 again. (PX16C p.92).

Dr. Taras Masynk

The parties proceeded with the evidence deposition of Dr. Taras Masynk on February 17, 2022. Dr. Masynk is a board-certified neurosurgeon. (RX6, p.5). Dr. Masynk opined he operated on Petitioner for the neck and Petitioner was at maximum medical improvement. He opined he did not require any further treatment or restrictions for his neck. If he did, they would be within the medical records. Dr. Masynk testified Petitioner did have some shoulder pathology but was seeing a shoulder surgeon for that. Dr. Masynk did not provide an opinion linking Petitioner's shoulder pathology to his work accidents. (RX6, p.6).

Dr. Masynk was also questioned regarding causation related to Petitioner's back and his need for surgery. Dr. Masynk testified he did not have an opinion on the cause of Petitioner's disc herniations. (RX6, p.7). Dr. Masynk testified that the only information he had was that Petitioner hurt his back ten years ago at the time of his May 12, 2012 accident, he had surgery with Dr. Ross and got better after the same. Dr. Masynk testified he received medical records an hour ago. He testified that it was very difficult to expect him to go over the records and have an opinion when he could not talk to the patient. Based on the same he did not have an opinion on causation for the surgery. (RX6, p.8). Dr. Masynk testified that regarding Petitioner's back, he was capable for working light duty full time with restrictions of limited repetitive heavy lifting and repetitive bending. (RX6, p.10).

Dr. Thomas Gleason

The parties proceeded with the evidence deposition of Dr. Thomas Gleason on April 12, 2022. (RX2). Dr. Gleason is a board-certified orthopedic spine surgeon. Dr. Gleason testified he conducted an Independent Medical Examination of Petitioner at Respondent's request on July 27, 2021. Dr. Gleason

testified Petitioner reported to him that on May 14, 2012 while at work, he was moving a piece of equipment weighing about 600 pounds, when his left leg gave out and he felt low back pain and neck pain. (RX2, p.9). Dr. Gleason also testified that Petitioner reported that on May 26, 2012, while at home, he fell and fractured his left clavicle and left ribs. Dr. Gleason testified that he reviewed all of Petitioner's medical records confirming Petitioner's treatment up to July 27, 2021, including films of his diagnostic studies. Regarding Petitioner's neck, Dr. Gleason testified that in his opinion Petitioner's neck condition was related to his work accident, but that he had reached maximum medical improvement by the time of his IME following treatment. (RX5, p.19). As for Petitioner's back, Dr. Gleason testified that Petitioner's work-related condition was treated successfully by Dr. Ross with surgery and had resolved by June 4, 2013 when he was released by Dr. Ross, and that his current condition is not related to his work accidents. (RX5, p.23). Dr. Gleason testified Petitioner's diagnostic studies after 2013, including his MRIs from 2015, 2017, 2019 and 2021 all showed findings consistent with the natural aging processes and no acute injury. (RX5, p.63-64). Dr. Gleason also testified he disagreed with Dr. Masynk's recommendation for a redo of Petitioner's L4-5 and L5-S1 laminotomy, foraminotomy and decompression. (RX5, p.23-24).

As it relates to Petitioner's left shoulder, Dr. Gleason testified that in his opinion Petitioner's left shoulder condition is not causally related to his work accidents as he did not report the onset of symptoms until 2015. (RX5, p.19, 26-27).

On Cross-Examination, Dr. Gleason did not know when the shoulder symptoms set in or what caused the cuff tear. (RX2 p.27-8). Dr. Gleason noted Petitioner would mention shoulder complaints around his surgeries. (RX2, p.39-40). Dr. Gleason further admitted Dr. Ross's 2012 surgery improved Petitioner's back pain. (RX2 p.55, 62). He noted over the years the MRIs were relatively stable. (RX2, p.63). He noted the MRIs were consistent with the natural aging process with no evidence of acute injury. (RX2, p.64). Dr. Gleason did not recommend more surgery for Petitioner's low back because it was an open procedure and the chances of improvement diminished with each following surgery. (RX2 p.68-9).

Testimony of Kari Stafseth-Zamora

Ms. Stafseth-Zamora is a licensed vocational counselor with Vocamotive. Ms. Stafseth-Zamora provided testimony twice via deposition on August 9, 2022 and June 27, 2023.

The parties initially proceeded with evidence deposition of Ms. Kari Stafseth-Zamora on August 9, 2022. (PX12). Ms. Stafseth-Zamora is a vocational rehabilitation counselor. *Id*. at 5. She met Petitioner back in 2016 and testified Petitioner participated in vocational services and those services resulted in him obtaining a job offer. *Id*. at 6. Ms. Stafseth-Zamora testified Petitioner got a job with Securitas that started in June 2017 and held it until December 2020. He previously worked 36 hours per weeks. His hours decreased at the request of his doctor. He was earning $11.41. *Id.* at 19-20.

She testified Petitioner lost access to his preinjury job as that position required physical capabilities at a medium level. *Id*. at 25. She further noted Petitioner lost access to his job as a security guard as those physical capabilities exceeded the restrictions outlined by Dr. Brandon. *Id*. at 26. She further noted Petitioner faced challenges returning to work as he was 60 years old, so he was considered to be of older age with physical limitations. *Id*. at 27. Based on the same, she opined Petitioner did not have access to any viable stable labor market. *Id*. at 30.

On Cross-examination, she clarified she relied on restrictions from the December 16, 2021 FCE questionnaire not an actual FCE. *Id*. at 43.

On June 27, 2023, Ms. Stafseth-Zamora was re-deposed. (RX8). Petitioner underwent a Functional Capacity Evaluation on October 10, 2022. Ms. Stafseth-Zamora testified she subsequently reviewed the Functional Capacity Evaluation and prepared an addendum report on November 2, 2022. *Id.* at 8. Per the Functional Capacity Evaluation, Petitioner demonstrated functional tolerances within the high end of light to the low end of the medium physical demand level with restrictions of lifting 20 pounds from floor to waist, 25 pounds from 12 inches to waist, 25 pounds from waist to shoulder on an occasional basis, carrying 25 pounds from 50 feet on an occasional basis, overhead reaching on an avoid basis and alternate between sitting and standing. *Id.* at 7-8. Ms. Stafseth-Zamora testified based on the Functional Capacity Evaluation it was her opinion that Petitioner was employable in a limited labor market with wages falling between $12.00 and $17.00 per hour. *Id.* at 8.

Ms. Stafseth-Zamora testified that rehabilitation/job placement services were then subsequently reinstated for Petitioner and started on January 6, 2023. (RX8, p.9). She testified she and/or her staff met with Petitioner two days a week to aid with his job search. Petitioner was cooperative with the job search process. *Id.* at 10. Petitioner secured a meet and greet with KSM. Ms. Stafseth-Zamora testified that interview resulted in a job offer that was extended to Petitioner on March 20, 2023. *Id.* at 12. Ms. Stafseth-Zamora testified KSM makes assemblies for the aerospace industry and that Petitioner was offered the position of an assembler and was responsible for making components of wire harnesses. *Id.* at 12-13. Ms. Stafseth-Zamora testified she reviewed the physical requirements of an assembler for KSM and that they were within the guidelines set for forth in Petitioner's Functional Capacity Evaluation. *Id.* at 13-14. Petitioner's start date at KSM was March 22, 2023. Ms. Stafseth-Zamora testified the first week of work for Petitioner KSM would be assessing his ability to do the job. *Id.* at 14. Ms. Stafseth-Zamora testified that on the morning of March 23, 2023 her field developer received a text message from Petitioner advising that he could not return for his second day of work and planned to contact KSM and leave them a message advising them of his inability to return. *Id.* at 15-16. Ms. Stafseth-Zamora testified her field developer attempted to reach Petitioner but was unable to, so the field developer went to KSM for the purpose of attempting to salvage the relationship as there was concern that calling off the second day off work would put Petitioner's employment in jeopardy. *Id.* at 17. Ms. Stafseth-Zamora testified KSM decided to terminate Petitioner after hearing his voicemail message due to concerns of absenteeism. *Id.* at 17-18. Ms. Stafseth-Zamora testified KSM was accommodating Petitioner within his restrictions, including allowing him to sit and stand as needed, and Petitioner reported no complaints of being asked to do work outside his restrictions. *Id.* at 20.

Ms. Stafseth-Zamora testified that in her opinion the position with KSM was the perfect position for Petitioner given that he refused to do security work. (RX8, p.25). Petitioner was offered the position with KSM at $18.00 per hour. *Id.* at 26. Ms. Stafseth-Zamora testified Petitioner returned to her company for ongoing job placement services and was subsequently terminated. Petitioner indicated he was not being paid any further and was not going to be attending any further appointments. *Id.* at 26. She confirmed Petitioner returned the equipment around April 21. *Id.* at 27.

On Cross-examination Stafseth-Zamora indicated Petitioner found a job as a security guard and worked a lengthy period of time. (RX8, p.28). Ms. Stafseth-Zamora noted Petitioner had a flare up in pain the next day after beginning his new job at KSM which was consistent with what Dr. Brandon had

mentioned about Petitioner may needing days off work. *Id.* at 37-38. She noted that in three months of looking for work, Petitioner found a job. *Id.* at 42. She further noted Petitioner was cooperative throughout the whole process. *Id.* at 44. After benefits were suspended, Petitioner elected not to continue with vocational rehabilitation. *Id.* at 45-46. She noted if there was no restriction for Petitioner to take days off, it would still be her opinion that Petitioner's job was a reasonable placement based on the functional capacity evaluation. *Id. at* 57-58.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Compensation Commission*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Industrial Commission*, 834 N.E.2d 583 (2d Dist. 2005).

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a Petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. *Id*. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill. Dec. 794 (4th Dist. 1989).

Petitioner is alleging several body parts. The Arbitrator will address each body part separately.

Lumbar Injury

The Arbitrator finds Petitioner initially sustained a back injury necessitating surgical intervention by Dr. Ross. The Arbitrator finds that Dr. Ross released Petitioner to maximum medical improvement as of June 4, 2013. Dr. Ross opined Petitioner made an excellent recovery from his back injury and surgery and could return to full duty work in regards to his back. Based on the same the Arbitrator finds Petitioner's condition after June 4, 2013 is not causally related to his accident. To obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she *has sustained* accidental injuries arising out of and in the course of the employment. (Emphasis added.) 820 ILCS 305/1(d) Petitioner has not met that burden in this case.

Petitioner testified he injured his back, on May 14, 2012 at the time of his first accident. Following that injury Petitioner underwent successful treatment with Dr. Ross to include surgery on December 12, 2012. Thereafter, Petitioner was released by Dr. Ross at maximum medical improvement for his back on June 4, 2023. As of June 4, 2023, Petitioner reported to Dr. Ross he had virtually no pain in his back. After June 4, 2013, Petitioner went on to treat for his neck and did not report symptoms in his back again until 2015 while seeking treatment for his neck with Dr. Kolavo.

The Arbitrator looks to the orthopedic and neurosurgeons on this case. The Arbitrator notes Dr. Ross did not provide any type of opinion on this case even though he was the one who performed the surgery. Dr. Kolavo advised he did not have an opinion on causation when specifically asked in his deposition. Dr. Masynk further noted he did not have an opinion and would need to discuss the same with Petitioner and review medical notes and refused to provide an opinion on causation. The Arbitrator finds that given the age of the case, Petitioner had ample time to discuss this case with any of his orthopedics and/or neurosurgeon to provide such an opinion. The only opinion rendered was by a pain physician, Dr. Hanna. Initially Dr. Hanna indicated he was not familiar with Petitioner's back and causation in regards to the same. Without hesitation, however, Dr. Hanna provided a causation opinion about Petitioner's neck condition due to his familiarity with the same. (PX6, p.9-10). Dr. Hanna subsequently reviewed a single medical note from August 22, 2012 and provided a causation opinion regarding the back. The Arbitrator does not find this testimony persuasive. Dr. Hanna did not treat Petitioner concurrently with his original injury. In addition, Dr. Hanna is not a surgeon. Lastly Petitioner did not begin treating with Dr. Hanna until 2015, almost three years after his release from Dr. Ross. The Arbitrator finds the physicians in the best position to provide a causation opinion would be Drs. Ross, Kolavo and Masynk all which did not provide any type of opinion.

In addition, when looking at the medical records the Arbitrator does note Petitioner underwent a lumbar myelogram in January of 2015, however, is unclear why. Petitioner then reported a June 22, 2015 injury to his back noting the opposite side right leg pain. The Arbitrator notes Petitioner's previous problem was left-sided. Petitioner specifically noted that this right leg pain began three weeks ago. Petitioner was later admitted to the hospital for back and right sided leg pain. The Arbitrator finds that these complaints are new and distinct then Petitioner's original back injury.

The Arbitrator also places some weight on the opinion of Dr. Gleason, Respondent's Section 12 physician. Dr. Gleason testified Petitioner's work-related condition was treated successfully by Dr. Ross

with surgery and had resolved by June 4, 2013 and that his current condition is not related to his work accidents. In support he found Petitioner's diagnostic studies after 2013, including his MRIs from 2015, 2017, 2019 and 2021 all showed findings consistent with the natural aging processes and no acute injury. When questioned whether Petitioner's surgery with Dr. Ross in 2012 could have led to an acceleration of the breakdown of Petitioner's joints, Dr. Gleason testified that he could not say to a reasonable degree of certainty that happened as Petitioner reported resolution this pain following his surgery in 2012 and his body was subject to normal aging over the next nine years.

Based on the opinions of Dr. Gleason and relying only on the opinions, or lack of opinions, of Petitioner's treating doctors, Petitioner has not met his burden under the Act. As such, the Arbitrator finds Petitioner sustained a back injury reaching MMI as of June 4, 2013. Petitioner's back condition after this date is not causally related to the accident.

Neck/Carpal Tunnel Syndrome

Petitioner testified he never had any prior neck problems prior to the injury. In addition, the chain of events presented in this case show Petitioner's neck became symptomatic after the June 11, 2013 accident, with some contribution from the May 14, 2012 and May 26, 2012 accidents. The Arbitrator finds Petitioner met his burden of proof by a preponderance of the evidence that his condition of ill-being was causally related to his work accident based on the chain of events in addition to the medical opinions contained in the record giving causal connection.

The Arbitrator notes Petitioner began complaints of neck pain after the May 26, 2012 injury which subsequently got worse. Petitioner's neck complaints progressed until the June 11, 2013 accident with no intervening accidents. Dr. Ross initially attributed the cervical injury to the 2012 work accidents but deferred treatment of the neck until the back was fixed. (PX3 p.41). Dr. Ross opined that although it was clear Petitioner had some degenerative arthritis in his neck that predated his work injury, in his opinion, the fall on May 26, 2012 caused the symptoms in his neck and arm. For treatment of Petitioner's neck Dr. Ross recommended an anterior cervical discectomy and fusion at C5-6 at C6-7. (PX3, p.30).

The Arbitrator finds while working on June 11, 2013, Petitioner sustained his third accident resulting in increased neck pain traveling down his left arm. (T.18). Dr. Ross continued to recommend surgery, however due to lack of approval Dr. Ross sent Petitioner to Dr. Kolavo. The Arbitrator finds Dr. Kolavo similarly attributed the cervical injury to both the May 14, 2012 accident with the resulting May 26, 2012 fall, and the June 11, 2013 work accident. (PX2 p.6). Dr. Kolavo testified Petitioner's neck condition was causally related to his work accidents and led to his need for neck surgery. (PX2, p. 7-8). He further noted Petitioner's need for treatment was related to the June 11, 2013 work injury.

Dr. Kolavo performed surgery on Petitioner on May 8, 2014 and eventually a revision surgery on March 30, 2015. When Petitioner woke up from surgery, he had what seemed like a dense carpal tunnel syndrome in his left hand and was ultimately surgically released by Dr. Kiesler. (PX2 p.15-16) Dr. Kolavo explained that the carpal tunnel syndrome had to have some relationship to the second surgery because he woke up with the complaint immediately after surgery, and whatever happened in surgery caused it. (PX2 p.17-18). Dr. Kolavo testified that with respect to the carpal tunnel syndrome, he believes it could have been aggravated by the neck surgery. It was a cause-and-effect situation. (PX2, p.17).

At the time of his deposition, Dr. Kolavo testified Petitioner was still healing for his second neck surgery and had persistent reports of arm symptoms. Petitioner continued to complain of persistent left trapezius pain and left triceps pain. Petitioner began pain management for intermediate neck pain. After reviewing Petitioner's myelogram, Dr. Kolavo confirmed options for Petitioner to include continuing with chronic pain management versus considering a revision ACDF at C5-6 on the left. Dr. Kolavo noted Petitioner had a large hypertrophic bone spur at C5-6 that was contributing to his symptoms. He also noted worsening foraminal stenosis. He also discussed the possibility of incomplete relief of symptoms. Petitioner confirmed he did not wish to proceed with surgery. The Arbitrator notes Petitioner continued to seek treatment for his neck with Dr. Hanna and Dr. Kolavo through 2017, undergoing therapy, diagnostic tests, and injections. Eventually Dr. Kolavo recommended a second opinion. The Arbitrator notes thereafter Petitioner was seen by Dr. Masynk. Dr. Masynk eventually recommended a posterior left C5-C6 removal of hardware followed by hemi laminectomy, foraminotomy, facetectomy for nerve root decompression. (PX1 p.2356). The Arbitrator notes this was the same surgery Dr. Kolavo had proposed back in April of 2016. Petitioner's cervical surgery was completed on December 7, 2020 and included a left posterior open C5-6 hemilaminectomy and foraminotomy for nerve root decompression, removal of C5-7 posterior instrumentation, and exploration of fusion (PX1, p. 1265). Post-operatively Petitioner was returned to physical therapy and was discharged as of March 30, 2021. (PX1, p. 785).

The Arbitrator finds Dr. Masynk also provided an opinion on this case. Dr. Masynk is a board-certified neurosurgeon who opined Petitioner's neck was related to the injury and placed Petitioner at maximum medical improvement. He opined he did not require any further treatment or restrictions for his neck. (RX6, p.6).

Lastly the Arbitrator notes that Dr Hanna also related the cervical treatment he had provided over the years to the work accidents from 2012. (PX6 p.10). Dr. Hanna had no hesitation in providing a causation opinion in regards to the neck. Petitioner obtained significant relief from the treatment Dr. Hanna provided for the neck. (PX6 p.11). Dr. Hanna testified he last treated Petitioner for his neck on January 27, 2021. (PX6, p. 27).

The Arbitrator finds these opinions more persuasive than Respondent's section 12 expert, Dr. Mather. The Arbitrator notes that Dr. Mather also initially admitted that the neck injury came from the June 11, 2013 work accident. He also admitted pushing a heavy machine can cause stress across the neck. (PX16B p.14).

Considering the medical evidence and chain of events presented in this case the Arbitrator finds Petitioner's cervical and carpal tunnel syndrome causally related to the June 11, 2013 work accident. The Arbitrator finds Drs. Ross, Kolavo and Masynk persuasive in the same. The timeline is linear and there are no intervening accidents to attribute the deteriorating cervical condition. Based on the same, the Arbitrator finds Petitioner's neck and carpal tunnel syndrome are related to his work injury.

Psychological treatment/Shoulder condition

Petitioner is alleging the psychological component is due to Petitioner's work injury. The Arbitrator finds Petitioner failed to prove the same. The Arbitrator notes that although Petitioner attempted to commit suicide as well as underwent counseling no physician specifically opined this condition was related to any of Petitioner's work injuries. Petitioner overdosed on cocaine and sustained

a diagnosis of acute psychosis due to the cocaine intoxication. Petitioner later sought counseling for an array of different issues to include the drug-induced mood disorder with psychosis. The Arbitrator cannot speculate what diagnoses are related without causation opinions. Based on the same the Arbitrator finds Petitioner's psychological treatment unrelated to the work accident.

In regards to the shoulder condition, it is unclear whether Petitioner is indicating that it is causally connected. As it is mentioned, the Arbitrator will address the same. The Arbitrator finds Petitioner's left shoulder not causally related to the work injury. Once again, the Arbitrator does not find any physician specifically addressing the left shoulder. If the Arbitrator were to causally relate the same, she would have to speculate as to the reasoning and the timeline. Per the medical records, Petitioner began substantial complaints of left shoulder pain in 2015. It is unclear to the Arbitrator how the shoulder is related to the injury and cannot speculate regarding the same. Based on the same, the Arbitrator finds Petitioner has not met his burden in providing that the left shoulder is causally related to the work injury.

With regard to Issue "G", what were Petitioner's earnings, the Arbitrator finds as follows:

Respondent placed Petitioner's wage statement into evidence. (RX10). Petitioner testified that this was an accurate copy of his earning for the first year. (T.11).

The wage statement ranges from check dates from May 27, 2011 through May 25, 2012 which results in 52 weeks. No evidence was placed to support the various payments. Per the wage statement, it looks like Petitioner was paid $20.20 per hour and worked overtime for 5 periods. Petitioner earned was also paid vacation hours, holiday hours and an earning labeled "SF2."

Petitioner worked 60 hours of overtime ($1979.60) at a straight rate would total $1212.00. The Arbitrator notes that overtimes hours are included if they are mandatory or consistent. In this case, Petitioner did not testify to either. As such, the Arbitrator is presented with no testimony regarding the same. As such, the Arbitrator has excluded the same. Taking out overtime hours reduces the total to be $40,570.05. Over 52 weeks this would result in an average weekly wage of $780.19.

The Arbitrator will utilize the average weekly wage of $780.19 in all three cases as the first injury was a factor in all three cases.

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 substantial amount of medical bills into evidence. Given the findings on causation, Respondent is liable for the treatment in regards to the low back through June 4, 2013. Respondent is also liable for medical expenses to include cervical surgeries, pain management to the cervical spine and carpal tunnel syndrome. (PX10).

The Arbitrator has denied the psychological treatment for the related suicide attempt in April 2022, follow up treatment at Braden Counseling Center, left shoulder care and back treatment after the June 2013 MMI date.

Lastly Respondent is also responsible for all vocational rehabilitation charges from Vocamotive under Section 8(a). (See PX12, PX15, RX9). The Arbitrator finds that Petitioner was entitled to vocational rehabilitation services. Respondent shall remit to Petitioner's counsel the payments for medical treatment which Respondent did not pay as well as the vocational expenses it did not pay.

With respect to Issue (K), what temporary benefits and temporary partial disability benefits are in dispute, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that 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. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

Per the stipulation sheet, Petitioner is seeking TTD benefits, TPD benefits and maintenance benefits. The Arbitrator will address each benefit.

TTD benefits

Petitioner alleged several periods of TTD benefits. Per the Stipulation Sheet, Petitioner alleges three periods of TTD benefits. The first period is from May 14, 2012 through June 3, 2013. (Arb. Ex.1). Petitioner testified he began missing work as of May 26, 2012. Based on the records, to include Dr.

Ross's opinion, Petitioner is awarded TTD benefits from May 26, 2012 through June 3, 2013 (release date by Dr. Ross).

The second period Petitioner is claiming is from May 4, 2014 through June 8, 2017. (Arb. Ex. 1,2,3). Petitioner testified that he was off work for this period and paid worker's compensation benefits. (T.21-22). The medical records show Petitioner was off work beginning on May 8, 2014 (the date of his cervical surgery), through June 8, 2017 (the day before his employment began with Securitas). Based on the same, Petitioner is awarded TTD benefit from May 4, 2014 through June 8, 2017.

The last period of TTD benefits Petitioner is claiming is from December 6, 2020 (the day before his December 7, 2020 neck surgery) through November 2, 2022 (when vocational rehabilitation began). (Arb. Ex. 1,2,3). The Arbitrator finds that Petitioner is owed this period. Respondent is given a credit for all TTD paid. (RX1).

TPD Benefits

The Arbitrator notes Petitioner claimed TPD benefits from June 9, 2017 through December 4, 2020. Petitioner worked in a modified position as a security officer from June 9, 2017 through December 4, 2020. Respondent agreed to the TPD period. (Arb. Ex.1,2,3). The Arbitrator finds Petitioner is owed this period. Respondent is given a credit for all TPD benefits paid. (RX1).

Maintenance Benefits

Petitioner is claiming maintenance benefits from November 3, 2022 through April 19, 2023. Ms. Stafseth-Zamora testified Petitioner initially obtained a job on March 22, 2023. Petitioner was subsequently terminated from that position. Petitioner returned to her company for ongoing job placement services. Petitioner indicated he was not being paid any further and was not going to be attending any further appointments. Ms. Stafseth-Zamora confirmed Petitioner returned the equipment around April 21. *Id.* at 27. Based on Ms. Stafseth-Zamora's testimony, it looks like Petitioner attempted to restart vocational rehabilitation, but Respondent would not pay for additional services and/or maintenance benefits. Based on the same the Arbitrator finds Respondent owes maintenance benefits from November 3, 2022 through April 19, 2023. Respondent shall get credits for amounts paid.

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

The Arbitrator adopts and incorporates all of the above findings of fact into these findings. The Arbitrator notes at the time of injury Petitioner was a 50-year-old male who worked for Respondent, RR Donnelly. The Arbitrator finds Petitioner underwent one back surgery and several neck surgeries. Petitioner eventually proceeded with vocational rehabilitation and found a job. Petitioner left that job to undergo additional medical care. He later underwent another FCE that placed him with restrictions at the high end of light to the low end of the medium physical demand level with restrictions of lifting 20 pounds from floor to waist, 25 pounds from 12 inches to waist, 25 pounds from waist to shoulder on an occasional basis, carrying 25 pounds from 50 feet on an occasional basis, overhead reaching on an avoid basis and alternate between sitting and standing. There was question regarding a questionnaire that Petitioner's new primary care physician filled out in December of 2021. The Arbitrator notes that Dr. Brandon was Petitioner's new primary care physician that he saw on May 9, 2021. Dr. Brandon ordered

a FCE and subsequently wrote a FCE questionnaire in December of 2021. Petitioner's FCE took place in October of 2022. There are no medical records indicating Dr. Brandon, or any other physician, reviewed the FCE or disagreed with the same. As such, the Arbitrator adopts the findings of the FCE as Petitioner's restrictions.

In assessing his permanency, Petitioner has requested a finding that Petitioner is permanently and totally disabled based on the 'odd-lot' theory. In support, he presents evidence and testimony of his inability to find gainful work after a proper effort and vocational opinion of Ms. Stafseth-Zamora. The Arbitrator declines to find the same.

The Arbitrator finds that Petitioner was placed with restrictions in October of 2022. Petitioner began vocational rehabilitation services as of January 6, 2023. (RX8, p.9). Petitioner was cooperative with the job search process and secured a job as of March 20, 2023. There is some question on whether this job was a good fit. The Arbitrator notes the only opinion offered was Ms. Stafseth-Zamora who opined that per the FCE this was a suitable employment. No other physicians or vocational counselors provided any other opinions. Based on the FCE restrictions and Petitioner's vocational interviews, the Arbitrator finds Petitioner does have transferable skills with a stable labor market. The Arbitrator points to the fact that Petitioner underwent vocational rehabilitation twice and secured two different employments.

Initially, the Arbitrator notes Petitioner has not presented a wage differential claim. Although Ms. Stafseth-Zamora testified based on the Functional Capacity Evaluation it was her opinion that Petitioner was employable in a limited labor market with wages falling between $12.00 and $17.00 per hour, the Arbitrator finds no detail discussion of reasoning per the National Tea Guidelines.

Petitioner did not offer evidence regarding Petitioner's educational barriers, any economical decompression in Petitioner's geographic areas and no language barriers were found. In fact, the Arbitrator is impressed with the fact Petitioner found two jobs during vocational rehabilitation. Based on the same, the Arbitrator finds that Petitioner has a stable labor market with transferable skills.

The Arbitrator further adopts the FCE to support Petitioner's restrictions. The Arbitrator puts weight on Ms. Stafseth-Zamora's opinion that there is a limited labor market for Petitioner. In addition, she opined Petitioner's job at KSM or security would have been a good fit for Petitioner.

The Arbitrator disagrees the Petitioner is permanently and totally disabled but finds Petitioner has suffered a loss of profession.

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
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
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 Petitioner placed Respondent's Section 12 depositions into evidence. Dr. Mather provided an AMA rating of 8 percent. (PX16C, p.35). As the Arbitrator did not find his opinions persuasive, the Arbitrator gives little weight to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner was employed as a machine operator and bindery mechanic, a heavy position, at the time of injury. Petitioner never returned back to work. Based on Petitioner's restrictions of the light demand level, the Arbitrator gives great weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes Petitioner was 50 years old on the date of this accident. Petitioner is now 61 years old. The Arbitrator notes that due to Petitioner's age the remaining amount of work life is minimal. As such, the Arbitrator assigns moderate weight to this factor.

With regard to subsection (iv) of § 8.1b(b), regarding the employee's future earning capacity, the Arbitrator notes that Petitioner's previous jobs paid less than his original employment. The Arbitrator finds that Petitioner has sustained a significant reduction in earning capacity. Based on the same, the Arbitrator gives this factor great weight as Petitioner is now currently not working and his previous employments were in a reduced earning capacity.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner's medical records reveal Petitioner underwent back surgery, several neck surgeries, and carpal tunnel surgery. Petitioner has permanent restrictions per his FCE. Petitioner continues to voice complaints of pain and difficulty with everyday tasks. In addition, he continues to experience numbness in his left hand and fingers, burning and pinching in his neck. Based on Petitioner's injury and disability in the medical records, this factor is given 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 70% person as a whole pursuant to §8(d)2 of the Act for the injuries sustained due to his worker's compensation injuries.

With respect to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner claims that he is entitled to penalties and fees. The Arbitrator finds Respondent did not per se act in bad faith. Petitioner's initial vocational services were terminated as of March 23, 2023 after Petitioner found employment. While the Arbitrator does not adopt Respondent's argument in not awarding additional maintenance benefits, it is the Arbitrator's view that Respondent's position is not objectively unreasonable or vexatious. The denial of this matter does not rise to the level of being vexatious and unreasonable.

Section 19(k) of the Act provides that "in case where there has been any unreasonable or vexatious delay of payment . . . which do not present a real controversy, but are merely frivolous or for delay, then

the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k). The Arbitrator further notes that there was a dispute regarding medical treatment based on the medical testimony. Based on the same, the Arbitrator denies penalties pursuant to Section 19(k).

Section 16 of the Act provides that "[w]henever the Commission shall find that the employer, his or her agent, service company or insurance carrier . . . has been guilty of unreasonable or vexatious delay . . . or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of [Section 19(k)], the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16. As indicated above, the Arbitrator does not believe that Respondent's argument about denial of medical care and ongoing maintenance benefits was frivolous. As such, the Arbitrator denies penalties.

Section 19(l) of the Act provides that "[i]f an employee has made a written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. . . . In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits . . . have been so withheld or refused, not to exceed $10,000." 820 ILCS 305/19(l).

The Arbitrator in reviewing COMPFILE notes Petitioner filed a Petition for Penalties as early as September 20, 2021. In reviewing the responses, the Arbitrator cannot speculate why there was constant disruption regarding TTD benefits. The Arbitrator also acknowledges that Respondent is not disputing the neck condition, however, there are medical bills that remain unpaid in regards to the same. In regards to TTD benefits, the Arbitrator notes that 78 of the 186 payments were delayed anywhere from 6 days to 3 years, with the average appearing to be around a month or two in delay. In other words, 42% of the payments were not paid in a timely manner nor in a manner which is explainable from the record. Respondent did not justify its payment practices. Medical bills were also denied and delayed. The Arbitrator notes that there is cervical medical care that is not paid. There is nothing in writing providing any reason why these payments were delayed and/or denied. While the Arbitrator acknowledges that Respondent may have denied something based on a Section 12 examination, the Arbitrator also acknowledges that Respondent did not put anything into evidence to explain the denial or justification of the same. In addition, Respondent did not place Dr. Mather's deposition testimony into evidence. Penalties under Section 19(l) are in the nature of a late fee" and are "mandatory '(i)f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay.'" *Jacobo v. IWCC*, 2011 IL App (3d) 100907WC, Section 19, 959 N.E.2d 772 (quoting *McMahan v. Industrial Commission*, 183 Ill.2d 499, 515, 702 N.E.2d 545, 552 (1998)). Here the Arbitrator finds that no adequate justification was provided for the delay. As such, the Arbitrator finds that the period from the initial demand and petition for penalties, September 20, 2021 through the present, no adequate justification for delay or nonpayment was provided. The §19(l) penalty is $30/day, not to exceed $10,000. Penalties calculated at the daily rate would exceed the $10,000 cap. Accordingly, the Arbitrator awards Petitioner $10,000.00, the maximum allowed for §19(l) penalties.

With respect to Issue (N), what credit is Respondent entitled to, the Arbitrator finds as follows:

Per RX1, Respondent issued payments. The Arbitrator notes that sometimes the payments are coded as TTD benefits when they really were issued during the period of maintenance. Respondent paid $150,350.18 in TTD, $15,548.49 in maintenance, $55,256.97 in TPD/wage differential benefits. Respondent shall receive credit for all amounts paid. (RX1).

Based on Ms. Stafseth-Zamora's testimony, it looks like Petitioner attempted to restart vocational rehabilitation, but Respondent would not pay for additional services and/or maintenance benefits. Based on the same the Arbitrator finds Respondent owes maintenance benefits from November 3, 2022 through April 19, 2023. Respondent shall get credits for amounts paid.

With respect to Issue (O), what prospective medial Petitioner is entitled to and whether Petitioner is entitled to Permanent Total Disability benefits, the Arbitrator finds as follows:

The Arbitrator has addressed Petitioner's nature and extent in section L and found Petitioner is not entitled to Permanent Total Disability benefits.

In regards to prospective medical, the Arbitrator notes Petitioner's 8(a) medical rights remain open for the causally related body parts but does not address any current treatment as this is not an 8(a) hearing.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC021597
Case Name	Brian Bronke v. R.R. Donnelly
Consolidated Cases	12WC021596; 13WC024555;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0153
Number of Pages of Decision	34
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Emilie Miller

DATE FILED: 4/8/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN BRONKE,

Petitioner,

vs. NO: 12WC021597

R.R. DONNELLY,

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 causation, medical expenses, wage calculations, nature and extent, penalties and attorney's fees, and being advised of the facts and law, affirms and adopts, with the following changes, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We affirm the Arbitrator's Order that the Decision in case number "12WC21596 lays out the award on all issues for the combined accident dates." We make the following changes and clarifications to maintain consistency among the Decisions that were issued in each of the consolidated cases.

The Commission affirms the Arbitrator's finding that Petitioner failed to prove he is permanently and totally disabled. However, we clarify the sequence of events relating to Dr. Brandon, Petitioner's primary care physician. Dr. Brandon's records reflect that Petitioner's first visit to "establish care" was on March 3, 2021. *Px4 at 2, T2.485; Id. at 440, T2.916; Id. at 596, T2.1081.*[1] There was no visit with Dr. Brandon on May 9, 2021, so we strike those references on pages 8 and 20 of the Decision. As discussed below, Petitioner did see Dr. Brandon on May 9, 2022.

[1] The electronic transcript in this case was uploaded in CompFile as two separate PDF files. The page numbers cited as "*T1*" refer to Volume 1 and "*T2*" refers to Volume 2.

On December 16, 2021, in conjunction with Petitioner's application for Social Security disability, Dr. Brandon completed a Physical Residual Functional Capacity Questionnaire and wrote that Petitioner had been "with Duly since 2/25/21." *Px4 at 568, T2.1051*. In the Questionnaire, Dr. Brandon indicated Petitioner was able to walk one city block without rest, sit for 30 minutes at a time, stand for 15 minutes at a time, stand/walk a total of less than two hours a day and sit for "about 2 hours" a day. *Px4 at 568-570, T2.1051-53*. Dr. Brandon also estimated that Petitioner would likely be absent from work "more than four days per month." *Id. at 570, 1053*.

On May 9, 2022, Petitioner saw Dr. Brandon who noted, "He is asking about an FCE [Functional Capacity Evaluation] for RTW," however an FCE was not ordered on that date. *Px4 at 205, T2.681*. The FCE was eventually ordered by Dr. Brandon on September 30, 2022. *Px4 at 40, T2.516*. Petitioner underwent the FCE on October 10, 2022. *Rx7, T2.3028*.

The FCE indicated Petitioner was "functionally employable at this time" and "recommended that client is placed in a position that allows him to alternate between sitting and standing." *Id*. The report stated, "Client demonstrated capabilities and functional tolerances to function within the high end of light to low end of the medium physical demand level with the heaviest weight able to lift within the demand level is 20# from floor to waist and 25# from 12" to waist and 25# from waist to shoulder." *Id. at T2.3029*.

With assistance from vocational counselors at Vocamotive, including Ms. Kari Stafseth-Zamora, Petitioner was able to obtain an employment opportunity with KSM Electronics for a "light assembly position that allowed employees to alternate between sitting and standing" with a starting wage of $18.00 per hour. *Rx9 at 136, T2.3340*.

Ms. Stafseth-Zamora testified that Petitioner requested that his start date be delayed until March 27, 2023 "so he could take a vacation" but he ended up starting on March 22nd. *Rx8-6/27/23 at 13, T2.3145*. We note that Petitioner testified he didn't really take a vacation but "wanted to veg out and stay home a few days before I started my new job." *T1.67-68*. We believe this is significant and reflects Petitioner's lackadaisical attitude toward starting his new job.

Petitioner attended the KSM job for one day on March 22, 2023. *Rx9 at 136, T2.3340*. Ms. Stafseth-Zamora testified that Petitioner's position as an assembler at KSM was within the physical requirement guidelines outlined by his FCE and that Petitioner was terminated from that employment based on his absenteeism. *Rx8-6/27/23 at 27, 3159*. Petitioner testified that he was unable to perform the KSM job since it caused him pain and he could not return the next day. *T1.33-34*. He argues "the FCE did not address, and did not dispute, that [he] would need unscheduled time off work to recover from his flares from work" (*P-brief at 5*). However, we find that Petitioner's argument is not based on any valid, current medical opinion.

Dr. Brandon completed the Functional Capacity Questionnaire for Social Security disability purposes in December 2021, almost ten months prior to the FCE, which was performed on October 10, 2022. We find that the opinions contained in Dr. Brandon's 2021 Questionnaire were superseded by the FCE. Petitioner never returned to Dr. Brandon to obtain restrictions that differed from the physical capabilities listed in the FCE nor is there any post-FCE medical opinion to support Petitioner's claim that his condition would require unscheduled absences from work. Therefore, we find that Petitioner simply refused to return to an accommodating job that was within

his physical capabilities. We agree with the Arbitrator's finding that Petitioner failed to prove that he is permanently and totally disabled.

We next address the Arbitrator's analysis of the five permanency factors in §8.1b(b) of the Act. With regard to factor (i), we find that Dr. Mather provided an AMA rating in his December 10, 2018 report, which was prior to Petitioner's final cervical surgery on December 7, 2020 and his FCE on October 10, 2022. Therefore, Dr. Mather's AMA rating is invalid and we give this factor no weight.

The Arbitrator gave factor (ii) "great weight" and noted that Petitioner was employed in a heavy position at the time of his injury and currently had "light demand level" restrictions. However, Petitioner's vocational counselor, Ms. Stafseth-Zamora, testified that Petitioner's pre-injury position required physical capabilities at a medium level. *Px12 at 25, T2.2275*. Petitioner's current restrictions, per the FCE, are "within the high end of light to the low end of the medium physical demand level." *Rx7, T2.3029*. We also point out that the FCE results include restrictions related to Petitioner's current lumbar spine and left shoulder conditions, which the Arbitrator correctly found to be not causally related to his work accidents. On November 7, 2022, Respondent's §12 physician, Dr. Gleason, opined that Petitioner's "Restrictions with respect to stair climbing and prolonged walking would be related to his lower back." *Rx5 at 2, T2.2985*. Therefore, Petitioner's permanent restrictions are based, in part, on conditions that are not causally related to his accidents. Petitioner testified that he could not perform security work because he couldn't walk and had problems with stairs. *T1.69*. We find these limitations are due to Petitioner's lumbar condition, which is not causally related to his work injuries. Petitioner also rejected security jobs because he would be required to refuse entry to potentially hostile people who had been terminated and "I didn't sign up for that." *T1.69*. We find that Petitioner's choices and work preferences are unrelated to his work restrictions. The Commission gives this factor moderate weight.

We agree with the Arbitrator's analysis of factor (iii).

Regarding factor (iv), we disagree with the Arbitrator's conclusion that Petitioner sustained a "significant" reduction in earning capacity. Petitioner obtained a job at KSM Electronics earning $18 per hour. He had been earning $20.20 per hour at the time of his first accident which means his reduction in earning capacity is only $2.20 per hour or $88 per 40-hour week. This is only about a 10% reduction in earning capacity, which we would characterize as a "minor" or "moderate" decrease in earning capacity. Although Petitioner's wages at the Securitas job from June 2017 through December 2020 were significantly less ($11.41 per hour) than his job at Respondent ($20.20), after he underwent the FCE and obtained permanent restrictions, he was able to obtain the KSM job earning $18 per hour. We also reiterate that Petitioner self-terminated his job at KSM based solely on his subjective complaints. The job was within his FCE restrictions and Petitioner did not return to any physician to have his permanent restrictions modified. We disagree with the Arbitrator's consideration of the fact that Petitioner is "now currently not working" since he is not working due to his own choice. Due to Petitioner's failure to prove that his job at KSM was beyond his restrictions and our finding that the reduction in his wages was minor, we give this factor "some" weight.

Finally, regarding factor (v), we generally agree with the Arbitrator's analysis but change "several" neck surgeries to "three."

Despite our modifications to the Arbitrator's analysis, as outlined above, we nevertheless agree that Petitioner sustained permanent partial disability to the extent of 70% person as a whole pursuant to §8(d)2 of the Act for the injuries sustained due to his worker's compensation injuries and hereby affirm that award.

Penalties and Fees

The Commission affirms the Arbitrator's award of penalties under §19(l) of the Act. However, we strike the analysis regarding the late or unpaid medical expenses because there is no evidence that Petitioner submitted the unpaid bills to Respondent. We find that Petitioner is entitled to §19(l) penalties based on the pattern of delay in temporary total disability (TTD) payments.

We also affirm the denial of penalties under §19(k) and attorney's fees under §16. However, we add additional analysis to support this finding. The Arbitrator wrote:

> In regards to TTD benefits, the Arbitrator notes that 78 of the 186 payments were delayed anywhere from 6 days to 3 years, with the average appearing to be around a month or two in delay. In other words, 42% of the payments were not paid in a timely manner nor in a manner which is explainable from the record.

Dec. 23.

Respondent's benefit payments exhibit was admitted into evidence (*Rx1*) and Petitioner's brief contains a summary of those payments to support his claim that there were extensive delays in payment. The entries that allege the lengthiest TTD delays are:

[Payment Dates	Date Sent	TTD Amount	Alleged Delay]
…			
11/19/14 - 12/7/15	5/23/2016	$30,134.67	"168 day delay"
5/7/14 - 11/7/14	5/23/2016	$14,518.01	"563 day delay"
6/11/13 - 4/23/14	5/23/2016	$24,955.28	"3 year delay"

P-brief at 15.

The Commission notes that on June 4, 2013, Dr. Ross opined that Petitioner was at maximum medical improvement for the lumbar spine and could return to full duty work." *Dec. 2., Px3, T2.81*. Petitioner testified that he did, in fact, work between June 9, 2013 and May 3, 2014. *T1.21*. On May 23, 2016, Respondent issued a check for TTD from June 11, 2013 through April 23, 2014. *Rx1 at 88-89, T2.2750-51*. However, Petitioner was not entitled to TTD for that period of time because he was working. Therefore, there was no "3 year delay" in that payment.

We next address the checks that were issued for the periods of "5/7/14 – 11/7/24" and "11/19/14 – 12/7/15." On March 6, 2014, after comparing the November 11, 2012 and November 27, 2013 cervical MRIs, Dr. Mather opined that Petitioner's cervical condition was not related to the June 11, 2013 work injury. *Px16A-DepX2, T2.2478*. On December 7, 2015, Dr. Mather authored a report, which is not in evidence but which he referenced during his deposition on January 28, 2016. He testified, "I felt that he had significant degenerative disc disease at C5-6-7

and based on the records it appeared to be nonoccupational." *Px16B at 10, T2.2502*. Therefore, we find that Respondent had a good faith basis to dispute TTD for those relevant periods based on Dr. Mather's opinion.

The benefit payment records reflect that, on May 23, 2016, Respondent issued the three checks (as indicated above) for TTD from June 11, 2013 through December 7, 2015. *Rx1 at 88-89, T2.2750-51*. It is unclear why Respondent reversed its position and accepted Petitioner's cervical condition at that time, but we note that Petitioner visited Dr. Kolavo on May 22, 2016. *Px11 at 120, T2.2144*. Dr. Kolavo opined that Petitioner "has residual or progressive and recurrent foraminal stenosis at C5-C6 on the left [where] previous foraminotomy has been performed [which] is contributing to his symptoms." *Id*. He recommended a "revision anterior decompression and takedown of his old fusion removal of instrumentation and revision foraminotomy and lateral recess decompression on the left at C5-6. The segment should then be refused and re-instrumented…" *Id*. Again, while it is unclear whether Respondent's decision was influenced by Dr. Kolavo's report, it issued the TTD checks the next day.

We point out another line from Petitioner's spreadsheet that incorrectly inflates the average delay in payment:

[Payment Dates	Date Sent	TTD Amount	Alleged Delay]
…			
12/15/17 - 12/28/17	2/15/2018	$600.58	"1 year delay"

P-brief at 14. The Commission finds that this was only a 2-month delay (not 1 year).

We find that most of the TTD payments were made timely and the ones with the most significant delays are explainable from the record, which results in a much lower "average" late payment. While we do not condone any delays, we exercise our discretion under §19(k) and §16 of the Act and find that Respondent's behavior, under the circumstances of this case, was not unreasonable or vexatious.

Clerical Errors

Although we affirm the Arbitrator's Decision, we correct the following clerical errors:

1) Throughout the Decision, we strike the references to "Dr. Masynk" and replace with "Dr. Masnyk" to reflect the correct spelling. *See e.g., Px1 at 628, T1.750 and throughout Px1*.

2) On page 4, in the first full paragraph, we clarify that Petitioner followed up with Dr. Kolavo on June 19, 2015 (not June 22, 2015). *Px11 at 194; T2.2219.*

3) On page 8, in the fourth paragraph, we clarify that Petitioner presented to Dr. Brandon on May 9, 2022 (not 2021). *Px4 at 205; T2.681*. We also strike the second sentence and replace it with: "Dr. Brandon ordered various labs and studies and told Petitioner to return in one month. (*Px4 at 209-210; T2.685-86*). On September 30, 2022, Dr. Brandon ordered the FCE. *(Px4 at 40-41; T2.516-17).*"

4) On page 10, after the first sentence in the first paragraph under the "Dr. Steven Mather" section, we replace the citation to "PX7" with "(*Px16A-DepX4, T2.2484).*"

5) On page 13, in the second full paragraph, and on page 21, in the third full paragraph, we clarify that Ms. Stafseth-Zamora opined Petitioner was employable with wages falling between $13.00 and $17.00 per hour. *Rx8 at 8, T2.3140*; *Rx9, T2.3309*.

6) On page 15, in the second paragraph under the "Lumbar Injury" section, we replace "June 4, 2023" with "June 4, 2013" to correct the year in the third and fourth sentences.

7) On page 21, in the fourth full paragraph, we change the word "decompression" to "depression."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2023 is hereby affirmed and adopted with the clarifications and corrections noted above.

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

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

No bond for the removal of this cause to the Circuit Court by Respondent is required since no award was made under this case number. 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.

April 8, 2025

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 2/18/25
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC021597
Case Name	Brian Bronke v. R.R. Donnelly
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Emilie Miller

DATE FILED: 10/3/2023

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

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Brian Bronke
Employee/Petitioner
v.

R.R. Donnelly
Employer/Respondent

Case # **12** WC **21597**

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 28, 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 **8(a) rights to future medical**

FINDINGS

On **May 26, 2012**, 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 partially*** causally related to the accident.

In the year preceding the injury, excluding overtime Petitioner earned $**40,570.05**; the average weekly wage was $**780.19**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **2** 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.

See companion award in 12WC21596 for combined credits for all claims.

ORDER

12WC21596 lays out the award on all issues for the combined accident dates.

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 3, 2023

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Bronke,	)
	)
Petitioner,	)
	)
v.	)
	)
R.R. Donnelly ,	)
	)
	)
Respondent.	)

FINDINGS OF FACT

This matter proceeded to hearing on June 28, 2023 in Ottawa, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing on three separate cases (Arb. Ex. 1, 2, 3).

Brian Bronke (hereinafter referred to as the "Petitioner") worked as a machine operator and bindery mechanic for R.R. Donnelly (hereinafter referred to as the "Respondent") since 2009. (T.10-11).

On May 14, 2012, Petitioner testified he was moving a piece of heavy equipment weighing about 300-400 pounds and his back went out on him. (T.13). Petitioner initially sought treatment at Tyler Medical Clinic with Dr. Long and was diagnosed with a lumbar strain and placed on light duty. (PX7, p.3). Petitioner testified he began missing work at that point. (T.14). Subsequently, Petitioner sustained a second accident on May 26, 2012. At the time Petitioner was at home when his left leg out gave out, and he fell fracturing his clavicle (collarbone) and several ribs. Petitioner also began complaining of neck pain. (T.14-16).

Petitioner followed up with Dr. Long on May 29, 2012 noting his back symptoms were improved. He noted that he fell at home and went to the ER. Petitioner was referred to an orthopedic for his left clavicle fracture and was to monitor his lumbar spine. He was off work. (PX7, p.5-6). Petitioner presented to Dr. Patari on June 4, 2012 who recommended nonoperative care. Petitioner was recommended an abdominal binder and a home exercise program. *Id.* at 9-10. Petitioner's clavicle and rib fractures were treated conservatively with physical therapy; however, he continued to experience low back pain. On July 26, 2012, Petitioner followed up with Dr. Long. The Doctor noted it was 10 weeks since the original injury and recommended an MRI of the lumbar spine. Petitioner was to continue with physical therapy. *Id*. at 29.

Petitioner underwent an MRI on August 7, 2012 which revealed a L4-5-disc protrusion. (PX7, p.95). Petitioner followed up with Dr. Long on August 9, 2012 for an evaluation of his lumbar spine with left lower extremity radiculopathy. The Doctor noted Petitioner had a L4-L5 disc protrusion and referred Petitioner to Dr. Ross. Petitioner remained on restrictions. *Id.* at 37.

On August 22, 2012 Petitioner presented to Dr. Ross. Petitioner previously treated for a left L4-5 microdiscectomy about 10 years ago. Dr. Ross went over Petitioner's condition and diagnosed him with

lumbar radiculopathy most likely due to his spondylosis, disk bulge and foraminal stenosis at the L4-5 and/or L5-1 level. Petitioner was recommended a trial of a Medrol Dosepak followed by an injection. Petitioner was placed on restrictions. (PX3, p.44).

Petitioner continued with physical therapy. On September 24, 2012, Dr. Patari placed Petitioner at MMI for his left clavicle injury releasing Petitioner to full duties for that injury. (PX7, p.56).

Petitioner followed up with Dr. Ross on November 13, 2012. Petitioner had undergone two transforaminal cortisone injections with temporary improvement. Given the failure, he would suggest foraminotomies at L4-5 and L5-S1. Petitioner also had left arm numbness which was suspicious for cubital tunnel syndrome. (PX3, p.41).

The EMG/NCV was performed on November 21, 2012, identifying mild right carpal tunnel syndrome, but not conclusive for cubital tunnel syndrome or cervical radiculopathy. (PX3 p.146).

On December 3, 2012, Dr. Ross authored a note indicating Petitioner should undergo an MRI of his cervical spine and EMG of the left arm due to his increasing neck pain. (PX3, p.40).

The cervical MRI was done on December 11, 2012 revealing cervical spondylosis. There was also spinal cord compression at C6-7 with altered cord signal, either myelomalacia or edema, associated with disc protrusions at C5-6 and C6-7. (PX3 p.90).

On December 12, 2012, Dr. Ross performed a re-exploration of the lumbar spine with a left L4-L5 hemilaminotomy, lysis of adhesions, micro discectomy, foraminotomy and L5-S1 hemilaminotomy in foraminotomy. Postoperative findings were identified as a recurrent lumbar disc herniation and foraminal stenosis at L4-5, and spondylosis with foraminal stenosis at L5-S1. (PX1 p.4185). Post-operatively Petitioner was placed in physical therapy. *Id.* at 57.

Petitioner followed up with Dr. Ross on December 26, 2012 reporting significant improvement in his back and left leg symptoms. Petitioner was recovering well from back surgery. Petitioner was recommended a brief three-week course of physical therapy before proceeding with his neck operation. (PX3, p.39). Petitioner resumed therapy on January 3, 2013. (PX7, p.57). Petitioner continued to follow up with Dr. Ross. Petitioner was improving in terms of his back but was recommended a cervical diskectomy and fusion. (PX3, p.32-38). On June 4, 2013, Petitioner returned to Dr. Ross. Petitioner had made an excellent recovery from his back injury and surgery. Dr. Ross opined he was at maximum medical improvement for the lumbar spine and could return to full duty work. He noted his neck was more problematic. Dr. Ross disagreed with the Section 12 examiner's opinion regarding causation for the neck. Dr. Ross noted that although it was clear Petitioner had some degenerative arthritis in his neck that predated his work injury, in his opinion, the fall on May 26, 2012 caused the symptoms in his neck and arm. For treatment of Petitioner's neck Dr. Ross recommended an anterior cervical discectomy and fusion at C5-6 at C6-7. Petitioner was able to return to work full duty on a trial basis at a light/medium level. He should ask for help to lift anything over 35 pounds. (PX3, p.30).

While working on June 11, 2013, Petitioner sustained a third accident. Petitioner reported that on June 11, 2013 he was moving a 200 to 300 lb. machine on wheels when he experienced increased pain in his neck down his left arm. (T.18).

Petitioner returned to Dr. Ross on June 27, 2013 indicating he was moving equipment at work and developed increased pain in his neck and left shoulder. Petitioner was to continue with therapy and was recommended an EMG. (PX3, p.28). Petitioner returned to Dr. Ross on July 24, 2013 with worsening pain. Petitioner was to undergo an EMG. *Id.* at 27.

The EMG/NCV was performed on August 2, 2013 and showed bilateral median nerve compression at the wrists consistent with carpal tunnel syndrome, as well as suggestion of C6-7 radiculopathy on the left. (PX1).

In an August 13, 2013 follow up, Petitioner noted he was working with a 25-pound restriction. Dr. Ross still recommended a C5-6 and C6-7 anterior cervical diskectomy and fusion. He was to return. (PX3, p.26). Petitioner followed up again on September 12, 2013 noting he was worse after working multiple 12-hour days. Petitioner was still recommended surgery and was to follow up. *Id.* at 25. Petitioner was then referred for an updated MRI of his cervical spine. The MRI was completed on November 27, 2013 and confirmed the prior disc herniations at C5-6 and C6-7, as well as facet arthropathy on the right at C3-4. *Id.* at 76.

Petitioner returned to Dr. Ross again on January 13, 2014. Petitioner still remained significantly symptomatic from his C5-6 and C6-7 cervical disk herniations. Petitioner was pending surgery and could continue working with a 25-pound lifting restriction. (PX3, p.24). Petitioner had his final visit with Dr. Ross on February 25, 2014. Petitioner was having difficulty getting approval for surgery. Petitioner was taking a lot of ibuprofen to complete his shift. *Id.* at 22.

The workers' compensation carrier would not authorize the surgery, so Dr. Ross referred Petitioner to Dr. Kolavo to perform the surgery under group insurance. (T.19).

On May 8, 2014, Dr. Kolavo performed an anterior cervical discectomy, osteophytectomy and fusion at C5-6 and C6-7 with instrumentation. Post-operative diagnosis was herniated cervical disk with cervical spondylosis, cervical spinal stenosis, and persistent left upper extremity radiculopathy. (PX1, p. 3966)**.**

Post-operatively, Petitioner was referred by Dr. Kolavo for pain management with Dr. Hanna for his neck. Petitioner began pain management on December 15, 2014. Dr. Hanna recommended cervical epidural steroid injections, a series of which were subsequently administered beginning December 15, 2014. (PX1, p.3878-3915). Petitioner eventually underwent a lumbar myelogram confirming a central disc protrusion superimposed on mild to moderate diffuse disc bulge at L4-5, mildly narrowing the left neural foreman and moderately narrowing the right foreman (PX1, p.3777). He also underwent a cervical myelogram confirming an incomplete fusion at C6-7 and C5-6. (PX1, p. 3779).

After reviewing the scans, Dr. Kolavo recommended a posterior cervical decompression and fusion to address Petitioner's failed fusion. Petitioner's surgery was completed on March 30, 2015. (PX1, p.3513). Post-operatively, Petitioner complained of left arm and hand numbness. Further investigation confirmed a diagnosis of left carpal tunnel syndrome with no cervical involvement and Petitioner was referred to Dr. Keisler for further consultation who confirmed Petitioner's carpal tunnel syndrome of the left hand and recommended surgery. (PX1, p.3396). The carpal tunnel release was performed on June 4,

2015, resulting in an improvement (but not resolution) in the pain, numbness and tingling in the hand. (PX1 p.3333, 3317).

Petitioner followed up with Dr. Kolavo on June 22, 2015. Petitioner underwent a left carpal tunnel release, with resolution of the pain in his hand but persistent numbness in the median nerve distribution. He also reported a new problem of right buttock and right leg pain beginning three weeks prior without specific injury. Petitioner reported that he was unable to walk long distances or stand up straight without pain. It was noted Petitioner had prior back issues in the past, but mostly left sided. Petitioner also reported persistent left trapezius pain and left triceps pain. Dr. Kolavo diagnosed Petitioner with a herniated lumbar disc and persistent cervical radiculitis and recommended physical therapy for both the arms and back. Dr. Kolavo also confirmed Petitioner's cervical problem was still causally related to his work injury of record. He did not provide a causal opinion related to Petitioner's new complaints of right sided back and leg pain. (PX11, p.193).

On June 25, 2015 Petitioner was admitted to the hospital for low back pain radiating down the right leg for the past week. Petitioner stated he was unable to walk at home. He denied any recent injury or fall. (PX1, p.3161). Dr. Miskiewicz performed a pain consultation, assessing the problem as right lumbar radiculopathy, a L4-5 disc herniation and spinal stenosis. *Id.* at 3170. Dr. Kolavo also examined Petitioner, noting a couple of weeks of worsening right leg pain without any new injury triggering the symptoms. The pain traveled from the right low back into the buttock, posterior and lateral thigh and the going down laterally below the knee. *Id.* at 3171. A lumbar MRI was reviewed showing a right central dick herniation compressing the shoulder of the L5 nerve root and some other degenerative changes. A left lateral disc herniation at L5-S1 encroached in the foramen and L5 nerve root, but Dr. Kolavo read that herniation as not clinically significant. Petitioner was diagnosed with a herniated L4-5 disk and was to undergo an injection. *Id.* at 3172. A lumbar epidural steroid injection markedly improved his symptoms, and he was discharged from the hospital. *Id.* at 3182.

Dr. Hanna saw Petitioner on August 6, 2015, noting a dramatic improvement from the previous ESI but a return in pain levels to a 6/10 level. (PX1 p.3060). Dr. Hanna performed a second ESI at L5-S1. *Id.* at.3062-3. This injection resulted in a 25% overall improvement. *Id.* at 3052. A third epidural steroid injection was done on August 31, 2015, but this injection provided no long-term improvement. *Id.* at 3024, 3014.

As of September 11, 2015, Petitioner reported to Dr. Kolavo persistent significant numbness in his left hand. Dr. Kolavo noted that mechanical shoulder pain seemed to be a component of Petitioner's disability and referred him for a shoulder evaluation. It was also noted Petitioner's lumbar symptoms were persisting and he was undergoing injections for his back with Dr. Hanna. (PX11, p.169). Petitioner's left shoulder was evaluated by Dr. Sterba on September 24, 2015. Dr. Sterba noted Petitioner may have injured his left shoulder at work when moving a heavy piece of equipment. Dr. Sterba diagnosed Petitioner with impingement syndrome and recommended therapy and subacromial injection, which was administered the same day. (PX1, p. 2977 and 2985).

Petitioner followed up with Dr. Kiesler came on October 19, 2015. Petitioner still complained of numbness in the left hand but was using the hand more normally each day. Given the severity of the carpal tunnel syndrome, Petitioner may have incomplete relief of symptoms. Petitioner was to continue with grip and upper extremity strengthening. He should return on an as needed basis. (PX1, p.2960-2961).

On October 23, 2015, Petitioner followed up with Dr. Kolavo with persistent left arm pain. Dr. Kolavo referred Petitioner for an updated EMG/NCV to further investigate his report of left upper extremity symptoms. (PX1, p.154-155).

Petitioner returned to Dr. Kolavo on February 9, 2016 with ongoing complaints of left arm symptoms. Petitioner also reported some ongoing numbness in his left hand despite his carpal tunnel release. Regarding his neck, Dr. Kolavo noted Petitioner had a recent flareup of pain that required the use of Norco transiently but had been able to stop it. Dr. Kolavo recommended a Functional Capacity Evaluation to confirm Petitioner's final return to work restrictions. (PX11, p.141).

The Functional Capacity Evaluation was put on hold pending updated orders from Dr. Kolavo for a cervical myelogram. Petitioner's cervical myelogram was completed on March 24, 2016 and confirmed, C3-4 facet arthropathy resulting in moderate to severe right neural foraminal stenosis and C4-5 disc bulge resulting in mild central canal stenosis and moderate right neural foraminal stenosis due to uncovertebral and facet atrophy. (PX11, p.134).

Following his myelogram, Petitioner returned to Dr. Kolavo on April 18, 2016. Dr. Kolavo noted Petitioner continued to report left upper extremity symptoms and suggested he follow-up with Dr. Kiesler. After reviewing Petitioner's myelogram, Dr. Kolavo confirmed options for Petitioner to include continuing with chronic pain management versus considering a revision ACDF at C5-6 on the left. Dr. Kolavo noted Petitioner had a large hypertrophic bone spur at C5-6 that was contributing to his symptoms. He also noted worsening foraminal stenosis. He also discussed the possibility of incomplete relief of symptoms. Petitioner was to remain off work and not undergo a FCE at this time. (PX11, p. 127).

On June 28, 2016, Petitioner returned to Dr. Kolavo and confirmed he did not wish to proceed with surgery. Dr. Kolavo recommended an evaluation by Dr. Oken at Marianjoy and recommended a Functional Capacity Evaluation. (PX11, p.110).

Petitioner's FCE was completed on July 5, 2016 and confirmed Petitioner was capable of work in a medium physical demand level. (PX1, p. 1484). Dr. Kolavo released him within the FCE findings. (PX1 p.2813).

Respondent was unable to accommodate, so Petitioner was placed in vocational rehabilitation. Petitioner eventually secured a job at Securitas. While Petitioner was working, Petitioner continued to seek treatment for his neck with Dr. Hanna and Dr. Kolavo. On October 10, 2017 Petitioner returned to Dr. Kolavo for a follow up to his anterior and posterior cervical surgery. He had not been seen for over 15 months. Petitioner noted gradual worsening of neck pain but had never been symptom free. Dr. Kolavo recommended Petitioner switch to prescription doses of ibuprofen to supplement with Tylenol. He should also obtain a cervical MRI and return in two weeks. (PX1, pp.2788-2790).

The MRI revealed postsurgical changes in areas of foraminal narrowing similar to the previous MRI scan, with the most prominent findings on the left at C5-C6. (PX1 p.2777-8).

Petitioner followed up with Dr. Kolavo on October 31, 2017 noting he was having issues with burning central mid thoracic and upper thoracic pain. Petitioner's MRI showed foraminal stenosis which was fairly severe on the left at C5-C6. He recommended an EMG/NCV of the left upper extremity along

with a pain consultation and epidural steroid injections targeting C5-C6. He also was recommended a thoracic MRI. (PX1 p.2763-64).

Petitioner was also sent for therapy. The EMG/NCV was performed on November 13, 2017, revealing moderate cubital tunnel syndrome, as well as residual carpal tunnel symptoms and mild C5-C6 radiculitis. (PX1 p.2744-5, 2750). Petitioner was recommended a follow up with Dr. Kiesler for the hand/arm and for the previously recommended cervical injection therapy. *Id.* at 2741.

Petitioner restarted treatment with Dr. Hanna on January 3, 2018. (PX1, p.2718). Petitioner underwent treatment to include cervical epidural steroid injections, medial branch blocks, facet blocks, and radiofrequency ablation. (PX1, p. 2692, 2660, 2595-6).

Petitioner returned to Dr. Kolavo on July 17, 2018 noting Petitioner's problems were very complicated. Dr. Kolavo noted further surgery would not likely affect his axial neck pain symptoms. Dr. Kolavo recommended a second opinion evaluation. (PX1, p.53).

Thereafter, Petitioner saw Dr. Masynk, a neurosurgeon for further evaluation. Petitioner first saw Dr. Masynk on August 2, 2018. Dr. Masynk ordered another cervical myelogram. (PX1, p. 2412-16). Petitioner's cervical myelogram was completed on August 30, 2018 and confirmed postsurgical changes at C5-7 with complete fusion, moderate osteophytic ridging asymmetrical to the left at C5-6, and mild degenerative changes throughout the remainder of the cervical spine. *Id.* at 2632 – 2363. Based on the cervical myelogram, Dr. Masynk recommended a posterior left C5-C6 removal of hardware followed by hemi laminectomy, foraminotomy, facetectomy for nerve root decompression. *Id.* at 2356. This was the same surgery Dr. Kolavo had proposed back in April of 2016. *Id.* at 2847.

While awaiting surgery Petitioner continued to undergo pain management treatment with Dr. Hanna for his neck. On March 13, 2019, Petitioner underwent left cervical radiofrequency ablation (PX1, p. 2259) and a right cervical radiofrequency ablation on April 17, 2019. (PX1, p. 2198).

On May 13, 2019, Petitioner was seen by Dr. Hanna and reported low back pain on the right greater than left but pain down to the left leg. Petitioner was also noted to be complaining of ongoing neck pain, 60% better after radiofrequency ablation. (PX1, p. 2150). Dr. Hanna diagnosed Petitioner with low back pain with left sided sciatica and recommended a trial SI joint injection. *Id.* at 2151. Petitioner returned on June 17, 2019 and was ordered a repeat MRI. The MRI was completed on July 15, 2019, compared to Petitioner's 2015 study, it confirmed a slightly more prominent than previous large diffuse disc bulge at L5-S1. *Id.* at 2108.

Based on the MRI, Dr. Hanna recommended additional lumbar transforaminal steroid injections. (PX1, p. 2074). Those injections were subsequently administered on September 19, 2019, October 14, 2019, and November 11, 2019. (PX1, p. 2039, 1993, 1943). Petitioner also underwent additional cervical medial branch blocks on April 22, 2022 and radiofrequency ablation on July 20, 2020. (PX1, p.1771).

Petitioner followed up with Dr. Kolavo on June 23, 2020. Petitioner was taking Norco and was complaining of dizziness and headaches. Dr. Kolavo did not think the cervical spine would cause these issues. His leg pain remained significant. Dr. Kolavo sent him for another cervical MRI. (PX1, p.1735-1736). The July 13, 2020 cervical MRI showed the same issues as the 2015 MRI, including impingement

on the right C4 root. (PX1, p.1717). Dr. Kolavo declined to operate on the cervical spine and Petitioner requested a referral to Dr. Ross or Dr. Masynk. (PX1 p.1703-4)

Petitioner's cervical surgery was completed on December 7, 2020 and included a left posterior open C5-6 hemilaminectomy and foraminotomy for nerve root decompression, removal of C5-7 posterior instrumentation, and exploration of fusion. (PX1, p. 1265). Post-operatively Petitioner was returned to physical therapy and was discharged as of March 30, 2021. *Id.* at 785. He also continued to treat with Dr. Hanna for his back and underwent SI joint injections on March 29, 2021. *Id.* at 811.

Petitioner also reported frequent falls due to weakness in his legs, along with pain in his left shoulder. Dr. Masynk referred Petitioner for an MRI of his left shoulder which was completed on March 30, 2021 and confirmed a full thickness rotator cuff tear involving the distal supraspinatus tendon and subscapularis tendon. (PX1, p. 775).

Petitioner was then referred by Dr. Masynk to Dr. LaBelle for his left shoulder. Dr. LaBelle noted that upon presenting for evaluation Petitioner reported a nine-year history of shoulder pain. Dr. LaBelle diagnosed Petitioner with a nontraumatic rotator cuff tear, impingement syndrome, and AC arthritis and recommended surgery. (PX1, p.715-720).

Petitioner last saw Dr. Masynk on May 11, 2021 for complaints of right buttock pain radiating down the posterior right leg. Petitioner reported some improvement in his back pain with injections but persistent right buttock and leg pain. Dr. Masynk offered Petitioner further surgery to include a redo L4-5 and L5-S1 discectomy. (PX1, p. 632). Petitioner testified he elected not to pursue further surgery for his back. (T. 63). However, Petitioner did continue treating with Dr. Hanna for his neck and back.

Petitioner presented for two Independent Medical Examinations with Dr. Gleason at Respondent's request on July 27, 2021 and November 7, 2022. Based on Dr. Gleason's opinions that Petitioner reached MMI related to his neck and did not require restrictions and that the current conditions of his back and left shoulder were not related to his work accidents, Petitioner's ongoing medical treatment for his back was denied. (RX4 and 5).

On April 2, 2022, an ambulance took Petitioner to the Emergency Room at Northwestern Delnor. (PX1, p.31). Petitioner expressed some suicidal ideation to the nurse. (PX1, p.31) He told the nurse that he "never wants to wake up." He did cocaine so that he could leave this earth and tried to take too many pills so that he could die. (PX1, p.70). The diagnoses included altered status in the setting of cocaine use, acute kidney injury with mildly elevated liver function test results, suicidal ideation, paranoia, and possible underlying psychiatric disorder contributing to his altered mental status, and opioid dependence, with a last recorded opioid refill on December 10, 2021. (PX1, p.62-3). Dr. Patel, a neurologist, reviewed past MRIs, reading the March 4, 2021 cervical MRI as showing progression of degenerative changes at C3-5 since the 2015 MRI, with impingement on the exiting roots on the right side. (PX1, p.75). Dr. Patel's diagnoses included acute psychosis likely due to cocaine intoxication, toxic metabolic encephalopathy was due to opioids and Gabapentin in his central nervous system, and chronic pain disorder- attributed to chronic lumbar and cervical spine disease. (PX1, p.80). The Doctor recommended Duloxetine (antidepressant) for the chronic pain, stopping the insomnia drug (Zalepon), stopping Norco and a psychiatry consult. (PX1, p.80).

Dr. Amber Kazi, a psychiatrist, interviewed Petitioner on April 3, 2022. The diagnosis was delirium versus drug-induced mood disorder with psychosis. (PX1 p.90-93). A licensed clinic social worker interviewed Petitioner on April 3, 2022 with him reporting stressors involving his unemployment, lack of belief in his reports and his divorce. (PX1, p.131). Petitioner noted delusions and his inability to work. The social worker recommended inpatient care, but Dr. Kazi instead recommended medication and a follow up visit in a day or two. (PX,1 p.134). He was told to seek counseling at Braden Counseling Center. (PX1 p.137).

Petitioner did follow up with Braden Counseling from April 8, 2022 through June 24, 2022. (PX13). He expressed difficulty adjusting to a recent divorce, he had been living with chronic pain for a long time and had been out of work. (PX13, p.6). The counselor advised Petitioner to talk with his doctor about the sleep issues and chronic pain. (PX13, p.9) At the final visit on June 24, 2022, he was working on his routine and sleep hygiene. He felt more comfortable with his situation and his physical restrictions. (PX13, p.18).

Medical records from Dr. Hanna confirm treatment of Petitioner for his neck through January 27, 2021 and back through November 22, 2021. (PX1). Per Dr. Hanna's records, Petitioner's treatment was suspended as of November 22, 2021 for his back due to insurance denial.

Thereafter, Petitioner presented to his primary care physician, Dr. Brandon, on May 9, 2021, asking about an FCE for return to work. Dr. Brandon ordered an FCE but confirmed Petitioner would need to submit for several tests to clear him for an FCE first (PX4, p. 182-207).

In conjunction with Petitioner's application for Social Security disability, Dr. Brandon completed a Physical Residual Functional Capacity Questionnaire for Petitioner on December 16, 2021. In that questionnaire Dr. Brandon confirmed treatment of Petitioner since February 25, 2021 for diagnoses including lumbar spondylosis, cervical spondylosis, cervical radiculopathy, hypertension, diabetes, insomnia, frequent falls, coronary disease. As for Petitioner's functional limitations, Dr. Brandon indicated Petitioner was able to walk one city block, sit for 30 minutes, stand for 15 minutes. stand for two hours a day and sit for two hours a day. (PX4, p. 568-570). Dr. Brandon was Petitioner's new primary Care physician. (T.65).

Petitioner's FCE was completed on October 10, 2022 and demonstrated Petitioner's capabilities and functional tolerances within the high end of the light physical demand level to low end of medium physical demand level with the heaviest weight able to lift within the demand level up to 20 lbs. from floor to waist, 25 lbs. from 12" to waist, and 25 lbs. from waist to shoulder. (RX7, p.2). Petitioner was then referred to Vocamotive for vocational rehabilitation on November 3, 2022.

At trial, Petitioner testified that after three months of vocational rehabilitation he found a job at KSM. (T.26). He felt back complaints during the job and afterwards. (T.29-30). He left a message for the new job indicating he was in bed and would not make it to the job. (T.31). He went to the doctor three days later. (T.32). Petitioner testified he continued with vocational rehabilitation for two and a half weeks later. (T.34). His benefits were suspended as of April 29, 2023. (T.34).

Petitioner testified that he falls down frequently. (T.37). He is still able to go grocery shopping, but his daughter will help carry the bags. (T.47). Petitioner testified he continues to experience numbness

in his left hand and fingers, burning and pinching in his neck, and flare-ups of his back pain. Petitioner testified that every two months he experiences a flare in his back pain that requires him to be down for a few days. (T.48-50). Petitioner was awarded Social Security disability earlier this year. (T.53).

On Cross-Examination, Petitioner confirmed after being released for the back he went back to work for Respondent. (T.59). During the last employment with KSM, they requested that he start on Monday but requested to take a vacation. Petitioner clarified he really didn't have a vacation but wanted to veg out and stay home a few days before he started his new job. (T.67).

During vocational rehabilitation, Petitioner also stated he refused security jobs because he had a hard time with stairs and did not want to be in a position to deal with anyone using AR 15s. (T.69). Petitioner noted the first treatment of depression was after his divorce. (T.70).

Deposition Testimony

Dr. Kolavo

The parties proceeded with the evidence deposition of Dr. Kolavo on June 23, 2015. (PX2). Dr. Kolavo is a board-certified orthopedic spine surgeon. (PX2, p.5). He testified to his treatment of Petitioner between April 23, 2014 and the date of his deposition regarding Petitioner's neck pain. Dr. Kolavo testified he began treating Petitioner on referral from Dr. Ross. Dr. Kolavo testified that in his opinion Petitioner's neck condition was causally related to his work accidents and led to his need for neck surgery. (PX2, p. 7-8). Dr. Kolavo further testified the need for the treatment was related to the June 11, 2013 work injury. (PX2, p.10). Dr. Kolavo noted Petitioner had to undergo a subsequent operation which was also related. (PX2, p.14). At the time of his deposition, Dr. Kolavo testified Petitioner was still healing for his second neck surgery and had persistent reports of arm symptoms. Dr. Kolavo testified that with respect to the carpal tunnel syndrome, he believes it could have been aggravated by the neck surgery. It was a cause-and-effect situation. (PX2, p.17). Dr. Kolavo testified that Petitioner had developed some new lumbar complaints. He did not know whether the lumbar complaints were related to Petitioner's work accidents as Petitioner had recovered from his lumbar fusion performed by Dr. Ross. (PX2, p.20).

Dr. Mark Hanna

The parties proceeded Dr. Mark Hanna's evidence deposition on July 28, 2022. (PX6). Dr. Hanna is a board-certified anesthesiologist and pain management specialist. Dr. Hanna testified to his treatment of Petitioner between December 15, 2014 and July 28, 2022 (the date of his deposition). Over six years of treatment, Dr. Hanna provided epidural injections, medication management and ablations. (PX6, p.7). Dr. Hanna testified when Petitioner first presented to him on December 15, 2014, he reported symptoms only related to his neck. (PX6, p. 9-10). Dr. Hanna indicated he was pretty certain about the history of the neck but did not recall the low back being talked about at the time of the accident. (PX6, p.9-10). He opined as it relates to Petitioner's neck, it was his opinion the treatment he rendered to him was causally related to his May 14, 2012 work accident. (PX6, p.10, 27). Dr. Hanna testified the basis for his opinion is the story and history provided to him by Petitioner. Dr. Hanna testified he last treated Petitioner for his neck on January 27, 2021. (PX6, p.27).

During direct examination, after being shown Dr. Ross's note of August 22, 2012, noting Petitioner reported low back pain after pushing a cart at work on May 14, 2012, Dr. Hanna testified that

it was his opinion it was more likely than not that his treatment of Petitioner's back was related to his work accident. (PX6, p.18-19).

Dr. Hanna predicted Petitioner would need ongoing radiofrequency ablations, normally twice a year, epidural injections a couple times a year if he is experiencing radicular pain. (PX6, p.20). Ablations would address the neck pain itself. But a stimulator could be warranted for the neck if radicular pain was involved into the arm. (PX6, p.24). Dr. Hanna thought that all of this treatment would be related to the work injuries. (PX6 p.25).

On Cross-Examination, Dr. Hanna opined that his low back causation opinion was only from the reviewing one note from August 22, 2012 from Dr. Ross. (PX6, p.28). He confirmed this was the only information he had seen relative to Petitioner's treatment and first saw the same during the deposition. (PX6, p.29). Dr. Hanna testified he did not give any weight to the fact Petitioner had been released by Dr. Ross following his back surgery as of June 4, 2013 after reporting virtually no back pain. (PX6, p. 33). Dr. Hanna testified Petitioner did not report any symptoms to him related to his back until June 17, 2019 but had undergone a lumbar epidural steroid injection in 2015 with his partner. (PX6, p.37). Dr. Hanna noted his notes indicated Petitioner saw his partner in 2015 for an epidural steroid injection. He continued to find causation based on the information Dr. Ross provided. (PX6, p.41). The Doctor clarified his opinions are based upon a reasonable degree of pain management certainty which is not the in the school of an orthopedic spinal surgeon. (PX6, p.43).

Dr. Steven Mather

The Parties proceeded with Dr. Steven Mather's deposition on September 14, 2014. (PX16A), January 28, 2016 (16B) and June 27, 2019 (PX16C). Dr. Mather is a board-certified orthopedic surgeon who works on the spine. Dr. Mather examined Petitioner on April 22, 2013 with a report generated on April 25, 2013. (PX7). Dr. Mather opined Petitioner had non occupational spondylosis and left arm cubital tunnel syndrome. (PX16A p.8-9). He related the low back injury to the May 14, 2012 work accident but did not relate the cubital tunnel or the neck to the work accidents. (PX16A p.9). Dr. Mather saw Petitioner again on October 21, 2013 diagnosing him with cervical radiculitis, suspecting a disc herniation versus stenosis. (PX16A p.12). The updated MRI was the same as the old MRI, so although surgery was warranted, it was not related to the accident. (PX16A p.15). Dr. Mather admitted on cross before he saw the new MRI, he related the radiculopathy to the June 11, 2013 accident. (PX16A p.19).

Dr. Mather testified a second time regarding his December 7, 2015 Section 12 report. (PX16b, p.7). Dr. Mather testified that he felt Petitioner had significant degenerative disc disease at C5-6-7 and based on the records it was nonoccupational. (PX16B, p.10). Dr. Mather noted the May 14, 2012 injury would not cause or aggravate Petitioner's neck condition. (PX16B, p.13). He did admit, however, that pushing a heavy machine could cause stress across the neck. (PX16B p.14) Up to the point of the June 11, 2013 accident, Petitioner did not have obvious episodes of radiculopathy. (PX16B p.21). Dr. Mather disputed whether a new herniated material was seen in the neck. He thought the findings were all old, calcified injuries. (PX16B p.28). Dr. Mather admitted that Drs. Ross, Kolavo and the radiologists all read the November 27, 2013 MRI as showing herniated material at C5-6, C6-7. (PX16B p.37-38). Dr. Mather admitted the June 11, 2013 accident may have briefly aggravated the preexisting condition in the neck, subjectively only. (PX16B p.41). Dr. Mather noted if there was a causal relationship, the June 11, 2013 would more likely be the instigation of the injury which led to the surgery. (PX16B, p.46). He further

testified if there was a causal relationship, the neck injury and subsequent surgeries are related to the June 11, 2013 accident. (PX16B p.47-48). He thought Petitioner could return to work with no restrictions, but he would have difficulty with overhead in cervical extension all day which Petitioner did not do at work. (PX16B p.50-51). On Re-Direct, Dr. Mather testified his opinion had not changed from his December 7, 2015 report. (PX16B, p.54).

Dr. Mather testified a third time on June 27, 2019. (PX16C). He opined Petitioner was status post fusion, C5-6-7, which had become solid and status post left carpal tunnel release. He felt Petitioner had some ongoing functional pain which was subjective complaints without clinical or objective findings. (PX16C, p.20). He opined surgery was reasonable. He further indicated the medial branch blocks, the epidural steroids, and radiofrequency ablations were not necessary. He found Petitioner should be placed with 40-pound lifting restriction. (PX16C, p.25). He further opined Petitioner reached maximum medical improvement. (PX16C, p.32). Lastly, he provided an AMA rating of 8 percent. (PX16C, p.35). He further indicated he did not want to change any of this prior opinions. (PX16C, p.41).

Dr. Mather did not agree with the plan to go in and remove the hardware and bony ridging. Dr. Mather thought Petitioner needed a 40 lb. limit on his lifting with no overhead lifting. (PX16C p.74-75). Dr. Mather objected to the pain management treatment from Dr. Hanna because it did not correct the problem. (PX16C p.81). He admitted the pain management treatment would provide temporary relief. (PX16C p.82). He believed Dr. Hanna was practicing outside evidence-based medicine. (PX16C, p.90). Dr. Mather had no idea why the surgeons wanted to go back in and work on C5-6 again. (PX16C p.92).

Dr. Taras Masynk

The parties proceeded with the evidence deposition of Dr. Taras Masynk on February 17, 2022. Dr. Masynk is a board-certified neurosurgeon. (RX6, p.5). Dr. Masynk opined he operated on Petitioner for the neck and Petitioner was at maximum medical improvement. He opined he did not require any further treatment or restrictions for his neck. If he did, they would be within the medical records. Dr. Masynk testified Petitioner did have some shoulder pathology but was seeing a shoulder surgeon for that. Dr. Masynk did not provide an opinion linking Petitioner's shoulder pathology to his work accidents. (RX6, p.6).

Dr. Masynk was also questioned regarding causation related to Petitioner's back and his need for surgery. Dr. Masynk testified he did not have an opinion on the cause of Petitioner's disc herniations. (RX6, p.7). Dr. Masynk testified that the only information he had was that Petitioner hurt his back ten years ago at the time of his May 12, 2012 accident, he had surgery with Dr. Ross and got better after the same. Dr. Masynk testified he received medical records an hour ago. He testified that it was very difficult to expect him to go over the records and have an opinion when he could not talk to the patient. Based on the same he did not have an opinion on causation for the surgery. (RX6, p.8). Dr. Masynk testified that regarding Petitioner's back, he was capable for working light duty full time with restrictions of limited repetitive heavy lifting and repetitive bending. (RX6, p.10).

Dr. Thomas Gleason

The parties proceeded with the evidence deposition of Dr. Thomas Gleason on April 12, 2022. (RX2). Dr. Gleason is a board-certified orthopedic spine surgeon. Dr. Gleason testified he conducted an Independent Medical Examination of Petitioner at Respondent's request on July 27, 2021. Dr. Gleason

testified Petitioner reported to him that on May 14, 2012 while at work, he was moving a piece of equipment weighing about 600 pounds, when his left leg gave out and he felt low back pain and neck pain. (RX2, p.9). Dr. Gleason also testified that Petitioner reported that on May 26, 2012, while at home, he fell and fractured his left clavicle and left ribs. Dr. Gleason testified that he reviewed all of Petitioner's medical records confirming Petitioner's treatment up to July 27, 2021, including films of his diagnostic studies. Regarding Petitioner's neck, Dr. Gleason testified that in his opinion Petitioner's neck condition was related to his work accident, but that he had reached maximum medical improvement by the time of his IME following treatment. (RX5, p.19). As for Petitioner's back, Dr. Gleason testified that Petitioner's work-related condition was treated successfully by Dr. Ross with surgery and had resolved by June 4, 2013 when he was released by Dr. Ross, and that his current condition is not related to his work accidents. (RX5, p.23). Dr. Gleason testified Petitioner's diagnostic studies after 2013, including his MRIs from 2015, 2017, 2019 and 2021 all showed findings consistent with the natural aging processes and no acute injury. (RX5, p.63-64). Dr. Gleason also testified he disagreed with Dr. Masynk's recommendation for a redo of Petitioner's L4-5 and L5-S1 laminotomy, foraminotomy and decompression. (RX5, p.23-24).

As it relates to Petitioner's left shoulder, Dr. Gleason testified that in his opinion Petitioner's left shoulder condition is not causally related to his work accidents as he did not report the onset of symptoms until 2015. (RX5, p.19, 26-27).

On Cross-Examination, Dr. Gleason did not know when the shoulder symptoms set in or what caused the cuff tear. (RX2 p.27-8). Dr. Gleason noted Petitioner would mention shoulder complaints around his surgeries. (RX2, p.39-40). Dr. Gleason further admitted Dr. Ross's 2012 surgery improved Petitioner's back pain. (RX2 p.55, 62). He noted over the years the MRIs were relatively stable. (RX2, p.63). He noted the MRIs were consistent with the natural aging process with no evidence of acute injury. (RX2, p.64). Dr. Gleason did not recommend more surgery for Petitioner's low back because it was an open procedure and the chances of improvement diminished with each following surgery. (RX2 p.68-9).

Testimony of Kari Stafseth-Zamora

Ms. Stafseth-Zamora is a licensed vocational counselor with Vocamotive. Ms. Stafseth-Zamora provided testimony twice via deposition on August 9, 2022 and June 27, 2023.

The parties initially proceeded with evidence deposition of Ms. Kari Stafseth-Zamora on August 9, 2022. (PX12). Ms. Stafseth-Zamora is a vocational rehabilitation counselor. *Id*. at 5. She met Petitioner back in 2016 and testified Petitioner participated in vocational services and those services resulted in him obtaining a job offer. *Id*. at 6. Ms. Stafseth-Zamora testified Petitioner got a job with Securitas that started in June 2017 and held it until December 2020. He previously worked 36 hours per weeks. His hours decreased at the request of his doctor. He was earning $11.41. *Id.* at 19-20.

She testified Petitioner lost access to his preinjury job as that position required physical capabilities at a medium level. *Id*. at 25. She further noted Petitioner lost access to his job as a security guard as those physical capabilities exceeded the restrictions outlined by Dr. Brandon. *Id*. at 26. She further noted Petitioner faced challenges returning to work as he was 60 years old, so he was considered to be of older age with physical limitations. *Id*. at 27. Based on the same, she opined Petitioner did not have access to any viable stable labor market. *Id*. at 30.

On Cross-examination, she clarified she relied on restrictions from the December 16, 2021 FCE questionnaire not an actual FCE. *Id*. at 43.

On June 27, 2023, Ms. Stafseth-Zamora was re-deposed. (RX8). Petitioner underwent a Functional Capacity Evaluation on October 10, 2022. Ms. Stafseth-Zamora testified she subsequently reviewed the Functional Capacity Evaluation and prepared an addendum report on November 2, 2022. *Id.* at 8. Per the Functional Capacity Evaluation, Petitioner demonstrated functional tolerances within the high end of light to the low end of the medium physical demand level with restrictions of lifting 20 pounds from floor to waist, 25 pounds from 12 inches to waist, 25 pounds from waist to shoulder on an occasional basis, carrying 25 pounds from 50 feet on an occasional basis, overhead reaching on an avoid basis and alternate between sitting and standing. *Id.* at 7-8. Ms. Stafseth-Zamora testified based on the Functional Capacity Evaluation it was her opinion that Petitioner was employable in a limited labor market with wages falling between $12.00 and $17.00 per hour. *Id.* at 8.

Ms. Stafseth-Zamora testified that rehabilitation/job placement services were then subsequently reinstated for Petitioner and started on January 6, 2023. (RX8, p.9). She testified she and/or her staff met with Petitioner two days a week to aid with his job search. Petitioner was cooperative with the job search process. *Id.* at 10. Petitioner secured a meet and greet with KSM. Ms. Stafseth-Zamora testified that interview resulted in a job offer that was extended to Petitioner on March 20, 2023. *Id.* at 12. Ms. Stafseth-Zamora testified KSM makes assemblies for the aerospace industry and that Petitioner was offered the position of an assembler and was responsible for making components of wire harnesses. *Id.* at 12-13. Ms. Stafseth-Zamora testified she reviewed the physical requirements of an assembler for KSM and that they were within the guidelines set for forth in Petitioner's Functional Capacity Evaluation. *Id.* at 13-14. Petitioner's start date at KSM was March 22, 2023. Ms. Stafseth-Zamora testified the first week of work for Petitioner KSM would be assessing his ability to do the job. *Id.* at 14. Ms. Stafseth-Zamora testified that on the morning of March 23, 2023 her field developer received a text message from Petitioner advising that he could not return for his second day of work and planned to contact KSM and leave them a message advising them of his inability to return. *Id.* at 15-16. Ms. Stafseth-Zamora testified her field developer attempted to reach Petitioner but was unable to, so the field developer went to KSM for the purpose of attempting to salvage the relationship as there was concern that calling off the second day off work would put Petitioner's employment in jeopardy. *Id.* at 17. Ms. Stafseth-Zamora testified KSM decided to terminate Petitioner after hearing his voicemail message due to concerns of absenteeism. *Id.* at 17-18. Ms. Stafseth-Zamora testified KSM was accommodating Petitioner within his restrictions, including allowing him to sit and stand as needed, and Petitioner reported no complaints of being asked to do work outside his restrictions. *Id.* at 20.

Ms. Stafseth-Zamora testified that in her opinion the position with KSM was the perfect position for Petitioner given that he refused to do security work. (RX8, p.25). Petitioner was offered the position with KSM at $18.00 per hour. *Id.* at 26. Ms. Stafseth-Zamora testified Petitioner returned to her company for ongoing job placement services and was subsequently terminated. Petitioner indicated he was not being paid any further and was not going to be attending any further appointments. *Id.* at 26. She confirmed Petitioner returned the equipment around April 21. *Id.* at 27.

On Cross-examination Stafseth-Zamora indicated Petitioner found a job as a security guard and worked a lengthy period of time. (RX8, p.28). Ms. Stafseth-Zamora noted Petitioner had a flare up in pain the next day after beginning his new job at KSM which was consistent with what Dr. Brandon had

mentioned about Petitioner may needing days off work. *Id.* at 37-38. She noted that in three months of looking for work, Petitioner found a job. *Id.* at 42. She further noted Petitioner was cooperative throughout the whole process. *Id.* at 44. After benefits were suspended, Petitioner elected not to continue with vocational rehabilitation. *Id.* at 45-46. She noted if there was no restriction for Petitioner to take days off, it would still be her opinion that Petitioner's job was a reasonable placement based on the functional capacity evaluation. *Id. at* 57-58.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Compensation Commission*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Industrial Commission*, 834 N.E.2d 583 (2d Dist. 2005).

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a Petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. *Id*. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill. Dec. 794 (4th Dist. 1989).

Petitioner is alleging several body parts. The Arbitrator will address each body part separately.

Lumbar Injury

The Arbitrator finds Petitioner initially sustained a back injury necessitating surgical intervention by Dr. Ross. The Arbitrator finds that Dr. Ross released Petitioner to maximum medical improvement as of June 4, 2013. Dr. Ross opined Petitioner made an excellent recovery from his back injury and surgery and could return to full duty work in regards to his back. Based on the same the Arbitrator finds Petitioner's condition after June 4, 2013 is not causally related to his accident. To obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she *has sustained* accidental injuries arising out of and in the course of the employment. (Emphasis added.) 820 ILCS 305/1(d) Petitioner has not met that burden in this case.

Petitioner testified he injured his back, on May 14, 2012 at the time of his first accident. Following that injury Petitioner underwent successful treatment with Dr. Ross to include surgery on December 12, 2012. Thereafter, Petitioner was released by Dr. Ross at maximum medical improvement for his back on June 4, 2023. As of June 4, 2023, Petitioner reported to Dr. Ross he had virtually no pain in his back. After June 4, 2013, Petitioner went on to treat for his neck and did not report symptoms in his back again until 2015 while seeking treatment for his neck with Dr. Kolavo.

The Arbitrator looks to the orthopedic and neurosurgeons on this case. The Arbitrator notes Dr. Ross did not provide any type of opinion on this case even though he was the one who performed the surgery. Dr. Kolavo advised he did not have an opinion on causation when specifically asked in his deposition. Dr. Masynk further noted he did not have an opinion and would need to discuss the same with Petitioner and review medical notes and refused to provide an opinion on causation. The Arbitrator finds that given the age of the case, Petitioner had ample time to discuss this case with any of his orthopedics and/or neurosurgeon to provide such an opinion. The only opinion rendered was by a pain physician, Dr. Hanna. Initially Dr. Hanna indicated he was not familiar with Petitioner's back and causation in regards to the same. Without hesitation, however, Dr. Hanna provided a causation opinion about Petitioner's neck condition due to his familiarity with the same. (PX6, p.9-10). Dr. Hanna subsequently reviewed a single medical note from August 22, 2012 and provided a causation opinion regarding the back. The Arbitrator does not find this testimony persuasive. Dr. Hanna did not treat Petitioner concurrently with his original injury. In addition, Dr. Hanna is not a surgeon. Lastly Petitioner did not begin treating with Dr. Hanna until 2015, almost three years after his release from Dr. Ross. The Arbitrator finds the physicians in the best position to provide a causation opinion would be Drs. Ross, Kolavo and Masynk all which did not provide any type of opinion.

In addition, when looking at the medical records the Arbitrator does note Petitioner underwent a lumbar myelogram in January of 2015, however, is unclear why. Petitioner then reported a June 22, 2015 injury to his back noting the opposite side right leg pain. The Arbitrator notes Petitioner's previous problem was left-sided. Petitioner specifically noted that this right leg pain began three weeks ago. Petitioner was later admitted to the hospital for back and right sided leg pain. The Arbitrator finds that these complaints are new and distinct then Petitioner's original back injury.

The Arbitrator also places some weight on the opinion of Dr. Gleason, Respondent's Section 12 physician. Dr. Gleason testified Petitioner's work-related condition was treated successfully by Dr. Ross

with surgery and had resolved by June 4, 2013 and that his current condition is not related to his work accidents. In support he found Petitioner's diagnostic studies after 2013, including his MRIs from 2015, 2017, 2019 and 2021 all showed findings consistent with the natural aging processes and no acute injury. When questioned whether Petitioner's surgery with Dr. Ross in 2012 could have led to an acceleration of the breakdown of Petitioner's joints, Dr. Gleason testified that he could not say to a reasonable degree of certainty that happened as Petitioner reported resolution this pain following his surgery in 2012 and his body was subject to normal aging over the next nine years.

Based on the opinions of Dr. Gleason and relying only on the opinions, or lack of opinions, of Petitioner's treating doctors, Petitioner has not met his burden under the Act. As such, the Arbitrator finds Petitioner sustained a back injury reaching MMI as of June 4, 2013. Petitioner's back condition after this date is not causally related to the accident.

Neck/Carpal Tunnel Syndrome

Petitioner testified he never had any prior neck problems prior to the injury. In addition, the chain of events presented in this case show Petitioner's neck became symptomatic after the June 11, 2013 accident, with some contribution from the May 14, 2012 and May 26, 2012 accidents. The Arbitrator finds Petitioner met his burden of proof by a preponderance of the evidence that his condition of ill-being was causally related to his work accident based on the chain of events in addition to the medical opinions contained in the record giving causal connection.

The Arbitrator notes Petitioner began complaints of neck pain after the May 26, 2012 injury which subsequently got worse. Petitioner's neck complaints progressed until the June 11, 2013 accident with no intervening accidents. Dr. Ross initially attributed the cervical injury to the 2012 work accidents but deferred treatment of the neck until the back was fixed. (PX3 p.41). Dr. Ross opined that although it was clear Petitioner had some degenerative arthritis in his neck that predated his work injury, in his opinion, the fall on May 26, 2012 caused the symptoms in his neck and arm. For treatment of Petitioner's neck Dr. Ross recommended an anterior cervical discectomy and fusion at C5-6 at C6-7. (PX3, p.30).

The Arbitrator finds while working on June 11, 2013, Petitioner sustained his third accident resulting in increased neck pain traveling down his left arm. (T.18). Dr. Ross continued to recommend surgery, however due to lack of approval Dr. Ross sent Petitioner to Dr. Kolavo. The Arbitrator finds Dr. Kolavo similarly attributed the cervical injury to both the May 14, 2012 accident with the resulting May 26, 2012 fall, and the June 11, 2013 work accident. (PX2 p.6). Dr. Kolavo testified Petitioner's neck condition was causally related to his work accidents and led to his need for neck surgery. (PX2, p. 7-8). He further noted Petitioner's need for treatment was related to the June 11, 2013 work injury.

Dr. Kolavo performed surgery on Petitioner on May 8, 2014 and eventually a revision surgery on March 30, 2015. When Petitioner woke up from surgery, he had what seemed like a dense carpal tunnel syndrome in his left hand and was ultimately surgically released by Dr. Kiesler. (PX2 p.15-16) Dr. Kolavo explained that the carpal tunnel syndrome had to have some relationship to the second surgery because he woke up with the complaint immediately after surgery, and whatever happened in surgery caused it. (PX2 p.17-18). Dr. Kolavo testified that with respect to the carpal tunnel syndrome, he believes it could have been aggravated by the neck surgery. It was a cause-and-effect situation. (PX2, p.17).

At the time of his deposition, Dr. Kolavo testified Petitioner was still healing for his second neck surgery and had persistent reports of arm symptoms. Petitioner continued to complain of persistent left trapezius pain and left triceps pain. Petitioner began pain management for intermediate neck pain. After reviewing Petitioner's myelogram, Dr. Kolavo confirmed options for Petitioner to include continuing with chronic pain management versus considering a revision ACDF at C5-6 on the left. Dr. Kolavo noted Petitioner had a large hypertrophic bone spur at C5-6 that was contributing to his symptoms. He also noted worsening foraminal stenosis. He also discussed the possibility of incomplete relief of symptoms. Petitioner confirmed he did not wish to proceed with surgery. The Arbitrator notes Petitioner continued to seek treatment for his neck with Dr. Hanna and Dr. Kolavo through 2017, undergoing therapy, diagnostic tests, and injections. Eventually Dr. Kolavo recommended a second opinion. The Arbitrator notes thereafter Petitioner was seen by Dr. Masynk. Dr. Masynk eventually recommended a posterior left C5-C6 removal of hardware followed by hemi laminectomy, foraminotomy, facetectomy for nerve root decompression. (PX1 p.2356). The Arbitrator notes this was the same surgery Dr. Kolavo had proposed back in April of 2016. Petitioner's cervical surgery was completed on December 7, 2020 and included a left posterior open C5-6 hemilaminectomy and foraminotomy for nerve root decompression, removal of C5-7 posterior instrumentation, and exploration of fusion (PX1, p. 1265). Post-operatively Petitioner was returned to physical therapy and was discharged as of March 30, 2021. (PX1, p. 785).

The Arbitrator finds Dr. Masynk also provided an opinion on this case. Dr. Masynk is a board-certified neurosurgeon who opined Petitioner's neck was related to the injury and placed Petitioner at maximum medical improvement. He opined he did not require any further treatment or restrictions for his neck. (RX6, p.6).

Lastly the Arbitrator notes that Dr Hanna also related the cervical treatment he had provided over the years to the work accidents from 2012. (PX6 p.10). Dr. Hanna had no hesitation in providing a causation opinion in regards to the neck. Petitioner obtained significant relief from the treatment Dr. Hanna provided for the neck. (PX6 p.11). Dr. Hanna testified he last treated Petitioner for his neck on January 27, 2021. (PX6, p. 27).

The Arbitrator finds these opinions more persuasive than Respondent's section 12 expert, Dr. Mather. The Arbitrator notes that Dr. Mather also initially admitted that the neck injury came from the June 11, 2013 work accident. He also admitted pushing a heavy machine can cause stress across the neck. (PX16B p.14).

Considering the medical evidence and chain of events presented in this case the Arbitrator finds Petitioner's cervical and carpal tunnel syndrome causally related to the June 11, 2013 work accident. The Arbitrator finds Drs. Ross, Kolavo and Masynk persuasive in the same. The timeline is linear and there are no intervening accidents to attribute the deteriorating cervical condition. Based on the same, the Arbitrator finds Petitioner's neck and carpal tunnel syndrome are related to his work injury.

Psychological treatment/Shoulder condition

Petitioner is alleging the psychological component is due to Petitioner's work injury. The Arbitrator finds Petitioner failed to prove the same. The Arbitrator notes that although Petitioner attempted to commit suicide as well as underwent counseling no physician specifically opined this condition was related to any of Petitioner's work injuries. Petitioner overdosed on cocaine and sustained

a diagnosis of acute psychosis due to the cocaine intoxication. Petitioner later sought counseling for an array of different issues to include the drug-induced mood disorder with psychosis. The Arbitrator cannot speculate what diagnoses are related without causation opinions. Based on the same the Arbitrator finds Petitioner's psychological treatment unrelated to the work accident.

In regards to the shoulder condition, it is unclear whether Petitioner is indicating that it is causally connected. As it is mentioned, the Arbitrator will address the same. The Arbitrator finds Petitioner's left shoulder not causally related to the work injury. Once again, the Arbitrator does not find any physician specifically addressing the left shoulder. If the Arbitrator were to causally relate the same, she would have to speculate as to the reasoning and the timeline. Per the medical records, Petitioner began substantial complaints of left shoulder pain in 2015. It is unclear to the Arbitrator how the shoulder is related to the injury and cannot speculate regarding the same. Based on the same, the Arbitrator finds Petitioner has not met his burden in providing that the left shoulder is causally related to the work injury.

With regard to Issue "G", what were Petitioner's earnings, the Arbitrator finds as follows:

Respondent placed Petitioner's wage statement into evidence. (RX10). Petitioner testified that this was an accurate copy of his earning for the first year. (T.11).

The wage statement ranges from check dates from May 27, 2011 through May 25, 2012 which results in 52 weeks. No evidence was placed to support the various payments. Per the wage statement, it looks like Petitioner was paid $20.20 per hour and worked overtime for 5 periods. Petitioner earned was also paid vacation hours, holiday hours and an earning labeled "SF2."

Petitioner worked 60 hours of overtime ($1979.60) at a straight rate would total $1212.00. The Arbitrator notes that overtimes hours are included if they are mandatory or consistent. In this case, Petitioner did not testify to either. As such, the Arbitrator is presented with no testimony regarding the same. As such, the Arbitrator has excluded the same. Taking out overtime hours reduces the total to be $40,570.05. Over 52 weeks this would result in an average weekly wage of $780.19.

The Arbitrator will utilize the average weekly wage of $780.19 in all three cases as the first injury was a factor in all three cases.

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 substantial amount of medical bills into evidence. Given the findings on causation, Respondent is liable for the treatment in regards to the low back through June 4, 2013. Respondent is also liable for medical expenses to include cervical surgeries, pain management to the cervical spine and carpal tunnel syndrome. (PX10).

The Arbitrator has denied the psychological treatment for the related suicide attempt in April 2022, follow up treatment at Braden Counseling Center, left shoulder care and back treatment after the June 2013 MMI date.

Lastly Respondent is also responsible for all vocational rehabilitation charges from Vocamotive under Section 8(a). (See PX12, PX15, RX9). The Arbitrator finds that Petitioner was entitled to vocational rehabilitation services. Respondent shall remit to Petitioner's counsel the payments for medical treatment which Respondent did not pay as well as the vocational expenses it did not pay.

With respect to Issue (K), what temporary benefits and temporary partial disability benefits are in dispute, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that 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. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

Per the stipulation sheet, Petitioner is seeking TTD benefits, TPD benefits and maintenance benefits. The Arbitrator will address each benefit.

TTD benefits

Petitioner alleged several periods of TTD benefits. Per the Stipulation Sheet, Petitioner alleges three periods of TTD benefits. The first period is from May 14, 2012 through June 3, 2013. (Arb. Ex.1). Petitioner testified he began missing work as of May 26, 2012. Based on the records, to include Dr.

Ross's opinion, Petitioner is awarded TTD benefits from May 26, 2012 through June 3, 2013 (release date by Dr. Ross).

The second period Petitioner is claiming is from May 4, 2014 through June 8, 2017. (Arb. Ex. 1,2,3). Petitioner testified that he was off work for this period and paid worker's compensation benefits. (T.21-22). The medical records show Petitioner was off work beginning on May 8, 2014 (the date of his cervical surgery), through June 8, 2017 (the day before his employment began with Securitas). Based on the same, Petitioner is awarded TTD benefit from May 4, 2014 through June 8, 2017.

The last period of TTD benefits Petitioner is claiming is from December 6, 2020 (the day before his December 7, 2020 neck surgery) through November 2, 2022 (when vocational rehabilitation began). (Arb. Ex. 1,2,3). The Arbitrator finds that Petitioner is owed this period. Respondent is given a credit for all TTD paid. (RX1).

TPD Benefits

The Arbitrator notes Petitioner claimed TPD benefits from June 9, 2017 through December 4, 2020. Petitioner worked in a modified position as a security officer from June 9, 2017 through December 4, 2020. Respondent agreed to the TPD period. (Arb. Ex.1,2,3). The Arbitrator finds Petitioner is owed this period. Respondent is given a credit for all TPD benefits paid. (RX1).

Maintenance Benefits

Petitioner is claiming maintenance benefits from November 3, 2022 through April 19, 2023. Ms. Stafseth-Zamora testified Petitioner initially obtained a job on March 22, 2023. Petitioner was subsequently terminated from that position. Petitioner returned to her company for ongoing job placement services. Petitioner indicated he was not being paid any further and was not going to be attending any further appointments. Ms. Stafseth-Zamora confirmed Petitioner returned the equipment around April 21. *Id.* at 27. Based on Ms. Stafseth-Zamora's testimony, it looks like Petitioner attempted to restart vocational rehabilitation, but Respondent would not pay for additional services and/or maintenance benefits. Based on the same the Arbitrator finds Respondent owes maintenance benefits from November 3, 2022 through April 19, 2023. Respondent shall get credits for amounts paid.

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

The Arbitrator adopts and incorporates all of the above findings of fact into these findings. The Arbitrator notes at the time of injury Petitioner was a 50-year-old male who worked for Respondent, RR Donnelly. The Arbitrator finds Petitioner underwent one back surgery and several neck surgeries. Petitioner eventually proceeded with vocational rehabilitation and found a job. Petitioner left that job to undergo additional medical care. He later underwent another FCE that placed him with restrictions at the high end of light to the low end of the medium physical demand level with restrictions of lifting 20 pounds from floor to waist, 25 pounds from 12 inches to waist, 25 pounds from waist to shoulder on an occasional basis, carrying 25 pounds from 50 feet on an occasional basis, overhead reaching on an avoid basis and alternate between sitting and standing. There was question regarding a questionnaire that Petitioner's new primary care physician filled out in December of 2021. The Arbitrator notes that Dr. Brandon was Petitioner's new primary care physician that he saw on May 9, 2021. Dr. Brandon ordered

a FCE and subsequently wrote a FCE questionnaire in December of 2021. Petitioner's FCE took place in October of 2022. There are no medical records indicating Dr. Brandon, or any other physician, reviewed the FCE or disagreed with the same. As such, the Arbitrator adopts the findings of the FCE as Petitioner's restrictions.

In assessing his permanency, Petitioner has requested a finding that Petitioner is permanently and totally disabled based on the 'odd-lot' theory. In support, he presents evidence and testimony of his inability to find gainful work after a proper effort and vocational opinion of Ms. Stafseth-Zamora. The Arbitrator declines to find the same.

The Arbitrator finds that Petitioner was placed with restrictions in October of 2022. Petitioner began vocational rehabilitation services as of January 6, 2023. (RX8, p.9). Petitioner was cooperative with the job search process and secured a job as of March 20, 2023. There is some question on whether this job was a good fit. The Arbitrator notes the only opinion offered was Ms. Stafseth-Zamora who opined that per the FCE this was a suitable employment. No other physicians or vocational counselors provided any other opinions. Based on the FCE restrictions and Petitioner's vocational interviews, the Arbitrator finds Petitioner does have transferable skills with a stable labor market. The Arbitrator points to the fact that Petitioner underwent vocational rehabilitation twice and secured two different employments.

Initially, the Arbitrator notes Petitioner has not presented a wage differential claim. Although Ms. Stafseth-Zamora testified based on the Functional Capacity Evaluation it was her opinion that Petitioner was employable in a limited labor market with wages falling between $12.00 and $17.00 per hour, the Arbitrator finds no detail discussion of reasoning per the National Tea Guidelines.

Petitioner did not offer evidence regarding Petitioner's educational barriers, any economical decompression in Petitioner's geographic areas and no language barriers were found. In fact, the Arbitrator is impressed with the fact Petitioner found two jobs during vocational rehabilitation. Based on the same, the Arbitrator finds that Petitioner has a stable labor market with transferable skills.

The Arbitrator further adopts the FCE to support Petitioner's restrictions. The Arbitrator puts weight on Ms. Stafseth-Zamora's opinion that there is a limited labor market for Petitioner. In addition, she opined Petitioner's job at KSM or security would have been a good fit for Petitioner.

The Arbitrator disagrees the Petitioner is permanently and totally disabled but finds Petitioner has suffered a loss of profession.

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
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
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 Petitioner placed Respondent's Section 12 depositions into evidence. Dr. Mather provided an AMA rating of 8 percent. (PX16C, p.35). As the Arbitrator did not find his opinions persuasive, the Arbitrator gives little weight to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner was employed as a machine operator and bindery mechanic, a heavy position, at the time of injury. Petitioner never returned back to work. Based on Petitioner's restrictions of the light demand level, the Arbitrator gives great weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes Petitioner was 50 years old on the date of this accident. Petitioner is now 61 years old. The Arbitrator notes that due to Petitioner's age the remaining amount of work life is minimal. As such, the Arbitrator assigns moderate weight to this factor.

With regard to subsection (iv) of § 8.1b(b), regarding the employee's future earning capacity, the Arbitrator notes that Petitioner's previous jobs paid less than his original employment. The Arbitrator finds that Petitioner has sustained a significant reduction in earning capacity. Based on the same, the Arbitrator gives this factor great weight as Petitioner is now currently not working and his previous employments were in a reduced earning capacity.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner's medical records reveal Petitioner underwent back surgery, several neck surgeries, and carpal tunnel surgery. Petitioner has permanent restrictions per his FCE. Petitioner continues to voice complaints of pain and difficulty with everyday tasks. In addition, he continues to experience numbness in his left hand and fingers, burning and pinching in his neck. Based on Petitioner's injury and disability in the medical records, this factor is given 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 70% person as a whole pursuant to §8(d)2 of the Act for the injuries sustained due to his worker's compensation injuries.

With respect to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner claims that he is entitled to penalties and fees. The Arbitrator finds Respondent did not per se act in bad faith. Petitioner's initial vocational services were terminated as of March 23, 2023 after Petitioner found employment. While the Arbitrator does not adopt Respondent's argument in not awarding additional maintenance benefits, it is the Arbitrator's view that Respondent's position is not objectively unreasonable or vexatious. The denial of this matter does not rise to the level of being vexatious and unreasonable.

Section 19(k) of the Act provides that "in case where there has been any unreasonable or vexatious delay of payment . . . which do not present a real controversy, but are merely frivolous or for delay, then

the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k). The Arbitrator further notes that there was a dispute regarding medical treatment based on the medical testimony. Based on the same, the Arbitrator denies penalties pursuant to Section 19(k).

Section 16 of the Act provides that "[w]henever the Commission shall find that the employer, his or her agent, service company or insurance carrier . . . has been guilty of unreasonable or vexatious delay . . . or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of [Section 19(k)], the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16. As indicated above, the Arbitrator does not believe that Respondent's argument about denial of medical care and ongoing maintenance benefits was frivolous. As such, the Arbitrator denies penalties.

Section 19(l) of the Act provides that "[i]f an employee has made a written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. . . . In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits . . . have been so withheld or refused, not to exceed $10,000." 820 ILCS 305/19(l).

The Arbitrator in reviewing COMPFILE notes Petitioner filed a Petition for Penalties as early as September 20, 2021. In reviewing the responses, the Arbitrator cannot speculate why there was constant disruption regarding TTD benefits. The Arbitrator also acknowledges that Respondent is not disputing the neck condition, however, there are medical bills that remain unpaid in regards to the same. In regards to TTD benefits, the Arbitrator notes that 78 of the 186 payments were delayed anywhere from 6 days to 3 years, with the average appearing to be around a month or two in delay. In other words, 42% of the payments were not paid in a timely manner nor in a manner which is explainable from the record. Respondent did not justify its payment practices. Medical bills were also denied and delayed. The Arbitrator notes that there is cervical medical care that is not paid. There is nothing in writing providing any reason why these payments were delayed and/or denied. While the Arbitrator acknowledges that Respondent may have denied something based on a Section 12 examination, the Arbitrator also acknowledges that Respondent did not put anything into evidence to explain the denial or justification of the same. In addition, Respondent did not place Dr. Mather's deposition testimony into evidence. Penalties under Section 19(l) are in the nature of a late fee" and are "mandatory '(i)f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay.'" *Jacobo v. IWCC*, 2011 IL App (3d) 100907WC, Section 19, 959 N.E.2d 772 (quoting *McMahan v. Industrial Commission*, 183 Ill.2d 499, 515, 702 N.E.2d 545, 552 (1998)). Here the Arbitrator finds that no adequate justification was provided for the delay. As such, the Arbitrator finds that the period from the initial demand and petition for penalties, September 20, 2021 through the present, no adequate justification for delay or nonpayment was provided. The §19(l) penalty is $30/day, not to exceed $10,000. Penalties calculated at the daily rate would exceed the $10,000 cap. Accordingly, the Arbitrator awards Petitioner $10,000.00, the maximum allowed for §19(l) penalties.

With respect to Issue (N), what credit is Respondent entitled to, the Arbitrator finds as follows:

Per RX1, Respondent issued payments. The Arbitrator notes that sometimes the payments are coded as TTD benefits when they really were issued during the period of maintenance. Respondent paid $150,350.18 in TTD, $15,548.49 in maintenance, $55,256.97 in TPD/wage differential benefits. Respondent shall receive credit for all amounts paid. (RX1).

Based on Ms. Stafseth-Zamora's testimony, it looks like Petitioner attempted to restart vocational rehabilitation, but Respondent would not pay for additional services and/or maintenance benefits. Based on the same the Arbitrator finds Respondent owes maintenance benefits from November 3, 2022 through April 19, 2023. Respondent shall get credits for amounts paid.

With respect to Issue (O), what prospective medial Petitioner is entitled to and whether Petitioner is entitled to Permanent Total Disability benefits, the Arbitrator finds as follows:

The Arbitrator has addressed Petitioner's nature and extent in section L and found Petitioner is not entitled to Permanent Total Disability benefits.

In regards to prospective medical, the Arbitrator notes Petitioner's 8(a) medical rights remain open for the causally related body parts but does not address any current treatment as this is not an 8(a) hearing.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC024555
Case Name	Brian Bronke v. R.R. Donnelly
Consolidated Cases	12WC021596; 12WC021597;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0154
Number of Pages of Decision	34
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Emilie Miller

DATE FILED: 4/8/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN BRONKE,

Petitioner,

vs. NO: 13WC024555

R.R. DONNELLY,

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 causation, medical expenses, wage calculations, nature and extent, penalties and attorney's fees, and being advised of the facts and law, affirms and adopts, with the following changes, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We affirm the Arbitrator's Order that the Decision in case number "12WC21596 lays out the award on all issues for the combined accident dates." We make the following changes and clarifications to maintain consistency among the Decisions that were issued in each of the consolidated cases.

The Commission affirms the Arbitrator's finding that Petitioner failed to prove he is permanently and totally disabled. However, we clarify the sequence of events relating to Dr. Brandon, Petitioner's primary care physician. Dr. Brandon's records reflect that Petitioner's first visit to "establish care" was on March 3, 2021. *Px4 at 2, T2.485; Id. at 440, T2.916; Id. at 596, T2.1081.*[1] There was no visit with Dr. Brandon on May 9, 2021, so we strike those references on pages 8 and 20 of the Decision. As discussed below, Petitioner did see Dr. Brandon on May 9, 2022.

[1] The electronic transcript in this case was uploaded in CompFile as two separate PDF files. The page numbers cited as "*T1*" refer to Volume 1 and "*T2*" refers to Volume 2.

On December 16, 2021, in conjunction with Petitioner's application for Social Security disability, Dr. Brandon completed a Physical Residual Functional Capacity Questionnaire and wrote that Petitioner had been "with Duly since 2/25/21." *Px4 at 568, T2.1051*. In the Questionnaire, Dr. Brandon indicated Petitioner was able to walk one city block without rest, sit for 30 minutes at a time, stand for 15 minutes at a time, stand/walk a total of less than two hours a day and sit for "about 2 hours" a day. *Px4 at 568-570, T2.1051-53*. Dr. Brandon also estimated that Petitioner would likely be absent from work "more than four days per month." *Id. at 570, 1053*.

On May 9, 2022, Petitioner saw Dr. Brandon who noted, "He is asking about an FCE [Functional Capacity Evaluation] for RTW," however an FCE was not ordered on that date. *Px4 at 205, T2.681*. The FCE was eventually ordered by Dr. Brandon on September 30, 2022. *Px4 at 40, T2.516*. Petitioner underwent the FCE on October 10, 2022. *Rx7, T2.3028*.

The FCE indicated Petitioner was "functionally employable at this time" and "recommended that client is placed in a position that allows him to alternate between sitting and standing." *Id*. The report stated, "Client demonstrated capabilities and functional tolerances to function within the high end of light to low end of the medium physical demand level with the heaviest weight able to lift within the demand level is 20# from floor to waist and 25# from 12" to waist and 25# from waist to shoulder." *Id. at T2.3029*.

With assistance from vocational counselors at Vocamotive, including Ms. Kari Stafseth-Zamora, Petitioner was able to obtain an employment opportunity with KSM Electronics for a "light assembly position that allowed employees to alternate between sitting and standing" with a starting wage of $18.00 per hour. *Rx9 at 136, T2.3340*.

Ms. Stafseth-Zamora testified that Petitioner requested that his start date be delayed until March 27, 2023 "so he could take a vacation" but he ended up starting on March 22nd. *Rx8-6/27/23 at 13, T2.3145*. We note that Petitioner testified he didn't really take a vacation but "wanted to veg out and stay home a few days before I started my new job." *T1.67-68*. We believe this is significant and reflects Petitioner's lackadaisical attitude toward starting his new job.

Petitioner attended the KSM job for one day on March 22, 2023. *Rx9 at 136, T2.3340*. Ms. Stafseth-Zamora testified that Petitioner's position as an assembler at KSM was within the physical requirement guidelines outlined by his FCE and that Petitioner was terminated from that employment based on his absenteeism. *Rx8-6/27/23 at 27, 3159*. Petitioner testified that he was unable to perform the KSM job since it caused him pain and he could not return the next day. *T1.33-34*. He argues "the FCE did not address, and did not dispute, that [he] would need unscheduled time off work to recover from his flares from work" (*P-brief at 5*). However, we find that Petitioner's argument is not based on any valid, current medical opinion.

Dr. Brandon completed the Functional Capacity Questionnaire for Social Security disability purposes in December 2021, almost ten months prior to the FCE, which was performed on October 10, 2022. We find that the opinions contained in Dr. Brandon's 2021 Questionnaire were superseded by the FCE. Petitioner never returned to Dr. Brandon to obtain restrictions that differed from the physical capabilities listed in the FCE nor is there any post-FCE medical opinion to support Petitioner's claim that his condition would require unscheduled absences from work. Therefore, we find that Petitioner simply refused to return to an accommodating job that was within

his physical capabilities. We agree with the Arbitrator's finding that Petitioner failed to prove that he is permanently and totally disabled.

We next address the Arbitrator's analysis of the five permanency factors in §8.1b(b) of the Act. With regard to factor (i), we find that Dr. Mather provided an AMA rating in his December 10, 2018 report, which was prior to Petitioner's final cervical surgery on December 7, 2020 and his FCE on October 10, 2022. Therefore, Dr. Mather's AMA rating is invalid and we give this factor no weight.

The Arbitrator gave factor (ii) "great weight" and noted that Petitioner was employed in a heavy position at the time of his injury and currently had "light demand level" restrictions. However, Petitioner's vocational counselor, Ms. Stafseth-Zamora, testified that Petitioner's pre-injury position required physical capabilities at a medium level. *Px12 at 25, T2.2275*. Petitioner's current restrictions, per the FCE, are "within the high end of light to the low end of the medium physical demand level." *Rx7, T2.3029*. We also point out that the FCE results include restrictions related to Petitioner's current lumbar spine and left shoulder conditions, which the Arbitrator correctly found to be not causally related to his work accidents. On November 7, 2022, Respondent's §12 physician, Dr. Gleason, opined that Petitioner's "Restrictions with respect to stair climbing and prolonged walking would be related to his lower back." *Rx5 at 2, T2.2985*. Therefore, Petitioner's permanent restrictions are based, in part, on conditions that are not causally related to his accidents. Petitioner testified that he could not perform security work because he couldn't walk and had problems with stairs. *T1.69*. We find these limitations are due to Petitioner's lumbar condition, which is not causally related to his work injuries. Petitioner also rejected security jobs because he would be required to refuse entry to potentially hostile people who had been terminated and "I didn't sign up for that." *T1.69*. We find that Petitioner's choices and work preferences are unrelated to his work restrictions. The Commission gives this factor moderate weight.

We agree with the Arbitrator's analysis of factor (iii).

Regarding factor (iv), we disagree with the Arbitrator's conclusion that Petitioner sustained a "significant" reduction in earning capacity. Petitioner obtained a job at KSM Electronics earning $18 per hour. He had been earning $20.20 per hour at the time of his first accident which means his reduction in earning capacity is only $2.20 per hour or $88 per 40-hour week. This is only about a 10% reduction in earning capacity, which we would characterize as a "minor" or "moderate" decrease in earning capacity. Although Petitioner's wages at the Securitas job from June 2017 through December 2020 were significantly less ($11.41 per hour) than his job at Respondent ($20.20), after he underwent the FCE and obtained permanent restrictions, he was able to obtain the KSM job earning $18 per hour. We also reiterate that Petitioner self-terminated his job at KSM based solely on his subjective complaints. The job was within his FCE restrictions and Petitioner did not return to any physician to have his permanent restrictions modified. We disagree with the Arbitrator's consideration of the fact that Petitioner is "now currently not working" since he is not working due to his own choice. Due to Petitioner's failure to prove that his job at KSM was beyond his restrictions and our finding that the reduction in his wages was minor, we give this factor "some" weight.

Finally, regarding factor (v), we generally agree with the Arbitrator's analysis but change "several" neck surgeries to "three."

Despite our modifications to the Arbitrator's analysis, as outlined above, we nevertheless agree that Petitioner sustained permanent partial disability to the extent of 70% person as a whole pursuant to §8(d)2 of the Act for the injuries sustained due to his worker's compensation injuries and hereby affirm that award.

Penalties and Fees

The Commission affirms the Arbitrator's award of penalties under §19(l) of the Act. However, we strike the analysis regarding the late or unpaid medical expenses because there is no evidence that Petitioner submitted the unpaid bills to Respondent. We find that Petitioner is entitled to §19(l) penalties based on the pattern of delay in temporary total disability (TTD) payments.

We also affirm the denial of penalties under §19(k) and attorney's fees under §16. However, we add additional analysis to support this finding. The Arbitrator wrote:

> In regards to TTD benefits, the Arbitrator notes that 78 of the 186 payments were delayed anywhere from 6 days to 3 years, with the average appearing to be around a month or two in delay. In other words, 42% of the payments were not paid in a timely manner nor in a manner which is explainable from the record.

Dec. 23.

Respondent's benefit payments exhibit was admitted into evidence (*Rx1*) and Petitioner's brief contains a summary of those payments to support his claim that there were extensive delays in payment. The entries that allege the lengthiest TTD delays are:

[Payment Dates	Date Sent	TTD Amount	Alleged Delay]
…			
11/19/14 - 12/7/15	5/23/2016	$30,134.67	"168 day delay"
5/7/14 - 11/7/14	5/23/2016	$14,518.01	"563 day delay"
6/11/13 - 4/23/14	5/23/2016	$24,955.28	"3 year delay"

P-brief at 15.

The Commission notes that on June 4, 2013, Dr. Ross opined that Petitioner was at maximum medical improvement for the lumbar spine and could return to full duty work." *Dec. 2., Px3, T2.81*. Petitioner testified that he did, in fact, work between June 9, 2013 and May 3, 2014. *T1.21*. On May 23, 2016, Respondent issued a check for TTD from June 11, 2013 through April 23, 2014. *Rx1 at 88-89, T2.2750-51*. However, Petitioner was not entitled to TTD for that period of time because he was working. Therefore, there was no "3 year delay" in that payment.

We next address the checks that were issued for the periods of "5/7/14 – 11/7/24" and "11/19/14 – 12/7/15." On March 6, 2014, after comparing the November 11, 2012 and November 27, 2013 cervical MRIs, Dr. Mather opined that Petitioner's cervical condition was not related to the June 11, 2013 work injury. *Px16A-DepX2, T2.2478*. On December 7, 2015, Dr. Mather authored a report, which is not in evidence but which he referenced during his deposition on January 28, 2016. He testified, "I felt that he had significant degenerative disc disease at C5-6-7

and based on the records it appeared to be nonoccupational." *Px16B at 10, T2.2502*. Therefore, we find that Respondent had a good faith basis to dispute TTD for those relevant periods based on Dr. Mather's opinion.

The benefit payment records reflect that, on May 23, 2016, Respondent issued the three checks (as indicated above) for TTD from June 11, 2013 through December 7, 2015. *Rx1 at 88-89, T2.2750-51*. It is unclear why Respondent reversed its position and accepted Petitioner's cervical condition at that time, but we note that Petitioner visited Dr. Kolavo on May 22, 2016. *Px11 at 120, T2.2144*. Dr. Kolavo opined that Petitioner "has residual or progressive and recurrent foraminal stenosis at C5-C6 on the left [where] previous foraminotomy has been performed [which] is contributing to his symptoms." *Id*. He recommended a "revision anterior decompression and takedown of his old fusion removal of instrumentation and revision foraminotomy and lateral recess decompression on the left at C5-6. The segment should then be refused and re-instrumented…" *Id*. Again, while it is unclear whether Respondent's decision was influenced by Dr. Kolavo's report, it issued the TTD checks the next day.

We point out another line from Petitioner's spreadsheet that incorrectly inflates the average delay in payment:

[Payment Dates	Date Sent	TTD Amount	Alleged Delay]
…			
12/15/17 - 12/28/17	2/15/2018	$600.58	"1 year delay"

P-brief at 14. The Commission finds that this was only a 2-month delay (not 1 year).

We find that most of the TTD payments were made timely and the ones with the most significant delays are explainable from the record, which results in a much lower "average" late payment. While we do not condone any delays, we exercise our discretion under §19(k) and §16 of the Act and find that Respondent's behavior, under the circumstances of this case, was not unreasonable or vexatious.

Clerical Errors

Although we affirm the Arbitrator's Decision, we correct the following clerical errors:

1) Throughout the Decision, we strike the references to "Dr. Masynk" and replace with "Dr. Masnyk" to reflect the correct spelling. *See e.g., Px1 at 628, T1.750 and throughout Px1*.

2) On page 4, in the first full paragraph, we clarify that Petitioner followed up with Dr. Kolavo on June 19, 2015 (not June 22, 2015). *Px11 at 194; T2.2219.*

3) On page 8, in the fourth paragraph, we clarify that Petitioner presented to Dr. Brandon on May 9, 2022 (not 2021). *Px4 at 205; T2.681*. We also strike the second sentence and replace it with: "Dr. Brandon ordered various labs and studies and told Petitioner to return in one month. (*Px4 at 209-210; T2.685-86*). On September 30, 2022, Dr. Brandon ordered the FCE. *(Px4 at 40-41; T2.516-17).*"

4) On page 10, after the first sentence in the first paragraph under the "Dr. Steven Mather" section, we replace the citation to "PX7" with "(*Px16A-DepX4, T2.2484).*"

5) On page 13, in the second full paragraph, and on page 21, in the third full paragraph, we clarify that Ms. Stafseth-Zamora opined Petitioner was employable with wages falling between $13.00 and $17.00 per hour. *Rx8 at 8, T2.3140*; *Rx9, T2.3309*.

6) On page 15, in the second paragraph under the "Lumbar Injury" section, we replace "June 4, 2023" with "June 4, 2013" to correct the year in the third and fourth sentences.

7) On page 21, in the fourth full paragraph, we change the word "decompression" to "depression."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2023 is hereby affirmed and adopted with the clarifications and corrections noted above.

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

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

No bond for the removal of this cause to the Circuit Court by Respondent is required since no award was made under this case number. 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.

April 8, 2025

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 2/18/25
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC024555
Case Name	Brian Bronke v. R.R. Donnelly
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Emilie Miller

DATE FILED: 10/3/2023

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

/s/ Roma Dalal, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Brian Bronke
Employee/Petitioner

v.

R.R. Donnelly
Employer/Respondent

Case # **13** WC **24555**

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 **Roma Dalal**, Arbitrator of the Commission, in the city of **Ottawa**, on **June 28, 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 **8(a) rights to future medical**

FINDINGS

On **June 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 partially*** causally related to the accident.

In the year preceding the injury, excluding overtime, Petitioner earned $**40,570.05**; the average weekly wage was $**780.19**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **2** 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.

See companion award in 12WC21596 for combined credits for all claims.

ORDER

12WC21596 lays out the award on all issues for the combined accident dates.

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 3, 2023

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Bronke,	)
	)
Petitioner,	)
	)
v.	)
	)
R.R. Donnelly ,	)
	)
	)
Respondent.	)

FINDINGS OF FACT

This matter proceeded to hearing on June 28, 2023 in Ottawa, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing on three separate cases (Arb. Ex. 1, 2, 3).

Brian Bronke (hereinafter referred to as the "Petitioner") worked as a machine operator and bindery mechanic for R.R. Donnelly (hereinafter referred to as the "Respondent") since 2009. (T.10-11).

On May 14, 2012, Petitioner testified he was moving a piece of heavy equipment weighing about 300-400 pounds and his back went out on him. (T.13). Petitioner initially sought treatment at Tyler Medical Clinic with Dr. Long and was diagnosed with a lumbar strain and placed on light duty. (PX7, p.3). Petitioner testified he began missing work at that point. (T.14). Subsequently, Petitioner sustained a second accident on May 26, 2012. At the time Petitioner was at home when his left leg out gave out, and he fell fracturing his clavicle (collarbone) and several ribs. Petitioner also began complaining of neck pain. (T.14-16).

Petitioner followed up with Dr. Long on May 29, 2012 noting his back symptoms were improved. He noted that he fell at home and went to the ER. Petitioner was referred to an orthopedic for his left clavicle fracture and was to monitor his lumbar spine. He was off work. (PX7, p.5-6). Petitioner presented to Dr. Patari on June 4, 2012 who recommended nonoperative care. Petitioner was recommended an abdominal binder and a home exercise program. *Id.* at 9-10. Petitioner's clavicle and rib fractures were treated conservatively with physical therapy; however, he continued to experience low back pain. On July 26, 2012, Petitioner followed up with Dr. Long. The Doctor noted it was 10 weeks since the original injury and recommended an MRI of the lumbar spine. Petitioner was to continue with physical therapy. *Id*. at 29.

Petitioner underwent an MRI on August 7, 2012 which revealed a L4-5-disc protrusion. (PX7, p.95). Petitioner followed up with Dr. Long on August 9, 2012 for an evaluation of his lumbar spine with left lower extremity radiculopathy. The Doctor noted Petitioner had a L4-L5 disc protrusion and referred Petitioner to Dr. Ross. Petitioner remained on restrictions. *Id.* at 37.

On August 22, 2012 Petitioner presented to Dr. Ross. Petitioner previously treated for a left L4-5 microdiscectomy about 10 years ago. Dr. Ross went over Petitioner's condition and diagnosed him with

lumbar radiculopathy most likely due to his spondylosis, disk bulge and foraminal stenosis at the L4-5 and/or L5-1 level. Petitioner was recommended a trial of a Medrol Dosepak followed by an injection. Petitioner was placed on restrictions. (PX3, p.44).

Petitioner continued with physical therapy. On September 24, 2012, Dr. Patari placed Petitioner at MMI for his left clavicle injury releasing Petitioner to full duties for that injury. (PX7, p.56).

Petitioner followed up with Dr. Ross on November 13, 2012. Petitioner had undergone two transforaminal cortisone injections with temporary improvement. Given the failure, he would suggest foraminotomies at L4-5 and L5-S1. Petitioner also had left arm numbness which was suspicious for cubital tunnel syndrome. (PX3, p.41).

The EMG/NCV was performed on November 21, 2012, identifying mild right carpal tunnel syndrome, but not conclusive for cubital tunnel syndrome or cervical radiculopathy. (PX3 p.146).

On December 3, 2012, Dr. Ross authored a note indicating Petitioner should undergo an MRI of his cervical spine and EMG of the left arm due to his increasing neck pain. (PX3, p.40).

The cervical MRI was done on December 11, 2012 revealing cervical spondylosis. There was also spinal cord compression at C6-7 with altered cord signal, either myelomalacia or edema, associated with disc protrusions at C5-6 and C6-7. (PX3 p.90).

On December 12, 2012, Dr. Ross performed a re-exploration of the lumbar spine with a left L4-L5 hemilaminotomy, lysis of adhesions, micro discectomy, foraminotomy and L5-S1 hemilaminotomy in foraminotomy. Postoperative findings were identified as a recurrent lumbar disc herniation and foraminal stenosis at L4-5, and spondylosis with foraminal stenosis at L5-S1. (PX1 p.4185). Post-operatively Petitioner was placed in physical therapy. *Id.* at 57.

Petitioner followed up with Dr. Ross on December 26, 2012 reporting significant improvement in his back and left leg symptoms. Petitioner was recovering well from back surgery. Petitioner was recommended a brief three-week course of physical therapy before proceeding with his neck operation. (PX3, p.39). Petitioner resumed therapy on January 3, 2013. (PX7, p.57). Petitioner continued to follow up with Dr. Ross. Petitioner was improving in terms of his back but was recommended a cervical diskectomy and fusion. (PX3, p.32-38). On June 4, 2013, Petitioner returned to Dr. Ross. Petitioner had made an excellent recovery from his back injury and surgery. Dr. Ross opined he was at maximum medical improvement for the lumbar spine and could return to full duty work. He noted his neck was more problematic. Dr. Ross disagreed with the Section 12 examiner's opinion regarding causation for the neck. Dr. Ross noted that although it was clear Petitioner had some degenerative arthritis in his neck that predated his work injury, in his opinion, the fall on May 26, 2012 caused the symptoms in his neck and arm. For treatment of Petitioner's neck Dr. Ross recommended an anterior cervical discectomy and fusion at C5-6 at C6-7. Petitioner was able to return to work full duty on a trial basis at a light/medium level. He should ask for help to lift anything over 35 pounds. (PX3, p.30).

While working on June 11, 2013, Petitioner sustained a third accident. Petitioner reported that on June 11, 2013 he was moving a 200 to 300 lb. machine on wheels when he experienced increased pain in his neck down his left arm. (T.18).

Petitioner returned to Dr. Ross on June 27, 2013 indicating he was moving equipment at work and developed increased pain in his neck and left shoulder. Petitioner was to continue with therapy and was recommended an EMG. (PX3, p.28). Petitioner returned to Dr. Ross on July 24, 2013 with worsening pain. Petitioner was to undergo an EMG. *Id.* at 27.

The EMG/NCV was performed on August 2, 2013 and showed bilateral median nerve compression at the wrists consistent with carpal tunnel syndrome, as well as suggestion of C6-7 radiculopathy on the left. (PX1).

In an August 13, 2013 follow up, Petitioner noted he was working with a 25-pound restriction. Dr. Ross still recommended a C5-6 and C6-7 anterior cervical diskectomy and fusion. He was to return. (PX3, p.26). Petitioner followed up again on September 12, 2013 noting he was worse after working multiple 12-hour days. Petitioner was still recommended surgery and was to follow up. *Id.* at 25. Petitioner was then referred for an updated MRI of his cervical spine. The MRI was completed on November 27, 2013 and confirmed the prior disc herniations at C5-6 and C6-7, as well as facet arthropathy on the right at C3-4. *Id.* at 76.

Petitioner returned to Dr. Ross again on January 13, 2014. Petitioner still remained significantly symptomatic from his C5-6 and C6-7 cervical disk herniations. Petitioner was pending surgery and could continue working with a 25-pound lifting restriction. (PX3, p.24). Petitioner had his final visit with Dr. Ross on February 25, 2014. Petitioner was having difficulty getting approval for surgery. Petitioner was taking a lot of ibuprofen to complete his shift. *Id.* at 22.

The workers' compensation carrier would not authorize the surgery, so Dr. Ross referred Petitioner to Dr. Kolavo to perform the surgery under group insurance. (T.19).

On May 8, 2014, Dr. Kolavo performed an anterior cervical discectomy, osteophytectomy and fusion at C5-6 and C6-7 with instrumentation. Post-operative diagnosis was herniated cervical disk with cervical spondylosis, cervical spinal stenosis, and persistent left upper extremity radiculopathy. (PX1, p. 3966)**.**

Post-operatively, Petitioner was referred by Dr. Kolavo for pain management with Dr. Hanna for his neck. Petitioner began pain management on December 15, 2014. Dr. Hanna recommended cervical epidural steroid injections, a series of which were subsequently administered beginning December 15, 2014. (PX1, p.3878-3915). Petitioner eventually underwent a lumbar myelogram confirming a central disc protrusion superimposed on mild to moderate diffuse disc bulge at L4-5, mildly narrowing the left neural foreman and moderately narrowing the right foreman (PX1, p.3777). He also underwent a cervical myelogram confirming an incomplete fusion at C6-7 and C5-6. (PX1, p. 3779).

After reviewing the scans, Dr. Kolavo recommended a posterior cervical decompression and fusion to address Petitioner's failed fusion. Petitioner's surgery was completed on March 30, 2015. (PX1, p.3513). Post-operatively, Petitioner complained of left arm and hand numbness. Further investigation confirmed a diagnosis of left carpal tunnel syndrome with no cervical involvement and Petitioner was referred to Dr. Keisler for further consultation who confirmed Petitioner's carpal tunnel syndrome of the left hand and recommended surgery. (PX1, p.3396). The carpal tunnel release was performed on June 4,

2015, resulting in an improvement (but not resolution) in the pain, numbness and tingling in the hand. (PX1 p.3333, 3317).

Petitioner followed up with Dr. Kolavo on June 22, 2015. Petitioner underwent a left carpal tunnel release, with resolution of the pain in his hand but persistent numbness in the median nerve distribution. He also reported a new problem of right buttock and right leg pain beginning three weeks prior without specific injury. Petitioner reported that he was unable to walk long distances or stand up straight without pain. It was noted Petitioner had prior back issues in the past, but mostly left sided. Petitioner also reported persistent left trapezius pain and left triceps pain. Dr. Kolavo diagnosed Petitioner with a herniated lumbar disc and persistent cervical radiculitis and recommended physical therapy for both the arms and back. Dr. Kolavo also confirmed Petitioner's cervical problem was still causally related to his work injury of record. He did not provide a causal opinion related to Petitioner's new complaints of right sided back and leg pain. (PX11, p.193).

On June 25, 2015 Petitioner was admitted to the hospital for low back pain radiating down the right leg for the past week. Petitioner stated he was unable to walk at home. He denied any recent injury or fall. (PX1, p.3161). Dr. Miskiewicz performed a pain consultation, assessing the problem as right lumbar radiculopathy, a L4-5 disc herniation and spinal stenosis. *Id.* at 3170. Dr. Kolavo also examined Petitioner, noting a couple of weeks of worsening right leg pain without any new injury triggering the symptoms. The pain traveled from the right low back into the buttock, posterior and lateral thigh and the going down laterally below the knee. *Id.* at 3171. A lumbar MRI was reviewed showing a right central dick herniation compressing the shoulder of the L5 nerve root and some other degenerative changes. A left lateral disc herniation at L5-S1 encroached in the foramen and L5 nerve root, but Dr. Kolavo read that herniation as not clinically significant. Petitioner was diagnosed with a herniated L4-5 disk and was to undergo an injection. *Id.* at 3172. A lumbar epidural steroid injection markedly improved his symptoms, and he was discharged from the hospital. *Id.* at 3182.

Dr. Hanna saw Petitioner on August 6, 2015, noting a dramatic improvement from the previous ESI but a return in pain levels to a 6/10 level. (PX1 p.3060). Dr. Hanna performed a second ESI at L5-S1. *Id.* at.3062-3. This injection resulted in a 25% overall improvement. *Id.* at 3052. A third epidural steroid injection was done on August 31, 2015, but this injection provided no long-term improvement. *Id.* at 3024, 3014.

As of September 11, 2015, Petitioner reported to Dr. Kolavo persistent significant numbness in his left hand. Dr. Kolavo noted that mechanical shoulder pain seemed to be a component of Petitioner's disability and referred him for a shoulder evaluation. It was also noted Petitioner's lumbar symptoms were persisting and he was undergoing injections for his back with Dr. Hanna. (PX11, p.169). Petitioner's left shoulder was evaluated by Dr. Sterba on September 24, 2015. Dr. Sterba noted Petitioner may have injured his left shoulder at work when moving a heavy piece of equipment. Dr. Sterba diagnosed Petitioner with impingement syndrome and recommended therapy and subacromial injection, which was administered the same day. (PX1, p. 2977 and 2985).

Petitioner followed up with Dr. Kiesler came on October 19, 2015. Petitioner still complained of numbness in the left hand but was using the hand more normally each day. Given the severity of the carpal tunnel syndrome, Petitioner may have incomplete relief of symptoms. Petitioner was to continue with grip and upper extremity strengthening. He should return on an as needed basis. (PX1, p.2960-2961).

On October 23, 2015, Petitioner followed up with Dr. Kolavo with persistent left arm pain. Dr. Kolavo referred Petitioner for an updated EMG/NCV to further investigate his report of left upper extremity symptoms. (PX1, p.154-155).

Petitioner returned to Dr. Kolavo on February 9, 2016 with ongoing complaints of left arm symptoms. Petitioner also reported some ongoing numbness in his left hand despite his carpal tunnel release. Regarding his neck, Dr. Kolavo noted Petitioner had a recent flareup of pain that required the use of Norco transiently but had been able to stop it. Dr. Kolavo recommended a Functional Capacity Evaluation to confirm Petitioner's final return to work restrictions. (PX11, p.141).

The Functional Capacity Evaluation was put on hold pending updated orders from Dr. Kolavo for a cervical myelogram. Petitioner's cervical myelogram was completed on March 24, 2016 and confirmed, C3-4 facet arthropathy resulting in moderate to severe right neural foraminal stenosis and C4-5 disc bulge resulting in mild central canal stenosis and moderate right neural foraminal stenosis due to uncovertebral and facet atrophy. (PX11, p.134).

Following his myelogram, Petitioner returned to Dr. Kolavo on April 18, 2016. Dr. Kolavo noted Petitioner continued to report left upper extremity symptoms and suggested he follow-up with Dr. Kiesler. After reviewing Petitioner's myelogram, Dr. Kolavo confirmed options for Petitioner to include continuing with chronic pain management versus considering a revision ACDF at C5-6 on the left. Dr. Kolavo noted Petitioner had a large hypertrophic bone spur at C5-6 that was contributing to his symptoms. He also noted worsening foraminal stenosis. He also discussed the possibility of incomplete relief of symptoms. Petitioner was to remain off work and not undergo a FCE at this time. (PX11, p. 127).

On June 28, 2016, Petitioner returned to Dr. Kolavo and confirmed he did not wish to proceed with surgery. Dr. Kolavo recommended an evaluation by Dr. Oken at Marianjoy and recommended a Functional Capacity Evaluation. (PX11, p.110).

Petitioner's FCE was completed on July 5, 2016 and confirmed Petitioner was capable of work in a medium physical demand level. (PX1, p. 1484). Dr. Kolavo released him within the FCE findings. (PX1 p.2813).

Respondent was unable to accommodate, so Petitioner was placed in vocational rehabilitation. Petitioner eventually secured a job at Securitas. While Petitioner was working, Petitioner continued to seek treatment for his neck with Dr. Hanna and Dr. Kolavo. On October 10, 2017 Petitioner returned to Dr. Kolavo for a follow up to his anterior and posterior cervical surgery. He had not been seen for over 15 months. Petitioner noted gradual worsening of neck pain but had never been symptom free. Dr. Kolavo recommended Petitioner switch to prescription doses of ibuprofen to supplement with Tylenol. He should also obtain a cervical MRI and return in two weeks. (PX1, pp.2788-2790).

The MRI revealed postsurgical changes in areas of foraminal narrowing similar to the previous MRI scan, with the most prominent findings on the left at C5-C6. (PX1 p.2777-8).

Petitioner followed up with Dr. Kolavo on October 31, 2017 noting he was having issues with burning central mid thoracic and upper thoracic pain. Petitioner's MRI showed foraminal stenosis which was fairly severe on the left at C5-C6. He recommended an EMG/NCV of the left upper extremity along

with a pain consultation and epidural steroid injections targeting C5-C6. He also was recommended a thoracic MRI. (PX1 p.2763-64).

Petitioner was also sent for therapy. The EMG/NCV was performed on November 13, 2017, revealing moderate cubital tunnel syndrome, as well as residual carpal tunnel symptoms and mild C5-C6 radiculitis. (PX1 p.2744-5, 2750). Petitioner was recommended a follow up with Dr. Kiesler for the hand/arm and for the previously recommended cervical injection therapy. *Id.* at 2741.

Petitioner restarted treatment with Dr. Hanna on January 3, 2018. (PX1, p.2718). Petitioner underwent treatment to include cervical epidural steroid injections, medial branch blocks, facet blocks, and radiofrequency ablation. (PX1, p. 2692, 2660, 2595-6).

Petitioner returned to Dr. Kolavo on July 17, 2018 noting Petitioner's problems were very complicated. Dr. Kolavo noted further surgery would not likely affect his axial neck pain symptoms. Dr. Kolavo recommended a second opinion evaluation. (PX1, p.53).

Thereafter, Petitioner saw Dr. Masynk, a neurosurgeon for further evaluation. Petitioner first saw Dr. Masynk on August 2, 2018. Dr. Masynk ordered another cervical myelogram. (PX1, p. 2412-16). Petitioner's cervical myelogram was completed on August 30, 2018 and confirmed postsurgical changes at C5-7 with complete fusion, moderate osteophytic ridging asymmetrical to the left at C5-6, and mild degenerative changes throughout the remainder of the cervical spine. *Id.* at 2632 – 2363. Based on the cervical myelogram, Dr. Masynk recommended a posterior left C5-C6 removal of hardware followed by hemi laminectomy, foraminotomy, facetectomy for nerve root decompression. *Id.* at 2356. This was the same surgery Dr. Kolavo had proposed back in April of 2016. *Id.* at 2847.

While awaiting surgery Petitioner continued to undergo pain management treatment with Dr. Hanna for his neck. On March 13, 2019, Petitioner underwent left cervical radiofrequency ablation (PX1, p. 2259) and a right cervical radiofrequency ablation on April 17, 2019. (PX1, p. 2198).

On May 13, 2019, Petitioner was seen by Dr. Hanna and reported low back pain on the right greater than left but pain down to the left leg. Petitioner was also noted to be complaining of ongoing neck pain, 60% better after radiofrequency ablation. (PX1, p. 2150). Dr. Hanna diagnosed Petitioner with low back pain with left sided sciatica and recommended a trial SI joint injection. *Id.* at 2151. Petitioner returned on June 17, 2019 and was ordered a repeat MRI. The MRI was completed on July 15, 2019, compared to Petitioner's 2015 study, it confirmed a slightly more prominent than previous large diffuse disc bulge at L5-S1. *Id.* at 2108.

Based on the MRI, Dr. Hanna recommended additional lumbar transforaminal steroid injections. (PX1, p. 2074). Those injections were subsequently administered on September 19, 2019, October 14, 2019, and November 11, 2019. (PX1, p. 2039, 1993, 1943). Petitioner also underwent additional cervical medial branch blocks on April 22, 2022 and radiofrequency ablation on July 20, 2020. (PX1, p.1771).

Petitioner followed up with Dr. Kolavo on June 23, 2020. Petitioner was taking Norco and was complaining of dizziness and headaches. Dr. Kolavo did not think the cervical spine would cause these issues. His leg pain remained significant. Dr. Kolavo sent him for another cervical MRI. (PX1, p.1735-1736). The July 13, 2020 cervical MRI showed the same issues as the 2015 MRI, including impingement

on the right C4 root. (PX1, p.1717). Dr. Kolavo declined to operate on the cervical spine and Petitioner requested a referral to Dr. Ross or Dr. Masynk. (PX1 p.1703-4)

Petitioner's cervical surgery was completed on December 7, 2020 and included a left posterior open C5-6 hemilaminectomy and foraminotomy for nerve root decompression, removal of C5-7 posterior instrumentation, and exploration of fusion. (PX1, p. 1265). Post-operatively Petitioner was returned to physical therapy and was discharged as of March 30, 2021. *Id.* at 785. He also continued to treat with Dr. Hanna for his back and underwent SI joint injections on March 29, 2021. *Id.* at 811.

Petitioner also reported frequent falls due to weakness in his legs, along with pain in his left shoulder. Dr. Masynk referred Petitioner for an MRI of his left shoulder which was completed on March 30, 2021 and confirmed a full thickness rotator cuff tear involving the distal supraspinatus tendon and subscapularis tendon. (PX1, p. 775).

Petitioner was then referred by Dr. Masynk to Dr. LaBelle for his left shoulder. Dr. LaBelle noted that upon presenting for evaluation Petitioner reported a nine-year history of shoulder pain. Dr. LaBelle diagnosed Petitioner with a nontraumatic rotator cuff tear, impingement syndrome, and AC arthritis and recommended surgery. (PX1, p.715-720).

Petitioner last saw Dr. Masynk on May 11, 2021 for complaints of right buttock pain radiating down the posterior right leg. Petitioner reported some improvement in his back pain with injections but persistent right buttock and leg pain. Dr. Masynk offered Petitioner further surgery to include a redo L4-5 and L5-S1 discectomy. (PX1, p. 632). Petitioner testified he elected not to pursue further surgery for his back. (T. 63). However, Petitioner did continue treating with Dr. Hanna for his neck and back.

Petitioner presented for two Independent Medical Examinations with Dr. Gleason at Respondent's request on July 27, 2021 and November 7, 2022. Based on Dr. Gleason's opinions that Petitioner reached MMI related to his neck and did not require restrictions and that the current conditions of his back and left shoulder were not related to his work accidents, Petitioner's ongoing medical treatment for his back was denied. (RX4 and 5).

On April 2, 2022, an ambulance took Petitioner to the Emergency Room at Northwestern Delnor. (PX1, p.31). Petitioner expressed some suicidal ideation to the nurse. (PX1, p.31) He told the nurse that he "never wants to wake up." He did cocaine so that he could leave this earth and tried to take too many pills so that he could die. (PX1, p.70). The diagnoses included altered status in the setting of cocaine use, acute kidney injury with mildly elevated liver function test results, suicidal ideation, paranoia, and possible underlying psychiatric disorder contributing to his altered mental status, and opioid dependence, with a last recorded opioid refill on December 10, 2021. (PX1, p.62-3). Dr. Patel, a neurologist, reviewed past MRIs, reading the March 4, 2021 cervical MRI as showing progression of degenerative changes at C3-5 since the 2015 MRI, with impingement on the exiting roots on the right side. (PX1, p.75). Dr. Patel's diagnoses included acute psychosis likely due to cocaine intoxication, toxic metabolic encephalopathy was due to opioids and Gabapentin in his central nervous system, and chronic pain disorder- attributed to chronic lumbar and cervical spine disease. (PX1, p.80). The Doctor recommended Duloxetine (antidepressant) for the chronic pain, stopping the insomnia drug (Zalepon), stopping Norco and a psychiatry consult. (PX1, p.80).

Dr. Amber Kazi, a psychiatrist, interviewed Petitioner on April 3, 2022. The diagnosis was delirium versus drug-induced mood disorder with psychosis. (PX1 p.90-93). A licensed clinic social worker interviewed Petitioner on April 3, 2022 with him reporting stressors involving his unemployment, lack of belief in his reports and his divorce. (PX1, p.131). Petitioner noted delusions and his inability to work. The social worker recommended inpatient care, but Dr. Kazi instead recommended medication and a follow up visit in a day or two. (PX,1 p.134). He was told to seek counseling at Braden Counseling Center. (PX1 p.137).

Petitioner did follow up with Braden Counseling from April 8, 2022 through June 24, 2022. (PX13). He expressed difficulty adjusting to a recent divorce, he had been living with chronic pain for a long time and had been out of work. (PX13, p.6). The counselor advised Petitioner to talk with his doctor about the sleep issues and chronic pain. (PX13, p.9) At the final visit on June 24, 2022, he was working on his routine and sleep hygiene. He felt more comfortable with his situation and his physical restrictions. (PX13, p.18).

Medical records from Dr. Hanna confirm treatment of Petitioner for his neck through January 27, 2021 and back through November 22, 2021. (PX1). Per Dr. Hanna's records, Petitioner's treatment was suspended as of November 22, 2021 for his back due to insurance denial.

Thereafter, Petitioner presented to his primary care physician, Dr. Brandon, on May 9, 2021, asking about an FCE for return to work. Dr. Brandon ordered an FCE but confirmed Petitioner would need to submit for several tests to clear him for an FCE first (PX4, p. 182-207).

In conjunction with Petitioner's application for Social Security disability, Dr. Brandon completed a Physical Residual Functional Capacity Questionnaire for Petitioner on December 16, 2021. In that questionnaire Dr. Brandon confirmed treatment of Petitioner since February 25, 2021 for diagnoses including lumbar spondylosis, cervical spondylosis, cervical radiculopathy, hypertension, diabetes, insomnia, frequent falls, coronary disease. As for Petitioner's functional limitations, Dr. Brandon indicated Petitioner was able to walk one city block, sit for 30 minutes, stand for 15 minutes. stand for two hours a day and sit for two hours a day. (PX4, p. 568-570). Dr. Brandon was Petitioner's new primary Care physician. (T.65).

Petitioner's FCE was completed on October 10, 2022 and demonstrated Petitioner's capabilities and functional tolerances within the high end of the light physical demand level to low end of medium physical demand level with the heaviest weight able to lift within the demand level up to 20 lbs. from floor to waist, 25 lbs. from 12" to waist, and 25 lbs. from waist to shoulder. (RX7, p.2). Petitioner was then referred to Vocamotive for vocational rehabilitation on November 3, 2022.

At trial, Petitioner testified that after three months of vocational rehabilitation he found a job at KSM. (T.26). He felt back complaints during the job and afterwards. (T.29-30). He left a message for the new job indicating he was in bed and would not make it to the job. (T.31). He went to the doctor three days later. (T.32). Petitioner testified he continued with vocational rehabilitation for two and a half weeks later. (T.34). His benefits were suspended as of April 29, 2023. (T.34).

Petitioner testified that he falls down frequently. (T.37). He is still able to go grocery shopping, but his daughter will help carry the bags. (T.47). Petitioner testified he continues to experience numbness

in his left hand and fingers, burning and pinching in his neck, and flare-ups of his back pain. Petitioner testified that every two months he experiences a flare in his back pain that requires him to be down for a few days. (T.48-50). Petitioner was awarded Social Security disability earlier this year. (T.53).

On Cross-Examination, Petitioner confirmed after being released for the back he went back to work for Respondent. (T.59). During the last employment with KSM, they requested that he start on Monday but requested to take a vacation. Petitioner clarified he really didn't have a vacation but wanted to veg out and stay home a few days before he started his new job. (T.67).

During vocational rehabilitation, Petitioner also stated he refused security jobs because he had a hard time with stairs and did not want to be in a position to deal with anyone using AR 15s. (T.69). Petitioner noted the first treatment of depression was after his divorce. (T.70).

Deposition Testimony

Dr. Kolavo

The parties proceeded with the evidence deposition of Dr. Kolavo on June 23, 2015. (PX2). Dr. Kolavo is a board-certified orthopedic spine surgeon. (PX2, p.5). He testified to his treatment of Petitioner between April 23, 2014 and the date of his deposition regarding Petitioner's neck pain. Dr. Kolavo testified he began treating Petitioner on referral from Dr. Ross. Dr. Kolavo testified that in his opinion Petitioner's neck condition was causally related to his work accidents and led to his need for neck surgery. (PX2, p. 7-8). Dr. Kolavo further testified the need for the treatment was related to the June 11, 2013 work injury. (PX2, p.10). Dr. Kolavo noted Petitioner had to undergo a subsequent operation which was also related. (PX2, p.14). At the time of his deposition, Dr. Kolavo testified Petitioner was still healing for his second neck surgery and had persistent reports of arm symptoms. Dr. Kolavo testified that with respect to the carpal tunnel syndrome, he believes it could have been aggravated by the neck surgery. It was a cause-and-effect situation. (PX2, p.17). Dr. Kolavo testified that Petitioner had developed some new lumbar complaints. He did not know whether the lumbar complaints were related to Petitioner's work accidents as Petitioner had recovered from his lumbar fusion performed by Dr. Ross. (PX2, p.20).

Dr. Mark Hanna

The parties proceeded Dr. Mark Hanna's evidence deposition on July 28, 2022. (PX6). Dr. Hanna is a board-certified anesthesiologist and pain management specialist. Dr. Hanna testified to his treatment of Petitioner between December 15, 2014 and July 28, 2022 (the date of his deposition). Over six years of treatment, Dr. Hanna provided epidural injections, medication management and ablations. (PX6, p.7). Dr. Hanna testified when Petitioner first presented to him on December 15, 2014, he reported symptoms only related to his neck. (PX6, p. 9-10). Dr. Hanna indicated he was pretty certain about the history of the neck but did not recall the low back being talked about at the time of the accident. (PX6, p.9-10). He opined as it relates to Petitioner's neck, it was his opinion the treatment he rendered to him was causally related to his May 14, 2012 work accident. (PX6, p.10, 27). Dr. Hanna testified the basis for his opinion is the story and history provided to him by Petitioner. Dr. Hanna testified he last treated Petitioner for his neck on January 27, 2021. (PX6, p.27).

During direct examination, after being shown Dr. Ross's note of August 22, 2012, noting Petitioner reported low back pain after pushing a cart at work on May 14, 2012, Dr. Hanna testified that

it was his opinion it was more likely than not that his treatment of Petitioner's back was related to his work accident. (PX6, p.18-19).

Dr. Hanna predicted Petitioner would need ongoing radiofrequency ablations, normally twice a year, epidural injections a couple times a year if he is experiencing radicular pain. (PX6, p.20). Ablations would address the neck pain itself. But a stimulator could be warranted for the neck if radicular pain was involved into the arm. (PX6, p.24). Dr. Hanna thought that all of this treatment would be related to the work injuries. (PX6 p.25).

On Cross-Examination, Dr. Hanna opined that his low back causation opinion was only from the reviewing one note from August 22, 2012 from Dr. Ross. (PX6, p.28). He confirmed this was the only information he had seen relative to Petitioner's treatment and first saw the same during the deposition. (PX6, p.29). Dr. Hanna testified he did not give any weight to the fact Petitioner had been released by Dr. Ross following his back surgery as of June 4, 2013 after reporting virtually no back pain. (PX6, p. 33). Dr. Hanna testified Petitioner did not report any symptoms to him related to his back until June 17, 2019 but had undergone a lumbar epidural steroid injection in 2015 with his partner. (PX6, p.37). Dr. Hanna noted his notes indicated Petitioner saw his partner in 2015 for an epidural steroid injection. He continued to find causation based on the information Dr. Ross provided. (PX6, p.41). The Doctor clarified his opinions are based upon a reasonable degree of pain management certainty which is not the in the school of an orthopedic spinal surgeon. (PX6, p.43).

Dr. Steven Mather

The Parties proceeded with Dr. Steven Mather's deposition on September 14, 2014. (PX16A), January 28, 2016 (16B) and June 27, 2019 (PX16C). Dr. Mather is a board-certified orthopedic surgeon who works on the spine. Dr. Mather examined Petitioner on April 22, 2013 with a report generated on April 25, 2013. (PX7). Dr. Mather opined Petitioner had non occupational spondylosis and left arm cubital tunnel syndrome. (PX16A p.8-9). He related the low back injury to the May 14, 2012 work accident but did not relate the cubital tunnel or the neck to the work accidents. (PX16A p.9). Dr. Mather saw Petitioner again on October 21, 2013 diagnosing him with cervical radiculitis, suspecting a disc herniation versus stenosis. (PX16A p.12). The updated MRI was the same as the old MRI, so although surgery was warranted, it was not related to the accident. (PX16A p.15). Dr. Mather admitted on cross before he saw the new MRI, he related the radiculopathy to the June 11, 2013 accident. (PX16A p.19).

Dr. Mather testified a second time regarding his December 7, 2015 Section 12 report. (PX16b, p.7). Dr. Mather testified that he felt Petitioner had significant degenerative disc disease at C5-6-7 and based on the records it was nonoccupational. (PX16B, p.10). Dr. Mather noted the May 14, 2012 injury would not cause or aggravate Petitioner's neck condition. (PX16B, p.13). He did admit, however, that pushing a heavy machine could cause stress across the neck. (PX16B p.14) Up to the point of the June 11, 2013 accident, Petitioner did not have obvious episodes of radiculopathy. (PX16B p.21). Dr. Mather disputed whether a new herniated material was seen in the neck. He thought the findings were all old, calcified injuries. (PX16B p.28). Dr. Mather admitted that Drs. Ross, Kolavo and the radiologists all read the November 27, 2013 MRI as showing herniated material at C5-6, C6-7. (PX16B p.37-38). Dr. Mather admitted the June 11, 2013 accident may have briefly aggravated the preexisting condition in the neck, subjectively only. (PX16B p.41). Dr. Mather noted if there was a causal relationship, the June 11, 2013 would more likely be the instigation of the injury which led to the surgery. (PX16B, p.46). He further

testified if there was a causal relationship, the neck injury and subsequent surgeries are related to the June 11, 2013 accident. (PX16B p.47-48). He thought Petitioner could return to work with no restrictions, but he would have difficulty with overhead in cervical extension all day which Petitioner did not do at work. (PX16B p.50-51). On Re-Direct, Dr. Mather testified his opinion had not changed from his December 7, 2015 report. (PX16B, p.54).

Dr. Mather testified a third time on June 27, 2019. (PX16C). He opined Petitioner was status post fusion, C5-6-7, which had become solid and status post left carpal tunnel release. He felt Petitioner had some ongoing functional pain which was subjective complaints without clinical or objective findings. (PX16C, p.20). He opined surgery was reasonable. He further indicated the medial branch blocks, the epidural steroids, and radiofrequency ablations were not necessary. He found Petitioner should be placed with 40-pound lifting restriction. (PX16C, p.25). He further opined Petitioner reached maximum medical improvement. (PX16C, p.32). Lastly, he provided an AMA rating of 8 percent. (PX16C, p.35). He further indicated he did not want to change any of this prior opinions. (PX16C, p.41).

Dr. Mather did not agree with the plan to go in and remove the hardware and bony ridging. Dr. Mather thought Petitioner needed a 40 lb. limit on his lifting with no overhead lifting. (PX16C p.74-75). Dr. Mather objected to the pain management treatment from Dr. Hanna because it did not correct the problem. (PX16C p.81). He admitted the pain management treatment would provide temporary relief. (PX16C p.82). He believed Dr. Hanna was practicing outside evidence-based medicine. (PX16C, p.90). Dr. Mather had no idea why the surgeons wanted to go back in and work on C5-6 again. (PX16C p.92).

Dr. Taras Masynk

The parties proceeded with the evidence deposition of Dr. Taras Masynk on February 17, 2022. Dr. Masynk is a board-certified neurosurgeon. (RX6, p.5). Dr. Masynk opined he operated on Petitioner for the neck and Petitioner was at maximum medical improvement. He opined he did not require any further treatment or restrictions for his neck. If he did, they would be within the medical records. Dr. Masynk testified Petitioner did have some shoulder pathology but was seeing a shoulder surgeon for that. Dr. Masynk did not provide an opinion linking Petitioner's shoulder pathology to his work accidents. (RX6, p.6).

Dr. Masynk was also questioned regarding causation related to Petitioner's back and his need for surgery. Dr. Masynk testified he did not have an opinion on the cause of Petitioner's disc herniations. (RX6, p.7). Dr. Masynk testified that the only information he had was that Petitioner hurt his back ten years ago at the time of his May 12, 2012 accident, he had surgery with Dr. Ross and got better after the same. Dr. Masynk testified he received medical records an hour ago. He testified that it was very difficult to expect him to go over the records and have an opinion when he could not talk to the patient. Based on the same he did not have an opinion on causation for the surgery. (RX6, p.8). Dr. Masynk testified that regarding Petitioner's back, he was capable for working light duty full time with restrictions of limited repetitive heavy lifting and repetitive bending. (RX6, p.10).

Dr. Thomas Gleason

The parties proceeded with the evidence deposition of Dr. Thomas Gleason on April 12, 2022. (RX2). Dr. Gleason is a board-certified orthopedic spine surgeon. Dr. Gleason testified he conducted an Independent Medical Examination of Petitioner at Respondent's request on July 27, 2021. Dr. Gleason

testified Petitioner reported to him that on May 14, 2012 while at work, he was moving a piece of equipment weighing about 600 pounds, when his left leg gave out and he felt low back pain and neck pain. (RX2, p.9). Dr. Gleason also testified that Petitioner reported that on May 26, 2012, while at home, he fell and fractured his left clavicle and left ribs. Dr. Gleason testified that he reviewed all of Petitioner's medical records confirming Petitioner's treatment up to July 27, 2021, including films of his diagnostic studies. Regarding Petitioner's neck, Dr. Gleason testified that in his opinion Petitioner's neck condition was related to his work accident, but that he had reached maximum medical improvement by the time of his IME following treatment. (RX5, p.19). As for Petitioner's back, Dr. Gleason testified that Petitioner's work-related condition was treated successfully by Dr. Ross with surgery and had resolved by June 4, 2013 when he was released by Dr. Ross, and that his current condition is not related to his work accidents. (RX5, p.23). Dr. Gleason testified Petitioner's diagnostic studies after 2013, including his MRIs from 2015, 2017, 2019 and 2021 all showed findings consistent with the natural aging processes and no acute injury. (RX5, p.63-64). Dr. Gleason also testified he disagreed with Dr. Masynk's recommendation for a redo of Petitioner's L4-5 and L5-S1 laminotomy, foraminotomy and decompression. (RX5, p.23-24).

As it relates to Petitioner's left shoulder, Dr. Gleason testified that in his opinion Petitioner's left shoulder condition is not causally related to his work accidents as he did not report the onset of symptoms until 2015. (RX5, p.19, 26-27).

On Cross-Examination, Dr. Gleason did not know when the shoulder symptoms set in or what caused the cuff tear. (RX2 p.27-8). Dr. Gleason noted Petitioner would mention shoulder complaints around his surgeries. (RX2, p.39-40). Dr. Gleason further admitted Dr. Ross's 2012 surgery improved Petitioner's back pain. (RX2 p.55, 62). He noted over the years the MRIs were relatively stable. (RX2, p.63). He noted the MRIs were consistent with the natural aging process with no evidence of acute injury. (RX2, p.64). Dr. Gleason did not recommend more surgery for Petitioner's low back because it was an open procedure and the chances of improvement diminished with each following surgery. (RX2 p.68-9).

Testimony of Kari Stafseth-Zamora

Ms. Stafseth-Zamora is a licensed vocational counselor with Vocamotive. Ms. Stafseth-Zamora provided testimony twice via deposition on August 9, 2022 and June 27, 2023.

The parties initially proceeded with evidence deposition of Ms. Kari Stafseth-Zamora on August 9, 2022. (PX12). Ms. Stafseth-Zamora is a vocational rehabilitation counselor. *Id*. at 5. She met Petitioner back in 2016 and testified Petitioner participated in vocational services and those services resulted in him obtaining a job offer. *Id*. at 6. Ms. Stafseth-Zamora testified Petitioner got a job with Securitas that started in June 2017 and held it until December 2020. He previously worked 36 hours per weeks. His hours decreased at the request of his doctor. He was earning $11.41. *Id.* at 19-20.

She testified Petitioner lost access to his preinjury job as that position required physical capabilities at a medium level. *Id*. at 25. She further noted Petitioner lost access to his job as a security guard as those physical capabilities exceeded the restrictions outlined by Dr. Brandon. *Id*. at 26. She further noted Petitioner faced challenges returning to work as he was 60 years old, so he was considered to be of older age with physical limitations. *Id*. at 27. Based on the same, she opined Petitioner did not have access to any viable stable labor market. *Id*. at 30.

On Cross-examination, she clarified she relied on restrictions from the December 16, 2021 FCE questionnaire not an actual FCE. *Id*. at 43.

On June 27, 2023, Ms. Stafseth-Zamora was re-deposed. (RX8). Petitioner underwent a Functional Capacity Evaluation on October 10, 2022. Ms. Stafseth-Zamora testified she subsequently reviewed the Functional Capacity Evaluation and prepared an addendum report on November 2, 2022. *Id.* at 8. Per the Functional Capacity Evaluation, Petitioner demonstrated functional tolerances within the high end of light to the low end of the medium physical demand level with restrictions of lifting 20 pounds from floor to waist, 25 pounds from 12 inches to waist, 25 pounds from waist to shoulder on an occasional basis, carrying 25 pounds from 50 feet on an occasional basis, overhead reaching on an avoid basis and alternate between sitting and standing. *Id.* at 7-8. Ms. Stafseth-Zamora testified based on the Functional Capacity Evaluation it was her opinion that Petitioner was employable in a limited labor market with wages falling between $12.00 and $17.00 per hour. *Id.* at 8.

Ms. Stafseth-Zamora testified that rehabilitation/job placement services were then subsequently reinstated for Petitioner and started on January 6, 2023. (RX8, p.9). She testified she and/or her staff met with Petitioner two days a week to aid with his job search. Petitioner was cooperative with the job search process. *Id.* at 10. Petitioner secured a meet and greet with KSM. Ms. Stafseth-Zamora testified that interview resulted in a job offer that was extended to Petitioner on March 20, 2023. *Id.* at 12. Ms. Stafseth-Zamora testified KSM makes assemblies for the aerospace industry and that Petitioner was offered the position of an assembler and was responsible for making components of wire harnesses. *Id.* at 12-13. Ms. Stafseth-Zamora testified she reviewed the physical requirements of an assembler for KSM and that they were within the guidelines set for forth in Petitioner's Functional Capacity Evaluation. *Id.* at 13-14. Petitioner's start date at KSM was March 22, 2023. Ms. Stafseth-Zamora testified the first week of work for Petitioner KSM would be assessing his ability to do the job. *Id.* at 14. Ms. Stafseth-Zamora testified that on the morning of March 23, 2023 her field developer received a text message from Petitioner advising that he could not return for his second day of work and planned to contact KSM and leave them a message advising them of his inability to return. *Id.* at 15-16. Ms. Stafseth-Zamora testified her field developer attempted to reach Petitioner but was unable to, so the field developer went to KSM for the purpose of attempting to salvage the relationship as there was concern that calling off the second day off work would put Petitioner's employment in jeopardy. *Id.* at 17. Ms. Stafseth-Zamora testified KSM decided to terminate Petitioner after hearing his voicemail message due to concerns of absenteeism. *Id.* at 17-18. Ms. Stafseth-Zamora testified KSM was accommodating Petitioner within his restrictions, including allowing him to sit and stand as needed, and Petitioner reported no complaints of being asked to do work outside his restrictions. *Id.* at 20.

Ms. Stafseth-Zamora testified that in her opinion the position with KSM was the perfect position for Petitioner given that he refused to do security work. (RX8, p.25). Petitioner was offered the position with KSM at $18.00 per hour. *Id.* at 26. Ms. Stafseth-Zamora testified Petitioner returned to her company for ongoing job placement services and was subsequently terminated. Petitioner indicated he was not being paid any further and was not going to be attending any further appointments. *Id.* at 26. She confirmed Petitioner returned the equipment around April 21. *Id.* at 27.

On Cross-examination Stafseth-Zamora indicated Petitioner found a job as a security guard and worked a lengthy period of time. (RX8, p.28). Ms. Stafseth-Zamora noted Petitioner had a flare up in pain the next day after beginning his new job at KSM which was consistent with what Dr. Brandon had

mentioned about Petitioner may needing days off work. *Id.* at 37-38. She noted that in three months of looking for work, Petitioner found a job. *Id.* at 42. She further noted Petitioner was cooperative throughout the whole process. *Id.* at 44. After benefits were suspended, Petitioner elected not to continue with vocational rehabilitation. *Id.* at 45-46. She noted if there was no restriction for Petitioner to take days off, it would still be her opinion that Petitioner's job was a reasonable placement based on the functional capacity evaluation. *Id. at* 57-58.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Compensation Commission*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Industrial Commission*, 834 N.E.2d 583 (2d Dist. 2005).

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a Petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. *Id*. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill. Dec. 794 (4th Dist. 1989).

Petitioner is alleging several body parts. The Arbitrator will address each body part separately.

Lumbar Injury

The Arbitrator finds Petitioner initially sustained a back injury necessitating surgical intervention by Dr. Ross. The Arbitrator finds that Dr. Ross released Petitioner to maximum medical improvement as of June 4, 2013. Dr. Ross opined Petitioner made an excellent recovery from his back injury and surgery and could return to full duty work in regards to his back. Based on the same the Arbitrator finds Petitioner's condition after June 4, 2013 is not causally related to his accident. To obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she *has sustained* accidental injuries arising out of and in the course of the employment. (Emphasis added.) 820 ILCS 305/1(d) Petitioner has not met that burden in this case.

Petitioner testified he injured his back, on May 14, 2012 at the time of his first accident. Following that injury Petitioner underwent successful treatment with Dr. Ross to include surgery on December 12, 2012. Thereafter, Petitioner was released by Dr. Ross at maximum medical improvement for his back on June 4, 2023. As of June 4, 2023, Petitioner reported to Dr. Ross he had virtually no pain in his back. After June 4, 2013, Petitioner went on to treat for his neck and did not report symptoms in his back again until 2015 while seeking treatment for his neck with Dr. Kolavo.

The Arbitrator looks to the orthopedic and neurosurgeons on this case. The Arbitrator notes Dr. Ross did not provide any type of opinion on this case even though he was the one who performed the surgery. Dr. Kolavo advised he did not have an opinion on causation when specifically asked in his deposition. Dr. Masynk further noted he did not have an opinion and would need to discuss the same with Petitioner and review medical notes and refused to provide an opinion on causation. The Arbitrator finds that given the age of the case, Petitioner had ample time to discuss this case with any of his orthopedics and/or neurosurgeon to provide such an opinion. The only opinion rendered was by a pain physician, Dr. Hanna. Initially Dr. Hanna indicated he was not familiar with Petitioner's back and causation in regards to the same. Without hesitation, however, Dr. Hanna provided a causation opinion about Petitioner's neck condition due to his familiarity with the same. (PX6, p.9-10). Dr. Hanna subsequently reviewed a single medical note from August 22, 2012 and provided a causation opinion regarding the back. The Arbitrator does not find this testimony persuasive. Dr. Hanna did not treat Petitioner concurrently with his original injury. In addition, Dr. Hanna is not a surgeon. Lastly Petitioner did not begin treating with Dr. Hanna until 2015, almost three years after his release from Dr. Ross. The Arbitrator finds the physicians in the best position to provide a causation opinion would be Drs. Ross, Kolavo and Masynk all which did not provide any type of opinion.

In addition, when looking at the medical records the Arbitrator does note Petitioner underwent a lumbar myelogram in January of 2015, however, is unclear why. Petitioner then reported a June 22, 2015 injury to his back noting the opposite side right leg pain. The Arbitrator notes Petitioner's previous problem was left-sided. Petitioner specifically noted that this right leg pain began three weeks ago. Petitioner was later admitted to the hospital for back and right sided leg pain. The Arbitrator finds that these complaints are new and distinct then Petitioner's original back injury.

The Arbitrator also places some weight on the opinion of Dr. Gleason, Respondent's Section 12 physician. Dr. Gleason testified Petitioner's work-related condition was treated successfully by Dr. Ross

with surgery and had resolved by June 4, 2013 and that his current condition is not related to his work accidents. In support he found Petitioner's diagnostic studies after 2013, including his MRIs from 2015, 2017, 2019 and 2021 all showed findings consistent with the natural aging processes and no acute injury. When questioned whether Petitioner's surgery with Dr. Ross in 2012 could have led to an acceleration of the breakdown of Petitioner's joints, Dr. Gleason testified that he could not say to a reasonable degree of certainty that happened as Petitioner reported resolution this pain following his surgery in 2012 and his body was subject to normal aging over the next nine years.

Based on the opinions of Dr. Gleason and relying only on the opinions, or lack of opinions, of Petitioner's treating doctors, Petitioner has not met his burden under the Act. As such, the Arbitrator finds Petitioner sustained a back injury reaching MMI as of June 4, 2013. Petitioner's back condition after this date is not causally related to the accident.

Neck/Carpal Tunnel Syndrome

Petitioner testified he never had any prior neck problems prior to the injury. In addition, the chain of events presented in this case show Petitioner's neck became symptomatic after the June 11, 2013 accident, with some contribution from the May 14, 2012 and May 26, 2012 accidents. The Arbitrator finds Petitioner met his burden of proof by a preponderance of the evidence that his condition of ill-being was causally related to his work accident based on the chain of events in addition to the medical opinions contained in the record giving causal connection.

The Arbitrator notes Petitioner began complaints of neck pain after the May 26, 2012 injury which subsequently got worse. Petitioner's neck complaints progressed until the June 11, 2013 accident with no intervening accidents. Dr. Ross initially attributed the cervical injury to the 2012 work accidents but deferred treatment of the neck until the back was fixed. (PX3 p.41). Dr. Ross opined that although it was clear Petitioner had some degenerative arthritis in his neck that predated his work injury, in his opinion, the fall on May 26, 2012 caused the symptoms in his neck and arm. For treatment of Petitioner's neck Dr. Ross recommended an anterior cervical discectomy and fusion at C5-6 at C6-7. (PX3, p.30).

The Arbitrator finds while working on June 11, 2013, Petitioner sustained his third accident resulting in increased neck pain traveling down his left arm. (T.18). Dr. Ross continued to recommend surgery, however due to lack of approval Dr. Ross sent Petitioner to Dr. Kolavo. The Arbitrator finds Dr. Kolavo similarly attributed the cervical injury to both the May 14, 2012 accident with the resulting May 26, 2012 fall, and the June 11, 2013 work accident. (PX2 p.6). Dr. Kolavo testified Petitioner's neck condition was causally related to his work accidents and led to his need for neck surgery. (PX2, p. 7-8). He further noted Petitioner's need for treatment was related to the June 11, 2013 work injury.

Dr. Kolavo performed surgery on Petitioner on May 8, 2014 and eventually a revision surgery on March 30, 2015. When Petitioner woke up from surgery, he had what seemed like a dense carpal tunnel syndrome in his left hand and was ultimately surgically released by Dr. Kiesler. (PX2 p.15-16) Dr. Kolavo explained that the carpal tunnel syndrome had to have some relationship to the second surgery because he woke up with the complaint immediately after surgery, and whatever happened in surgery caused it. (PX2 p.17-18). Dr. Kolavo testified that with respect to the carpal tunnel syndrome, he believes it could have been aggravated by the neck surgery. It was a cause-and-effect situation. (PX2, p.17).

At the time of his deposition, Dr. Kolavo testified Petitioner was still healing for his second neck surgery and had persistent reports of arm symptoms. Petitioner continued to complain of persistent left trapezius pain and left triceps pain. Petitioner began pain management for intermediate neck pain. After reviewing Petitioner's myelogram, Dr. Kolavo confirmed options for Petitioner to include continuing with chronic pain management versus considering a revision ACDF at C5-6 on the left. Dr. Kolavo noted Petitioner had a large hypertrophic bone spur at C5-6 that was contributing to his symptoms. He also noted worsening foraminal stenosis. He also discussed the possibility of incomplete relief of symptoms. Petitioner confirmed he did not wish to proceed with surgery. The Arbitrator notes Petitioner continued to seek treatment for his neck with Dr. Hanna and Dr. Kolavo through 2017, undergoing therapy, diagnostic tests, and injections. Eventually Dr. Kolavo recommended a second opinion. The Arbitrator notes thereafter Petitioner was seen by Dr. Masynk. Dr. Masynk eventually recommended a posterior left C5-C6 removal of hardware followed by hemi laminectomy, foraminotomy, facetectomy for nerve root decompression. (PX1 p.2356). The Arbitrator notes this was the same surgery Dr. Kolavo had proposed back in April of 2016. Petitioner's cervical surgery was completed on December 7, 2020 and included a left posterior open C5-6 hemilaminectomy and foraminotomy for nerve root decompression, removal of C5-7 posterior instrumentation, and exploration of fusion (PX1, p. 1265). Post-operatively Petitioner was returned to physical therapy and was discharged as of March 30, 2021. (PX1, p. 785).

The Arbitrator finds Dr. Masynk also provided an opinion on this case. Dr. Masynk is a board-certified neurosurgeon who opined Petitioner's neck was related to the injury and placed Petitioner at maximum medical improvement. He opined he did not require any further treatment or restrictions for his neck. (RX6, p.6).

Lastly the Arbitrator notes that Dr Hanna also related the cervical treatment he had provided over the years to the work accidents from 2012. (PX6 p.10). Dr. Hanna had no hesitation in providing a causation opinion in regards to the neck. Petitioner obtained significant relief from the treatment Dr. Hanna provided for the neck. (PX6 p.11). Dr. Hanna testified he last treated Petitioner for his neck on January 27, 2021. (PX6, p. 27).

The Arbitrator finds these opinions more persuasive than Respondent's section 12 expert, Dr. Mather. The Arbitrator notes that Dr. Mather also initially admitted that the neck injury came from the June 11, 2013 work accident. He also admitted pushing a heavy machine can cause stress across the neck. (PX16B p.14).

Considering the medical evidence and chain of events presented in this case the Arbitrator finds Petitioner's cervical and carpal tunnel syndrome causally related to the June 11, 2013 work accident. The Arbitrator finds Drs. Ross, Kolavo and Masynk persuasive in the same. The timeline is linear and there are no intervening accidents to attribute the deteriorating cervical condition. Based on the same, the Arbitrator finds Petitioner's neck and carpal tunnel syndrome are related to his work injury.

Psychological treatment/Shoulder condition

Petitioner is alleging the psychological component is due to Petitioner's work injury. The Arbitrator finds Petitioner failed to prove the same. The Arbitrator notes that although Petitioner attempted to commit suicide as well as underwent counseling no physician specifically opined this condition was related to any of Petitioner's work injuries. Petitioner overdosed on cocaine and sustained

a diagnosis of acute psychosis due to the cocaine intoxication. Petitioner later sought counseling for an array of different issues to include the drug-induced mood disorder with psychosis. The Arbitrator cannot speculate what diagnoses are related without causation opinions. Based on the same the Arbitrator finds Petitioner's psychological treatment unrelated to the work accident.

In regards to the shoulder condition, it is unclear whether Petitioner is indicating that it is causally connected. As it is mentioned, the Arbitrator will address the same. The Arbitrator finds Petitioner's left shoulder not causally related to the work injury. Once again, the Arbitrator does not find any physician specifically addressing the left shoulder. If the Arbitrator were to causally relate the same, she would have to speculate as to the reasoning and the timeline. Per the medical records, Petitioner began substantial complaints of left shoulder pain in 2015. It is unclear to the Arbitrator how the shoulder is related to the injury and cannot speculate regarding the same. Based on the same, the Arbitrator finds Petitioner has not met his burden in providing that the left shoulder is causally related to the work injury.

With regard to Issue "G", what were Petitioner's earnings, the Arbitrator finds as follows:

Respondent placed Petitioner's wage statement into evidence. (RX10). Petitioner testified that this was an accurate copy of his earning for the first year. (T.11).

The wage statement ranges from check dates from May 27, 2011 through May 25, 2012 which results in 52 weeks. No evidence was placed to support the various payments. Per the wage statement, it looks like Petitioner was paid $20.20 per hour and worked overtime for 5 periods. Petitioner earned was also paid vacation hours, holiday hours and an earning labeled "SF2."

Petitioner worked 60 hours of overtime ($1979.60) at a straight rate would total $1212.00. The Arbitrator notes that overtimes hours are included if they are mandatory or consistent. In this case, Petitioner did not testify to either. As such, the Arbitrator is presented with no testimony regarding the same. As such, the Arbitrator has excluded the same. Taking out overtime hours reduces the total to be $40,570.05. Over 52 weeks this would result in an average weekly wage of $780.19.

The Arbitrator will utilize the average weekly wage of $780.19 in all three cases as the first injury was a factor in all three cases.

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 substantial amount of medical bills into evidence. Given the findings on causation, Respondent is liable for the treatment in regards to the low back through June 4, 2013. Respondent is also liable for medical expenses to include cervical surgeries, pain management to the cervical spine and carpal tunnel syndrome. (PX10).

The Arbitrator has denied the psychological treatment for the related suicide attempt in April 2022, follow up treatment at Braden Counseling Center, left shoulder care and back treatment after the June 2013 MMI date.

Lastly Respondent is also responsible for all vocational rehabilitation charges from Vocamotive under Section 8(a). (See PX12, PX15, RX9). The Arbitrator finds that Petitioner was entitled to vocational rehabilitation services. Respondent shall remit to Petitioner's counsel the payments for medical treatment which Respondent did not pay as well as the vocational expenses it did not pay.

With respect to Issue (K), what temporary benefits and temporary partial disability benefits are in dispute, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that 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. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

Per the stipulation sheet, Petitioner is seeking TTD benefits, TPD benefits and maintenance benefits. The Arbitrator will address each benefit.

TTD benefits

Petitioner alleged several periods of TTD benefits. Per the Stipulation Sheet, Petitioner alleges three periods of TTD benefits. The first period is from May 14, 2012 through June 3, 2013. (Arb. Ex.1). Petitioner testified he began missing work as of May 26, 2012. Based on the records, to include Dr.

Ross's opinion, Petitioner is awarded TTD benefits from May 26, 2012 through June 3, 2013 (release date by Dr. Ross).

The second period Petitioner is claiming is from May 4, 2014 through June 8, 2017. (Arb. Ex. 1,2,3). Petitioner testified that he was off work for this period and paid worker's compensation benefits. (T.21-22). The medical records show Petitioner was off work beginning on May 8, 2014 (the date of his cervical surgery), through June 8, 2017 (the day before his employment began with Securitas). Based on the same, Petitioner is awarded TTD benefit from May 4, 2014 through June 8, 2017.

The last period of TTD benefits Petitioner is claiming is from December 6, 2020 (the day before his December 7, 2020 neck surgery) through November 2, 2022 (when vocational rehabilitation began). (Arb. Ex. 1,2,3). The Arbitrator finds that Petitioner is owed this period. Respondent is given a credit for all TTD paid. (RX1).

TPD Benefits

The Arbitrator notes Petitioner claimed TPD benefits from June 9, 2017 through December 4, 2020. Petitioner worked in a modified position as a security officer from June 9, 2017 through December 4, 2020. Respondent agreed to the TPD period. (Arb. Ex.1,2,3). The Arbitrator finds Petitioner is owed this period. Respondent is given a credit for all TPD benefits paid. (RX1).

Maintenance Benefits

Petitioner is claiming maintenance benefits from November 3, 2022 through April 19, 2023. Ms. Stafseth-Zamora testified Petitioner initially obtained a job on March 22, 2023. Petitioner was subsequently terminated from that position. Petitioner returned to her company for ongoing job placement services. Petitioner indicated he was not being paid any further and was not going to be attending any further appointments. Ms. Stafseth-Zamora confirmed Petitioner returned the equipment around April 21. *Id.* at 27. Based on Ms. Stafseth-Zamora's testimony, it looks like Petitioner attempted to restart vocational rehabilitation, but Respondent would not pay for additional services and/or maintenance benefits. Based on the same the Arbitrator finds Respondent owes maintenance benefits from November 3, 2022 through April 19, 2023. Respondent shall get credits for amounts paid.

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

The Arbitrator adopts and incorporates all of the above findings of fact into these findings. The Arbitrator notes at the time of injury Petitioner was a 50-year-old male who worked for Respondent, RR Donnelly. The Arbitrator finds Petitioner underwent one back surgery and several neck surgeries. Petitioner eventually proceeded with vocational rehabilitation and found a job. Petitioner left that job to undergo additional medical care. He later underwent another FCE that placed him with restrictions at the high end of light to the low end of the medium physical demand level with restrictions of lifting 20 pounds from floor to waist, 25 pounds from 12 inches to waist, 25 pounds from waist to shoulder on an occasional basis, carrying 25 pounds from 50 feet on an occasional basis, overhead reaching on an avoid basis and alternate between sitting and standing. There was question regarding a questionnaire that Petitioner's new primary care physician filled out in December of 2021. The Arbitrator notes that Dr. Brandon was Petitioner's new primary care physician that he saw on May 9, 2021. Dr. Brandon ordered

a FCE and subsequently wrote a FCE questionnaire in December of 2021. Petitioner's FCE took place in October of 2022. There are no medical records indicating Dr. Brandon, or any other physician, reviewed the FCE or disagreed with the same. As such, the Arbitrator adopts the findings of the FCE as Petitioner's restrictions.

In assessing his permanency, Petitioner has requested a finding that Petitioner is permanently and totally disabled based on the 'odd-lot' theory. In support, he presents evidence and testimony of his inability to find gainful work after a proper effort and vocational opinion of Ms. Stafseth-Zamora. The Arbitrator declines to find the same.

The Arbitrator finds that Petitioner was placed with restrictions in October of 2022. Petitioner began vocational rehabilitation services as of January 6, 2023. (RX8, p.9). Petitioner was cooperative with the job search process and secured a job as of March 20, 2023. There is some question on whether this job was a good fit. The Arbitrator notes the only opinion offered was Ms. Stafseth-Zamora who opined that per the FCE this was a suitable employment. No other physicians or vocational counselors provided any other opinions. Based on the FCE restrictions and Petitioner's vocational interviews, the Arbitrator finds Petitioner does have transferable skills with a stable labor market. The Arbitrator points to the fact that Petitioner underwent vocational rehabilitation twice and secured two different employments.

Initially, the Arbitrator notes Petitioner has not presented a wage differential claim. Although Ms. Stafseth-Zamora testified based on the Functional Capacity Evaluation it was her opinion that Petitioner was employable in a limited labor market with wages falling between $12.00 and $17.00 per hour, the Arbitrator finds no detail discussion of reasoning per the National Tea Guidelines.

Petitioner did not offer evidence regarding Petitioner's educational barriers, any economical decompression in Petitioner's geographic areas and no language barriers were found. In fact, the Arbitrator is impressed with the fact Petitioner found two jobs during vocational rehabilitation. Based on the same, the Arbitrator finds that Petitioner has a stable labor market with transferable skills.

The Arbitrator further adopts the FCE to support Petitioner's restrictions. The Arbitrator puts weight on Ms. Stafseth-Zamora's opinion that there is a limited labor market for Petitioner. In addition, she opined Petitioner's job at KSM or security would have been a good fit for Petitioner.

The Arbitrator disagrees the Petitioner is permanently and totally disabled but finds Petitioner has suffered a loss of profession.

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
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
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 Petitioner placed Respondent's Section 12 depositions into evidence. Dr. Mather provided an AMA rating of 8 percent. (PX16C, p.35). As the Arbitrator did not find his opinions persuasive, the Arbitrator gives little weight to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner was employed as a machine operator and bindery mechanic, a heavy position, at the time of injury. Petitioner never returned back to work. Based on Petitioner's restrictions of the light demand level, the Arbitrator gives great weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes Petitioner was 50 years old on the date of this accident. Petitioner is now 61 years old. The Arbitrator notes that due to Petitioner's age the remaining amount of work life is minimal. As such, the Arbitrator assigns moderate weight to this factor.

With regard to subsection (iv) of § 8.1b(b), regarding the employee's future earning capacity, the Arbitrator notes that Petitioner's previous jobs paid less than his original employment. The Arbitrator finds that Petitioner has sustained a significant reduction in earning capacity. Based on the same, the Arbitrator gives this factor great weight as Petitioner is now currently not working and his previous employments were in a reduced earning capacity.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner's medical records reveal Petitioner underwent back surgery, several neck surgeries, and carpal tunnel surgery. Petitioner has permanent restrictions per his FCE. Petitioner continues to voice complaints of pain and difficulty with everyday tasks. In addition, he continues to experience numbness in his left hand and fingers, burning and pinching in his neck. Based on Petitioner's injury and disability in the medical records, this factor is given 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 70% person as a whole pursuant to §8(d)2 of the Act for the injuries sustained due to his worker's compensation injuries.

With respect to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner claims that he is entitled to penalties and fees. The Arbitrator finds Respondent did not per se act in bad faith. Petitioner's initial vocational services were terminated as of March 23, 2023 after Petitioner found employment. While the Arbitrator does not adopt Respondent's argument in not awarding additional maintenance benefits, it is the Arbitrator's view that Respondent's position is not objectively unreasonable or vexatious. The denial of this matter does not rise to the level of being vexatious and unreasonable.

Section 19(k) of the Act provides that "in case where there has been any unreasonable or vexatious delay of payment . . . which do not present a real controversy, but are merely frivolous or for delay, then

the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k). The Arbitrator further notes that there was a dispute regarding medical treatment based on the medical testimony. Based on the same, the Arbitrator denies penalties pursuant to Section 19(k).

Section 16 of the Act provides that "[w]henever the Commission shall find that the employer, his or her agent, service company or insurance carrier . . . has been guilty of unreasonable or vexatious delay . . . or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of [Section 19(k)], the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16. As indicated above, the Arbitrator does not believe that Respondent's argument about denial of medical care and ongoing maintenance benefits was frivolous. As such, the Arbitrator denies penalties.

Section 19(l) of the Act provides that "[i]f an employee has made a written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. . . . In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits . . . have been so withheld or refused, not to exceed $10,000." 820 ILCS 305/19(l).

The Arbitrator in reviewing COMPFILE notes Petitioner filed a Petition for Penalties as early as September 20, 2021. In reviewing the responses, the Arbitrator cannot speculate why there was constant disruption regarding TTD benefits. The Arbitrator also acknowledges that Respondent is not disputing the neck condition, however, there are medical bills that remain unpaid in regards to the same. In regards to TTD benefits, the Arbitrator notes that 78 of the 186 payments were delayed anywhere from 6 days to 3 years, with the average appearing to be around a month or two in delay. In other words, 42% of the payments were not paid in a timely manner nor in a manner which is explainable from the record. Respondent did not justify its payment practices. Medical bills were also denied and delayed. The Arbitrator notes that there is cervical medical care that is not paid. There is nothing in writing providing any reason why these payments were delayed and/or denied. While the Arbitrator acknowledges that Respondent may have denied something based on a Section 12 examination, the Arbitrator also acknowledges that Respondent did not put anything into evidence to explain the denial or justification of the same. In addition, Respondent did not place Dr. Mather's deposition testimony into evidence. Penalties under Section 19(l) are in the nature of a late fee" and are "mandatory '(i)f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay.'" *Jacobo v. IWCC*, 2011 IL App (3d) 100907WC, Section 19, 959 N.E.2d 772 (quoting *McMahan v. Industrial Commission*, 183 Ill.2d 499, 515, 702 N.E.2d 545, 552 (1998)). Here the Arbitrator finds that no adequate justification was provided for the delay. As such, the Arbitrator finds that the period from the initial demand and petition for penalties, September 20, 2021 through the present, no adequate justification for delay or nonpayment was provided. The §19(l) penalty is $30/day, not to exceed $10,000. Penalties calculated at the daily rate would exceed the $10,000 cap. Accordingly, the Arbitrator awards Petitioner $10,000.00, the maximum allowed for §19(l) penalties.

With respect to Issue (N), what credit is Respondent entitled to, the Arbitrator finds as follows:

Per RX1, Respondent issued payments. The Arbitrator notes that sometimes the payments are coded as TTD benefits when they really were issued during the period of maintenance. Respondent paid $150,350.18 in TTD, $15,548.49 in maintenance, $55,256.97 in TPD/wage differential benefits. Respondent shall receive credit for all amounts paid. (RX1).

Based on Ms. Stafseth-Zamora's testimony, it looks like Petitioner attempted to restart vocational rehabilitation, but Respondent would not pay for additional services and/or maintenance benefits. Based on the same the Arbitrator finds Respondent owes maintenance benefits from November 3, 2022 through April 19, 2023. Respondent shall get credits for amounts paid.

With respect to Issue (O), what prospective medial Petitioner is entitled to and whether Petitioner is entitled to Permanent Total Disability benefits, the Arbitrator finds as follows:

The Arbitrator has addressed Petitioner's nature and extent in section L and found Petitioner is not entitled to Permanent Total Disability benefits.

In regards to prospective medical, the Arbitrator notes Petitioner's 8(a) medical rights remain open for the causally related body parts but does not address any current treatment as this is not an 8(a) hearing.

Affirm and Adopt (No Changes) No Affirm with Changes No No Reverse Reason No Modify	Injured Workers' Benefit Fund (§4(d)) No Rate Adjustment Fund (§8(g)) No Second Injury Fund (§8(e)18) No PTD/Fatal denied No

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC019027
Case Name	Robert L Taylor v. Northwester Memorial Hospital
Consolidated Cases	
Proceeding Type	***Remand from the Circuit Court of Cook County***
Decision Type	Commission Decision
Commission Decision Number	25IWCC0155
Number of Pages of Decision	5
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brian Teven
Respondent Attorney	Christine Jagodzinski

DATE FILED: 4/8/2025

/s/Deborah Simpson,Commissioner

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)
- ☐ PTD/Fatal denied
- ☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT TAYLOR,

Petitioner,

vs. No: 14 WC 19027 & 21 IWCC 292

NORTHWESTERN MEMORIAL HOSPITAL,

Respondent.

DECISION AND OPINION ON REMAND FROM CIRCUIT COURT OF COOK COUNTY

This matter comes before the Commission on Remand from the Circuit Court of Cook County. The matter was arbitrated before Arbitrator Fruth on April 30, 2018. Petitioner alleged that he developed Urticaria (hives) and Angioedema (swelling) which were caused by the Measles, Mumps, Rubella vaccine ("MMR") which he was required to have because of his employment as a nurse with Respondent. The Arbitrator found that Petitioner did not sustain his burden of proving that the MMR vaccine caused his conditions of ill-being, he also found that Petitioner did not provide adequate notice, and he denied compensation. In so doing, the Arbitrator noted that Petitioner was of "doubtful credibility" and he found the causation opinions of Respondent's Section 12 records review examiners to be more persuasive than those of Petitioner's treating allergist, Dr. Ghani. On review, the Commission reversed the Decision of the Arbitrator regarding notice, finding that while notice was not perfect Respondent was not prejudiced by the delay, but otherwise the Commission affirmed and adopted the Decision of the Arbitrator denying compensation.

On appeal, the Circuit Court of Cook County reversed the Decision of the Commission. The Court did so based on the Illinois Rules of Evidence rather the Workers' Compensation or Occupational Diseases Acts. It found that the Section 12 medical examiners neither provided the bases for their opinions nor their "expertise to meet the requirements of Rule 702." Therefore, the Court determined the Arbitrator/Commission erred in admitting/considering those opinions in their respective deliberations. The Court then found that Petitioner's treating doctor, provided a "cause/effect" reasoning for his opinion that the MMR could have caused Petitioner's conditions of ill-being. The Court then concluded that Dr. Ghani's opinion was sufficient under the chain-of-event analysis to establish accident and causation and it represented the only competent evidence adduced at arbitration.

Therefore, the Circuit Court of Cook County found that Petitioner successfully sustained his burden of proving that the administration of the MMR vaccine caused his current conditions of ill-being of Urticaria and Angioedema. It then "REMANDED [the matter] to the Commission for additional findings concerning each of the further issues disputed by the parties at the arbitration of this matter" [emphasis in original]. The Court also "authorized [the Commission] to further remand the matter to the arbitrator; conduct further hearings of its own; or employ whatever methods it deems necessary in order to comply with this order."

Conclusions of Law

The Commission is prohibited to take additional evidence after arbitration in claims arbitrated after December 18, 1989 under §19(e) of the Act. Based on the mandate issued in the Corrected Order of the Circuit Court of Cook County, Petitioner has successfully sustained his burden of proving accident and causation and the Commission must determine the issues of what benefits Petitioner is entitled to including medical expenses, temporary total disability benefits ("TTD"), and permanent partial disability benefits ("PPD").

The Commission notes that in its brief on review, Petitioner only argues the issues of accident, causation, and notice. Petitioner does not even argue TTD, suggest a PPD award, or even mention medical expenses. The Commission also notes that Arbitrator Fruth is retired and the Commission finds appropriate to determine the issues of medical expenses, TTD, and PPD based on the record the parties presented at arbitration, rather than remanding and/or reopening proofs.

On the issue of medical expenses, Petitioner submitted bills from Midwest Physical Therapy, Midwest Allergy & Immunity, Rheumatology Specialists, and PCC Community Wellness. The Commission notes that Petitioner has been diagnosed with, and was actively treating for, various maladies other than Urticaria and Angioedema, including diabetes, major depression, and Fibromyalgia. The vast majority of medical expenses (including physical therapy) Petitioner submitted were incurred to treat Fibromyalgia. Nobody opined that any of these conditions, particularly Fibromyalgia, was caused by the MMR vaccine. In addition, the Corrected Order of the Circuit Court of Cook County specifically directs the Commission to apply the causation opinion of Dr. Ghani, who only opined about possible causation to Urticaria and Angioedema and not to Fibromyalgia. Therefore, the Commission finds that only the expenses associated with treatment of Petitioner's Urticaria and Angioedema are attributable to his occupational diseases and awards Petitioner the medical expenses from Midwest Allergy & Immunity, representing the treatment of Dr. Ghani, and any out-of-pocket expenses Petitioner proved at arbitration. The Commission denies all other medical expenses.

On the issue of TTD, in the Request for Hearing form Petitioner alleged 186&1/7 weeks of TTD, including from October 23, 2014 to the date of arbitration, April 30, 2018. Petitioner testified his last day of work was April 30, 2018. Based on our finding that only the medical expenses from Dr. Ghani are reimbursable, similarly, the Commission awards TTD for 13&5/7 weeks, the period of time Dr. Ghani took Petitioner off work. Incidentally, the Commission has not found any other medical off-work notes in the record.

On the issue of the nature and extent of Petitioner's partial permanent disability, the issue becomes what are chronic Urticaria and Angioedema worth. In *De La Vega v Sanford Corp,* 04 WC 8918, 10 IWCC 97, the Majority (with one Commissioner dissenting) reversed the Decision of the Arbitrator and found that Petitioner sustained her burden of proving her chronic Urticaria was caused by her exposure to chemicals in the workplace. The Commission awarded Petitioner 15 weeks of PPD representing loss of 3% of the person-as-a-whole.

In *Hall v A. Finkl & Sons Co.,* 01 WC 5837, 03 IWCC 718, the Commission affirmed and adopted the Decision of the Arbitrator who found Petitioner proved his allergic reaction to exposure to Refractory Ceramic Fiber Produce ("RCF") in the workplace caused his chronic Urticaria and noted he had to change jobs/could not work in any environment with RCF present. She awarded Petitioner 40 weeks of PPD for loss of the use of 8% of the person-as-a-whole.

In *Pham v PACTIV Corp*., 05 WC 20952, 09 IWCC 1331, the Commission affirmed and adopted (with a clerical correction) the Decision of the Arbitrator. Apparently, in *Pham*, Respondent accepted liability and the Arbitrator basically only dealt with the issue of PPD. The Arbitrator noted that it was agreed that Petitioner was diagnosed with Angioedema and Allergic Dermatitis, found that Petitioner's allergic reaction to workplace chemicals was so severe as to be life threatening, and found that Petitioner could no longer work at his customary occupation. He awarded Petitioner 100 weeks of PPD presenting loss of 20% of the person-as-a-whole.

In the claim now before the Commission, Petitioner testified that he had not worked since October 23, 2014 due to "pain and mental fogginess and also Angioedema flare ups," which occurred once or twice a month. He was on Social Security disability and currently had sharp pains in his shoulder, hips, and back. His current pain level was 6/10 and increases with activity, temperature, and touch. He was currently taking Lyrica, Cymbalta, Ambien, Xyzal, and Meclizine. He had also been diagnosed with depression, had difficulty reading, and needed help preparing meals. The symptoms about which Petitioner claimed would appear to be associated mostly with Fibromyalgia and not Urticaria and/or Angioedema. In addition, Petitioner's SSA disability designation is presumably based on his diagnosis of Fibromyalgia and perhaps possibly other non-work related maladies and not based on diagnoses of Urticaria and/or Angioedema. Unlike the claimant in *Pham*, Petitioner did not show his reaction to the MMR vaccine was life threatening or that his conditions of Urticaria and Angioedema resulted in the loss of his normal occupation as nurse. In looking at the entire record before us, the Commission finds that an award of 50 weeks of PPD representing loss of 10% of the person-as-a-whole is appropriate.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay the medical expenses associated with treatment from Midwest Allergy & Immunity and/or Dr. Ghani for treatment for the conditions of Urticaria and Angioedema, as well as any associated out-of-pocket expenses, Petitioner proved as of the date of arbitration, April 30, 2018.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $581.79 per week for a period of 13&5/7 weeks, that being the period Petitioner was temporarily totally disabled from work as a result of the work-related diseases.

IT IS FUTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $523.61 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the partial disability to the extent of 10% of the person-as-a-whole.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $35,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 8, 2025

DLS/dw
O-5/18/21
46

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

/s/*Steven J. Mathis*
Steven J. Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC008205
Case Name	Tim Cragg v. State of Illinois - Illinois Deptt of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0156
Number of Pages of Decision	25
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mark Weissburg
Respondent Attorney	Danielle Curtiss

DATE FILED: 4/8/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tim Cragg,

Petitioner,

vs. NO. 10WC008205

State of Illinois – Illinois Department of Corrections,

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 penalties, attorney fees, "[c]larify credit awarded", and permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 16, 2024, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

April 8, 2025
SJM/sj
o-3.5.25
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	10WC008205
Case Name	Tim Cragg v. State of Illinois - Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Mark Weissburg
Respondent Attorney	Danielle Curtiss

DATE FILED: 4/16/2024

/s/ Jessica Hegarty, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 16, 2024 5.155%

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

April 16, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Tim Cragg
Employee/Petitioner

v.

State of Illinois, Dept. of Corrections
Employer/Respondent

Case # **10 WC 008205**

Consolidated cases: **n/a**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Kankakee**, on **9/5/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **4/2/2009**, 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 accident, Petitioner earned $95,329.76, the average weekly wage was $1,990.83.

On the date of accident, Petitioner was **49** years of age, ***married*** with **1** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

ORDER

The Arbitrator finds that Respondent is liable under Section 8(a) for all medical bills contained in Petitioner's Exhibit 25 and Arbitrator's Exhibit 1;

Petitioner is entitled to TTD benefits from September 28, 2009, through April 17, 2018;

Respondent shall be given a credit of $369,618.78 for TTD, $0.00 for TPD, $471,888.83 for maintenance, and $375,206.65 for other benefits, for a total credit of $1,216,714.26;

The Arbitrator finds that Respondent is liable under Section 8(a) for all medical bills contained in Petitioner's Exhibit 25 and Arbitrator's Exhibit 1;

Petitioner's average weekly wage is $1,990.83, which is the payroll voucher total, minus the overtime discussed in the attached Addendum.

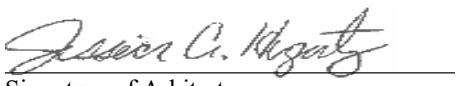
Respondent shall pay Petitioner permanent and total disability benefits of $1,194.49/ week for life, commencing April 18, 2018, as provided in Section 8(f) of the Act.

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

The Arbitrator declines to award any penalties and/or fees in this case.

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 16, 2024

ADDENDUM TO THE DECISION OF THE ARBITRATOR

On April 2, 2009, Petitioner was employed by Respondent as a steam fitter. His job duties involved the repair and maintenance of all steam piping and plumbing in the prison facility. Petitioner was required to lift, carry, and move items weighing 75 to 150 pounds. He utilized tools including pipe wrenches, screwdrivers, welders, lifts, and various cutting tools in the course of his job duties.

The parties stipulated that on April 2, 2009, while in the course of his normal job duties at Dwight Correctional Center, Petitioner sustained work-related injuries when a pipe that weighed over 100 pounds struck his right shoulder and neck causing immediate pain to the upper right portion of Petitioner's back, neck, head, and shoulder.

The medical records in evidence indicate that on May 1, 2009, Petitioner presented to Dr. Patrick Baslier, a chiropractor at Crest Hill Clinic, with complaints of persistent right-sided neck pain that radiated to the right shoulder, right deltoid, brachium, and thumb following a work accident, one month prior, involving a 130-140 lb. pipe that struck Petitioner's neck and "rolled sideways forcing [Petitioner's] neck laterally" to the left side (Petitioner's Exhibit "PX" 1, p. 13-14).

Petitioner underwent MRI testing of his cervical spine and right shoulder on May 1, 2009 (PX 2). The cervical MRI report indicated: 1. At C5-C6, a small broad-based central and right-sided disk herniation with mild impingement on the cervical cord and moderate bilateral foraminal stenosis; 2. At C4-C5, moderate to severe right foraminal stenosis secondary to uncovertebral joint hypertrophy. Minimal impingement upon the cervical cord; 3. Mild to moderate spondylosis throughout the remainder of the cervical spine as described above (Id.). MRI of Petitioner's right shoulder noted moderate supraspinatus tendinosis, moderately severe degenerative changes of the posterior glenoid labrum and adjacent bony glenoid rim, and small para labral cysts posteriorly and inferiorly (Id.).

On August 10, 2009, Petitioner presented for initial consult at Rezin Orthopedics and Sports Medicine in Morris, Illinois with Dr. Raymond Meyer (Px 4, p. 4). Petitioner reported a history of right shoulder and right paracervical pain with radicular tingling and pain from the right side of his neck into his right arm and elbow following an April 6, 2009, work accident in which Petitioner was holding up a 120-pound pipe that fell and "caused him to roll and twist backward with his right shoulder and neck" (Id.). The doctor examined Petitioner and reviewed the recent MRI reports noting a diagnosis of a right paracentral C5-C6 disk herniation, a right posterosuperior labral tear, and right shoulder glenohumeral degenerative joint disease (Id.). Petitioner was referred to Dr. Kuo for evaluation of his cervical spine and prescribed a course of physical therapy for his right shoulder. Light-duty work restrictions were issued (Id.)

Petitioner followed up with Dr. Meyer on August 31 and September 28, 2009, with complaints of persistent right shoulder and right-sided paracervical pain that he related to traction applied during physical therapy along with radicular pain, numbness, and tingling in his right shoulder that extended to his upper arm and elbow. An epidural steroid injection was administered to the subacromial space in Petitioner's right shoulder (Id., p. 11). Dr. Meyer recommended that Petitioner continue with physical therapy and light-duty work restrictions. Prescriptions for Vicodin and Mobic were issued (Id., p. 8).

On October 14, 2009, Petitioner presented to Dr. Eugene Kuo with a history of cervical and right shoulder pain with numbness and tingling radiating down his right arm (Id., p. 13) Dr. Kuo noted the recent cervical MRI scan showed a herniated disc at C5-C6, a bulging disc at C4-C5, central and bilateral foraminal stenosis, right greater than left, which was "quite severe" at C5-C6, and right foraminal stenosis along with posterior osteophytes at C4-C5 (Id., p. 14). The doctor further noted Petitioner had recently undergone EMG testing that demonstrated right-sided C5 radiculopathy (Id.). On exam, a positive Spurling's sign was noted (Id., p. 15). Dr. Kuo's assessment noted right arm radiculopathy in the C5 dermatone, secondary to foraminal stenosis at C4-C5 causing right-sided C5 compression (Id.) The doctor administered an epidural steroid injection at C5 to address irritation at the nerve root and referred Petitioner to a pain management physician (Id.) In late October 2009, Dr. Kuo discharged Petitioner from physical therapy for his right shoulder pending the resolution of his cervical neck symptoms (Id., p. 18).

On November 19, 2009, Petitioner presented for initial consult with Dr. Samir Sharma at Pain and Spine Institute in Kankakee with complaints of throbbing, stabbing pain in his cervical spine and right neck that radiated to his right upper arm and shoulder following a work accident in April involving a heavy pipe rolling onto Petitioner (PX 5, p. 9). Dr. Sharma recommended a series of cervical transforaminal epidural steroid injections which commenced on November 27, 2009, when Dr. Sharma administered a transforaminal epidural steroid injection at C5-C6 (Id., p. 12).

Petitioner continued treatment in December 2009 with Dr. Kuo and Dr. Meyer who noted his complaints of persistent neck and shoulder pain unchanged following an epidural steroid injection. Petitioner reportedly was miserable. Dr. Meyer noted the likelihood that surgery was required for the right shoulder surgery but wanted to monitor Petitioner's response to the course of steroid injections and whether surgical intervention for the cervical spine was required. Petitioner's light duty restrictions were continued (Id., p. 36, 38.)

Petitioner underwent epidural steroid injections at C5- C6 with Dr. Sharma on December 24, 2009, and January 18, 2010 (PX 5, p. 12, 19).

Petitioner followed up with Dr. Kuo in January 2010 at which time the doctor recommended surgery noting that conservative treatment had failed to alleviate Petitioner's persistent complaints of cervical pain and radiculopathy (PX 4, p. 42).

On March 25, 2010, Petitioner underwent an anterior cervical diskectomy and fusion with Allograft and instrumentation at C4-C5 and C5-C6, performed by Dr. Kuo at Provena Saint Joseph Hospital in Joliet (Id., p. 62).

Postoperatively, Petitioner followed up with Dr. Kuo on April 7, 2010, when he reported 50% improvement in his neck pain (Id., p. 83) In May 2010, Dr. Kuo noted Petitioner's neck was doing well although he reported some "referred" pain in the interscapular region along with persistent right shoulder pain (Id., p. 84)

On June 6, 2010, Petitioner presented to the emergency department at Riverside Medical Center with complaints of dizziness. Petitioner underwent a cervical CT scan that noted spondylosis at C4-C5 with mild narrowing of the right-sided neural foramen and straightening of the normal cervical lordosis noted as nonspecific. The radiologist's impression noted a fusion at C4, C5, and C6 and degenerative changes as

described above. Petitioner also underwent a CT of his brain that was normal. The discharge diagnosis was vertigo.

On June 9, 2010, Dr. Kuo noted that Petitioner was experiencing headaches, neck pain, and had passed out recently, necessitating an ER visit. Dr. Kuo thought Petitioner's headaches were stemming from his postoperative neck discomfort. The doctor advised that Petitioner was free to undergo shoulder surgery and recommended that physical therapy for his cervical spine commence (PX 4, p. 88).

On August 10, 2010, Petitioner underwent right shoulder surgery consisting of arthroscopy, debridement, and subacromial decompression performed by Dr. Meyer at Deerpath Surgery Center in Morris, Illinois (PX 4, p. 108). The post-operative diagnosis noted a right shoulder posterior-superior labral tear, impingement syndrome, type 1-SLAP lesion, and posterior labral tear and impingement syndrome (Id.).

On September 9, 2010, Petitioner's right shoulder physical therapy program was discontinued pursuant to Petitioner's report that therapy had aggravated his cervical spine (Id. at 116).

On September 16, 2011, Petitioner followed up with Dr. Sharma who noted that he completed four weeks of physical therapy and was experiencing increased neck pain. Dr. Sharma continued the prescription for Norco and ordered cervical radio-frequency ablation of the medial branch nerves of the cervical C4, C5, C6, and C7, under fluoroscopic guidance. Petitioner underwent this treatment on October 3, 2011.

On September 21, 2010, a cervical MRI indicated anterior instrumentation from C4-C8, moderate to significant C5-C6 foraminal stenosis due to joint hypertrophy and possibly, a bulging disc. Minimal left C4-C5 foraminal stenosis was also noted.

On October 7, 2010, Dr. Meyer noted Petitioner's report that his shoulder was doing well (PX 4, p. 118). Physical therapy had been discontinued due to cervical pain. Petitioner was authorized to return to work full duty regarding his right shoulder (Id.).

On October 11, 2010, Dr. Sharma referred Petitioner for an orthospine/neurosurgical evaluation with Dr. Goldberg and a surgical evaluation for his cervical spine with Dr. Salehi. Dr. Sharma scheduled a cervical transforaminal epidural steroid injection and continued Petitioner's off-work restrictions.

On October 26, 2010, Petitioner presented to Dr. Sean Salehi at Neurological Surgery and Spine Center with a history of a work injury consistent with his testimony (PX 7, p. 4). Dr. Salehi noted that Petitioner had undergone surgery earlier that year followed by physical therapy for his shoulder which caused increased neck pain and intermittent numbness in his left 4th and 5th digits and forearm along with spasms in his right forearm (Id.). Petitioner reportedly was taking up to 6 tablets of Norco per day. Petitioner further reported speech difficulty and intermittent weakness in the left side of his face. Dr. Salehi reviewed cervical MRI and x-rays from September 21, 2010, noting an impression of cervical spondylosis with no evidence of significant pathology adjacent to the fused segments that would warrant further surgical treatment. Dr. Salehi recommended C3-C7 facet injections and, if the injections yielded a positive result, cervical rhizotomy bilaterally at those levels (Id.). The doctor did not recommend surgery. He referred Petitioner to Dr. DiSanto,

a neurologist, for what appeared to be an intermittent transient ischemic attack with speech difficulty and intermittent facial weakness possibly due to hypertension (Id).

Petitioner continued treatment with Dr. Sharma in December 2010 at which time, cervical diagnostic medial branch blocks at C2, C3, C4, and C5 were administered which provided no relief, per the report of Petitioner, 10 days following the procedure (PX 5, p. 51).
On January 10, 2011, Petitioner underwent cervical medial branch blocks at C2-C5 which yielded a 75% improvement in Petitioner's cervical complaints, per Petitioner's report later that month when Dr. Sharma recommended radio-frequency ablation of Petitioner's medial cervical nerves at C2-C5 (Id.).

As of April 1, 2011, Dr. Sharma continued to prescribe Norco 10mg/32mg tablet 1-2 tablets every 4-6 hours, a maximum of 6 tablets per day, for Petitioner's neck and right shoulder pain (Id., p. 74).

On May 20, 2011, Petitioner underwent MRI of his cervical spine that revealed a small, right-sided herniation at C6-C7 (PX 15).

On June 17, 2011, Petitioner presented to Dr. Edward Goldberg for evaluation of his cervical spine (RX 3). Petitioner complained of neck stiffness and pain with cervical extension and right lateral rotation (Id.). Petitioner reportedly was no longer having symptoms down his arms but reported pain radiating from the right side of his neck to his right shoulder (Id.). Dr. Goldberg opined that Petitioner's neck symptoms were likely due to the small central and right-sided herniation at C6-7 identified on the recent MRI (Id.3).
The doctor recommended physical therapy before considering radiofrequency ablation or further injections. He opined that Petitioner was not a surgical candidate. Dr. Goldberg recommended a neurology consult due to Petitioner's neurological symptoms (Id.).

Petitioner underwent 12 sessions of physical therapy for his neck and right shoulder through September 7, 2011 (PX 11, p. 4). On September 7, 2011, Petitioner's therapist noted his complaints of pain in his neck at a 7 out of 10 on the pain scale (Id.).

On October 3, 2011, Petitioner underwent radiofrequency ablation with Dr. Sharma at C2-C5 (PX 5, p. 82). Dr. Sharma continued the prescription for Norco and ordered radio-frequency ablation of the medial branch nerves of the cervical C4, C5, C6, and C7, under fluoroscopic guidance.

On November 8, 2011, an MRI of Petitioner's cervical spine noted possible mild progression of posterior disc osteophyte complex with a central superimposed disc protrusion at C6-C7 (PX 9, p. 16).

Petitioner followed up with Dr. Sean Salehi at which time the doctor reviewed the aforementioned cervical spine MRI, noting that Petitioner's spinal stenosis had advanced. Dr. Salehi prescribed a Medrol dosepak, a cervical epidural steroid injection, and referred Petitioner to Dr. Goldberg, an orthopedist at Rush, for surgical evaluation of his cervical spine at C6-C7. Dr. Salehi placed Petitioner off work.

On November 30, 2011, Petitioner underwent a C7 transforaminal epidural steroid injection with Dr. Sharma (PX 5, p. 96). Dr. Sharma reviewed the most recent cervical MRI noting the spinal stenosis at C6-7 had

advanced since the last MRI. Dr. Sharma continued Petitioner's off-work restrictions and referred Petitioner to Dr. Goldberg for surgical evaluation at C6-C7 (Id.).

On February 15, 2012, Petitioner presented for initial consult with Dr. Mark Nolden at Northshore Orthopedics (PX 12, p. 12). Petitioner reported that his neck pain became aggravated by physical therapy for his right shoulder. Dr. Nolden noted Petitioner had done well following an anterior cervical discectomy and fusion from C4-C6 but after undergoing right shoulder surgery and undergoing postoperative physical therapy, he began to experience worsening neck pain with radiation into the interscapular region which has been "quite significant" since October 2011. On exam, significant pain on cervical extension in the neck and into the upper back and interscapular region was noted (Id.). Cervical spine x-rays, taken that day, noted mild to moderate degenerative changes at C6-C7. Dr. Nolden's impression noted cervical stenosis at C6-C7. A CT myelogram was ordered (Id.).

Petitioner continued treatment with Dr. Nolden in April, May, and June 2012 (PX 12) Petitioner's complaints of worsening cervical pain that required constant narcotic usage. Petitioner had recently undergone a cervical CT myelogram significant for a posterior disk/osteophyte complex at C6-7 with degenerative changes. Although the doctor initially opined that surgery was unwarranted, he determined that Petitioner was a surgical candidate based, in part, on a May 4, 2012, cervical MRI that revealed significant pathology at C6-C7, including a C6-C7 disc herniation and moderate to severe cervical stenosis (PX 12, p. 20).

On August 12, 2012, Petitioner underwent surgery to his cervical spine performed by Dr. Nolden, consisting of an anterior cervical discectomy and fusion with a "stand-alone device" placed at C6-C7 (Id., p. 30). A post-surgical x-ray on August 29, 2012, showed well-placed hardware at C6-C7 (Id.).

On August 20, 2012, Petitioner was admitted to the ER at Provena Saint Joseph Medical Center with complaints of palpitations, dizziness, lightheadedness, and right arm numbness. Petitioner had reportedly undergone a recent cervical fusion and had taken Oxycontin and Norco earlier that day. The attending doctor noted Petitioner's right arm numbness might be related to his cervical symptoms.

Petitioner continued to follow up with Dr. Nolden post-operatively. On November 18, 2012, Dr. Nolden noted that Petitioner expressed "extreme gratitude" that his stabbing upper back and para scapular pain had been completely resolved (PX 12, p. 37). Dr. Nolden noted however, "He is left with residual right-sided trapezial pain and right superior shoulder and arm pain which has been present for many years and which he has been told by his previous surgeon is secondary to his chronic C5 radiculopathy, confirmed with electrodiagnostic studies postoperatively after his C4 to C6 ACDF" (Id.). Dr. Nolden noted that Petitioner's treatment with a pain management specialist was ongoing although he was trying to wean off narcotic medicine. Petitioner was reluctant to undergo additional physical therapy as it had worsened his pain in the past. The doctor noted Petitioner would return in three months for a post-operative check-up (Id.).

On February 13, 2013, Petitioner presented to Dr. Nolden with complaints of persistent neck and right shoulder pain (Id. at 41). Dr. Nolden thought Petitioner was possibly suffering from myofascial pain syndrome. Dr. Nolden indicated, "I would not expect him to return to any gainful employment in the near future, especially his previous position with the State of Illinois." (Id.).

On May 31, 2013, Dr. Balsier at Crest Hill Clinic examined Petitioner noting a diagnosis of myelopathy in the cervical region, weakness of peripheral muscles, burning sensation, and plexopathy. Dr. Balsier recommended electrotherapy and cryotherapy noting Petitioner's prognosis was "guarded" (PX 1).

Petitioner last saw Dr. Nolden on August 7, 2013, at which time his complaints of persistent cervical neck discomfort with radiation into his jaw were noted along with right shoulder and right arm pain (PX 12., p. 50).

On August 23, 2013, Petitioner underwent an EMG of his upper limbs with Dr. Roberto Segura at Chicago Peripheral Nerve Center who noted no evidence of active lumbar radiculopathy or peripheral neuropathy although the findings suggested meralgia paresthetica (PX 8, p. 50).

On September 5, 2013, Petitioner underwent MRI studies of his cervical spine and right shoulder (PX 13). The cervical spine MRI noted: 1. At C6-C7, 2-3 mm disc/osseous protrusions with mild to moderate spinal stenosis and moderate left foraminal stenosis; 2. At C3-C4, a 2 mm disc bulge with mild to moderate stenosis and slight flattening of the anterior spinal cord; 3. Mild right and moderate left foraminal stenosis; 4. Other levels of disc bulging and stenosis; 5. Spondylosis and congenitally short pedicles (Id).

The right shoulder MRI noted: 1. A full-thickness rotator cuff tear defect with larger areas of partial thickness tearing of the supraspinatus and infraspinatus tendons; 2. Posterior labral undermining and tearing with capsular and periosteal stripping, extended to the postero-superior and inferior labrum; 3. Moderate AC joint arthrosis chondral degeneration in the humeral head and glenoid; 4. Rotator cuff and long bicep tendinosis (Id.).

On March 4, 2014, Dr. Sharma noted Petitioner's complaints of cervical pain in the upper right, mid, and lower right cervical spine that radiated to the mid-scapular bilateral and right forearm. Petitioner reported persistent neck stiffness, paravertebral muscle spasms, radicular right arm pain, and numbness in the right upper arm. Aggravating activities included lifting, twisting, throwing, prolonged positions, sitting, standing, and walking. Refill prescriptions for Norco, Opana, and Benicar were issued (PX 5, p. 186)

On June 6, 2014, Petitioner underwent C2-3 and C3-4 intra-articular cervical facet injections with Dr. Sharma. Petitioner continued to follow up monthly with Dr. Sharma for cervical spine and right shoulder pain management.

In July 2014, Dr. Segura at Crest Hill Clinic authored a report in support of the reconsideration of social security benefits. Dr. Segura noted that Petitioner sustained a traumatic work-related injury in April of 2009 when a heavy pipe fell on top of his neck and outstretched right arm. Dr. Segura opined that Petitioner was disabled and in a "non-functional state" and would never have the physical capability to return to his original trade of pipe fitting. The doctor further stated that Petitioner was unable to undergo training for sedentary work due to his constant and severe pain managed by a regimen of narcotic analgesic medications (Opana, Oxycodone), muscle relaxers (Flexeril), and benzodiazepines (Lorazapan).

On July 24, 2014, David Patsavas, M.A., C.R.C. at Independent Rehabilitation Services, Inc. prepared an Initial Vocational Assessment Report in which he opined that Petitioner was unable to resume his occupation as a Pipefitter/Plumber. He further noted that Petitioner had obtained a high school diploma and without

additional education and significant accommodations, Petitioner had no access to a viable and stable labor market.

On March 12, 2015, Petitioner underwent MRI of his cervical spine significant for bilateral foraminal stenosis at C3-4 and C2-3 (PX 13).

Petitioner continued monthly treatment with Dr. Sharma for cervical spine and right shoulder pain management (PX 5).

On August 11, 2015, Dr. Cary Templin at Hinsdale Orthopedics noted Petitioner presented for initial consult with complaints of persistent right shoulder pain (PX 17, p. 11). The doctor recommended a right shoulder CT scan (Id.).
On August 24, 2015, Petitioner presented to Dr. Jason Hurbanek at Hinsdale Orthopedics with complaints of constant right shoulder pain. Dr. Hurbanek diagnosed a superior labral tear and a rotator cuff tear for which he recommended surgery (PX 17).

On August 25, 2015, Dr. Chatrath wrote another letter in support of Petitioner's social security disability claim advising that Petitioner's high blood pressure started after his neck injury and that he needed to stay on Benicar 40 mg daily. In the doctor's opinion, Petitioner was unable to return to work and was permanently disabled.

On August 26, 2015, Petitioner underwent a cervical spine CT that noted degenerative changes at multiple levels including progressive degenerative disc disease at C3-C4 and C7-T1 (PX 15). The previous fusion at C4-C7 was intact (Id.).

Petitioner continued to follow up monthly with Dr. Sharma for pain management for his cervical spine and right shoulder complaints (PX 5).

On November 4, 2016, Petitioner underwent an MRI of his cervical spine that revealed relatively straight cervical alignment at C1-T1 with extensive surgical changes at C4-C7 and multilevel disc dislocation and height loss (PX 17).

On January 9, 2017, Dr. Hurbanek noted that the Petitioner indicated a willingness to proceed with the recommended shoulder surgery (PX 17).

On January 17, 2017, Petitioner underwent an MRI of his right shoulder that indicated rotator cuff tendinosis and atrophy (PX 13).

On February 20, 2017, Petitioner followed up with Dr. Hurbanek who recommended that Petitioner undergo right shoulder surgery (PX 17, p. 27).

On January 15, 2018, Petitioner underwent surgery consisting of a C3-C4 anterior cervical discectomy fusion with bony fusion, bony arthrodesis, posterior and anterior osteophytectomy with a standalone system from

the spine wave system, performed by Dr. Cary Templin at Presence Saint Joseph Medical Center (PX 17). The doctor's post-operative diagnosis was cervical radiculopathy and neck pain Id.)

Post-operatively, Petitioner followed up with Dr. Templin and on February 20, 2018, x-rays indicated proper position, healing, and alignment of the C3-C4 fusion. Petitioner was instructed to continue home exercise and remain off work.

On July 1, 2019, Petitioner underwent bilateral cervical medial branch block injections administered by Dr. Sharma, and on August 29, 2019, the doctor performed radiofrequency ablation on Petitioner's cervical spine (PX 5, p. 444).

Petitioner continues to follow up every month with Dr. Sharma for pain management (TX., p. 38).

Dr. Sharma's last treatment record on March 20, 2023, indicates the doctor determined control of Petitioner's pain required narcotic and nonsteroid anti-inflammatory medications (PX 5, p. 571). Petitioner's medications included Hydrocodone 10-325 mg, 1 tablet every 6 hours, Aspirin, Xanax, Motrin, and Tylenol (Id.). Petitioner reported persistent neck pain at a 7/10 the prior week and a 50-60% improvement in his pain with his medications. He reported the onset of relief following the medication was 1-2 hours and the duration of relief lasted 4-5 hours (Id.).

INDEPENDENT MEDICAL EXAMINATIONS

July 24, 2012 - Dr. Troy

On July 24, 2012, Petitioner underwent an independent medical examination ("IME") at Respondent's request with Dr. Daniel Troy, who is an orthopedic surgeon (RX 4, Respondent's deposition Exhibit 1). Dr. Troy noted Petitioner had undergone a two-level cervical fusion from C4 to C6 on March 25, 2010, and that Petitioner had recently been evaluated by Dr. Nolden who proposed an anterior cervical discectomy and fusion at C6-7, noting that Petitioner may be developing a transitional syndrome (Id.).

Regarding causation, Dr. Troy opined in Petitioner's favor regarding his cervical condition noting, "It appears that the claimant's current diagnosis is secondary to his injury on April 2, 2009. The claimant appears to be developing a transitional syndrome following the surgical intervention performed by Dr. Kuo in March of 2010" (Id.).

Regarding prospective treatment, Dr. Troy agreed with Dr. Nolden's recommendation that Petitioner undergo a C6-C7 fusion noting, "He has failed pain management and appears to have developed transitional syndrome as a result of the two-level fusion that was required to treat his original work injury. Therefore he is not at maximum medical improvement and I would suggest that the transitional syndrome be surgically addressed with a C6-7 fusion" (Id.).

In response to whether Petitioner can return to full-duty work, Dr. Troy opined, "Mr. Cragg cannot return to full-duty work as a pipefitter. He may return to work in a sedentary or light duty position with no lifting greater than twenty pounds and limited overhead work to avoid exacerbating his posterior neck pain" (Id.).

Regarding the right shoulder, Dr. Troy noted Petitioner had persistent right shoulder symptoms following the accident and had undergone diagnostic arthropathy with Dr. Meyer. In terms of a diagnosis, Dr. Troy noted, "The claimant has resolved impingement symptoms in the right shoulder. He has suffered no permanent sequela and is asymptomatic on today's examination".

Regarding causation concerning the right shoulder, Dr. Troy opined, "It appears that the claimant's current diagnosis is secondary to his injury on April 2, 2009" (Id.).

January 26, 2015 – Dr. Troy

On January 26, 2015, Petitioner underwent a second IME with Dr. Troy (RX 4, deposition Exhibit 2). Regarding causation, Dr. Troy noted, "In regards to the cervical spine, the claimant continues with a significant amount of pain to the posterior cervical region. The prior cervical surgery appears to have been Workers' Compensation related and, therefore, the continued posterior cervical neck complaints appear to be Workers' Compensation related. In regards to the right shoulder, the claimant's progression of the rotator cuff tear appears to be time-dependent and not Workers' Compensation related. The claimant himself reports that he has not been doing anything that should have caused the rotator cuff tear itself. The initial aggravation of the shoulder was Workers' Compensation based. The vast majority of the symptoms at this time appear to be emanating from the posterior cervical spine" (Id., p. 10).

Dr. Troy believed that Petitioner would be approaching maximum medical improvement if a CT myelogram of the cervical spine were performed. If the CT myelogram of the cervical spine could not be performed, the doctor recommended an updated MRI of the cervical spine (Id.).

Regarding Petitioner's ability to work, Dr. Troy wrote, "From my standpoint, the claimant can be released back to sedentary duty only. He would have to have appropriate break times to allow him to sit and stand to alleviate any subjectively-based symptomatology. It should also be noted that the claimant is taking a significant amount of pain medications" (Id.).

December 16, 2015 - Dr. Jeffrey Mjaanes

On December 16, 2015, Petitioner underwent an IME at Respondent's request for his right shoulder with Dr. Jeffrey Mjaanes at Midwest Orthopedic at Rush (PX 6). Dr. Mjaanes diagnosed Petitioner with right shoulder pain, the etiology of which, was multifactorial. The doctor noted the 2009 MRI indicated chronic changes in the glenoid labrum, the glenoid itself, and the supraspinatus muscle, but no rotator cuff tear (Id. at 57). The doctor opined that the chronic degenerative changes evident on MRI were consistent with overuse syndrome. Dr. Mjaanes further noted, that while no rotator cuff tear was identified in the August 10, 2010, operative report, the most recent MRI showed a full-thickness rotator cuff tear (Id.).

Dr. Mjaanes opined that Petitioner's current shoulder condition was unrelated to the work accident. The doctor noted Petitioner was not at MMI and required further treatment including a corticosteroid injection and possibly surgery although any such treatment was unrelated to Petitioner's work accident. The doctor agreed that Petitioner should be limited to light-duty work (Id.).

June 20, 2016 - Dr. Daniel Troy

On June 20, 2016, Petitioner underwent his third IME at Respondent's request with Dr. Daniel Troy (RX 4, Deposition Exhibit 3). Dr. Troy, who opined, "The claimant most likely has chronic neck pain. He demonstrates mild degenerative changes at C2-3 and C3-4 level, with mild degenerative changes at C7-T1 level. There is no need for any additional surgical intervention in regards to the cervical spine. The doctor found that Petitioner was at MMI for his cervical condition noting a Functional Capacity Evaluation would be beneficial (RX 4) Dr. Troy opined that Petitioner would have chronic pain for the remainder of his life, and would be limited to sedentary work (Id.).

January 14, 2017 – Dr. Chmell

On January 14, 2017, Petitioner presented to orthopedic surgeon, Dr. Samuel Chmell, for an IME at the request of his attorney (PX 20). Dr. Chmell examined Petitioner's cervical spine noting positive Spurling's and Tinel's findings, indicative of nerve root compression (PX 19, p. 16). In addition, Petitioner's cervical range of motion was "markedly diminished" with cervical flexion at 20 degrees below normal, cervical extension at 15 degrees below normal, and cervical rotation and side bending each reduced by 50% or more (Id., p. 15). The doctor noted such findings consistent with Petitioner's previous fusion surgeries at C4-C5 and C5-C6, according to Dr. Chmell who noted, "Half of the neck is fused" (Id.). Petitioner also exhibited diminished sensation along the lateral and posterior borders of his left arm and the radial aspect of his right forearm and wrist, along with an absent right biceps reflex. Dr. Chmell noted such findings indicative of cervical radiculopathy (Id., 18-19).

On examination of Petitioner's right shoulder, the doctor noted a healed surgical scar, tenderness in the subacromial/rotator cuff area, and atrophy of the supraspinatus and infraspinatus, the two major muscles in the rotator cuff (Id., p. 16-17). According to Dr. Chmell, atrophy of those muscles signals a poor prognosis for the rotator cuff. The doctor explained that muscle atrophy involves infiltration of fat rather than the "red meat" of normal muscle tissue. According to Dr. Chmell, even if Petitioner's rotator cuff tear healed, the normal motion, strength, and function would not be restored (Id., p. 16-17). Atrophy of the rotator cuff muscles is consistent with Petitioner's injury that occurred "years ago in 2009" (Id., p. 17). The doctor further noted a diminished range of motion during his exam of Petitioner. Specifically, Petitioner's flexion was 40 degrees below normal while his extension was 20 degrees below normal. External rotation was 35 degrees below normal while abduction was 25 degrees below normal (Id., p. 17). Additionally, a positive impingement test, positive crossover sign, and a positive drop test, indicative of a torn rotator cuff were noted (Id., p. 18). Lastly, the doctor noted diminished strength in Petitioner's right shoulder, elbow, wrist, and hand (Id.).

Regarding causal connection, Dr. Chmell opined the following diagnoses are causally related to Petitioner's work accident:

1. C5-C6 disc herniation with right cervical radiculopathy status post C4-C5 and C5-C6 anterior cervical decompression, fusion, and internal fixation;

2. C6-C7 disc protrusion status post-C6-C7 anterior cervical decompression with internal fixation;

3. Traumatic aggravation of degenerative disc disease of the cervical spine status following the above-mentioned surgical procedures;

4. Right shoulder glenoid labrum tear and impingement syndrome status post arthroscopy, debridement and subacromial decompression;

5. Traumatic aggravation of rotator cuff tendinosis and glenohumeral and A-C joint osteoarthritis right shoulder; 6. Left cervical radiculopathy secondary to the above-mentioned 1 and 2 (Id.)

Dr. Chmell testified that the mechanism of injury in this case, a heavy pipe that weighed more than 100 pounds, that fell on Petitioner's right shoulder and neck, is a competent cause of the right shoulder and cervical injuries sustained by Petitioner (PX 19, p. 10).

With respect to prospective medical treatment, Dr. Chmell opined the C3-C4 anterior cervical decompression and fusion with internal fixation, as recommended by Dr. Templin, was reasonable, necessary, and related to Petitioner's work accident.

Dr. Chmell thought a reverse total shoulder replacement would improve Petitioner's pain and function noting the September 10, 2013, right shoulder MRI indicated a large rotator cuff tear involving the supraspinatus and infraspinatus tendons with significant tendinosis and glenohumeral arthritis in addition to his exam findings which noted atrophy of the supraspinatus and infraspinatus muscles.

Regarding the progression and deterioration of Petitioner's right shoulder condition, Dr. Chmell acknowledged that the initial MRI did not show a torn rotator cuff while the 2013 study did exhibit such a finding, "The rotator cuff was already damaged in the first MRI scan. It just wasn't completely torn. But the process continued to the point where it tore" (Id, p. 28). According to the doctor, the initial MRI showed tendinosis of the rotator cuff which signals damage, deterioration, and weakness to the rotator cuff. While the torn glenoid labrum was surgically debrided during the initial surgery, such debridement resulted in posterior subluxation of the humeral head that caused further deterioration of the shoulder manifesting in arthritis and eventually a rotator cuff tear. The process of deterioration and tearing in the rotator cuff was initiated by Petitioner's work accident in April 2009, according to Dr. Chmell (Id.).

Regarding Petitioner's ability to work, Dr. Chmell agreed that Petitioner is physically incapable of resuming his occupation as a pipefitter. With respect to sedentary job duties, the doctor found Petitioner's pain management protocol and medications made him unemployable, "I think we could think of a job where he's answering the phone, but even doing that with the medications he's on, he would likely have frequent periods of incapacity, where he would miss work. And when he was at work. He would have difficulty concentrating and staying on task eight hours a day, five days a week" (Id., p. 29-30).

Dr. Chmell further opined that treatment to date has been reasonable, necessary, and attributable to the April 2009 accident (Id.).

November 6, 2017 - Dr Troy

On November 6, 2017, Petitioner underwent his fourth IME at Respondent's request with Dr. Troy (RX 4, Deposition Exhibit 4). Dr. Troy opined that Petitioner's cervical spine condition is related to Petitioner's April 2009 work accident. Regarding prospective surgery to Petitioner's cervical spine, he noted a 25-50% chance that a cervical neck fusion addressing the C3-C4 level would alleviate Petitioner's symptoms or provide significant improvement (Id.). Dr. Troy noted Petitioner exhibited "about 50% loss of motion" in his cervical spine secondary to pain and multilevel fusions. The doctor noted Petitioner's subjective pain complaints in his neck and right shoulder had increased since his last visit (Id.). Dr. Troy acknowledged his original evaluation on June 20, 2016, where he did not recommend surgery for Petitioner's cervical spine. In reversing course on this issue, the doctor noted, "From an objective standpoint there is a low to moderate probability that an anterior cervical discectomy and fusion at the C3-4 level would relieve his symptomatology" (Id.).

Regarding Petitioner's right shoulder, Dr. Troy acknowledged the presence of impingement symptoms, an underlying rotator cuff tear, and increased pain symptoms since June 20, 2016, although he maintained his prior opinions that the current condition in the right shoulder is due to the natural progression of time rather than the work accident in April 2009. Dr. Troy opined that Petitioner would benefit from surgery to address the rotator cuff tear although any surgery would be unrelated to the accident in this case.
Regarding Petitioner's prognosis, Dr. Troy noted, "The prognosis, as given before in my June 20, 2016, as well as today, remains guarded. The claimant will most likely be on chronic pain management for the rest of his life regardless of care and intervention and regardless if he undergoes the fusion at the C3-4 level. There is about a 25% probability that this will decrease the amount of pain the claimant is having to the neck region" (Id.).

The doctor further opined that Petitioner would be limited to sedentary work and was at MMI as of June 20, 2016 (Id.).

Vocational Evaluation

Petitioner underwent a Vocational Evaluation on July 24, 2014, with David Patsavas (PX 18). Mr. Patsavas noted that Petitioner was employed by Respondent as a Steam Fitter which is a medium-demand level position and that Petitioner's work history involved only medium-demand level positions. Petitioner's highest level of education is a high school diploma. Mr. Patsavas was unaware of any options that would allow Petitioner to return to gainful employment. Any employment obtained by Petitioner would require significant accommodations due to his physical restrictions. Mr. Patsavas opined that no stable labor market existed for Petitioner (Id.).

Labor Market Survey

A Blind Labor Market Survey ("LMS") was completed on March 13, 2015 (RX 8). The LMS identified 35 potentially appropriate jobs that were available during a one-week period in March 2015. The LMS noted that Petitioner would be required to return to school to qualify for many jobs listed in the report. The salaries of the identified jobs ranged from $29,000 to $86,000, with positions in customer service, project management, and service clerk/dispatcher The LMS found that Petitioner would not be a good candidate for vocational services (Id.).

On May 1, 2023, a Vocational Status Update was completed with David Patsavas at the request of Petitioner's attorney (PX 18). This evaluation was completed over the telephone. Mr. Patsavas noted that his opinion remains that there is no stable labor market for Petitioner (Id.).

FRASCO Surveillance

Respondent called Rob Kinsch, a Regional Manager at FRASCO Investigative Services, in their case in chief. The nature of FRASCO's business is to investigate insurance claims.

In 2015 and 2021 FRASCO was assigned to conduct surveillance on Petitioner and investigate his background and social media. Kinsch testified that Respondent's Exhibits 9 and 10, are the report and video surveillance, respectively, compiled by FRASCO in the course of their investigation of Petitioner.

Petitioner identified himself and his vehicle, a Silver SUV, in the surveillance video dated October 23, 2015, contained in Respondent's Exhibit 10 which shows him getting in and out of the vehicle and walking (RX 10).

Petitioner identified himself and his vehicle, a white SUV, in surveillance video dated March 12, 2021, which contains video footage of Petitioner in a grocery store lifting a 12-pack of Gatorade with his right hand. Petitioner has a cart full of groceries and appears to be shopping alone (Id.).

Petitioner identified himself in the video dated March 19, 2021, which shows him entering and exiting his vehicle. He is seen bending into the trunk and carrying a three-pound neon orange yard marker with his right hand (Id.).

Petitioner identified himself and his vehicle in video footage captured on March 29, 2021, at which time he was driving a white SUV. Petitioner is shown at Wal-Mart with a shopping containing goods and groceries (Id.). Petitioner is seen loading groceries into the trunk of the vehicle and is observed lifting two cases of water and a case of Gatorade with both hands. On that day, Petitioner is shown in the parking lot of Dick's Sporting Goods and is observed lifting a box with his left hand and placing it in the trunk of the vehicle. He is also lifting what appears to be a collapsible camping chair with his right hand (Id.).
Petitioner identified himself video obtained on November 10, 2021, at which time he is observed carrying a three-pound piece of cardboard in his right hand at a cemetery. Petitioner is seen on the video walking, then bending down, and holding one end of a tape measure, while an area on the ground is measured (Id.).

CONCLUSIONS OF LAW

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

CAUSAL CONNECTION

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).

It is well-established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, 993 N.E.2d 473. Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred 'but for' the original injury. For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. Where the work injury itself causes a subsequent injury the chain of causation is not broken. *(Id.).*

Expert opinions must be supported by facts and are only as valid as the facts underlying them." *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87 (2003). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the basis for the expert's opinion. *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 28, 889 N.E.2d 654, 662 (2008). If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Modelski v. Navistar International Transportation Corp.*, 302 Ill. App. 3d 879, 885, 707 N.E.2d 239, 244 (1999).

The Arbitrator finds the preponderance of credible evidence contained in the record supports a finding that Petitioner's current condition of ill-being in his cervical spine and right shoulder is causally related to his April 2, 2009, work accident. In support, the Arbitrator notes the following:

1. Respondent does not dispute that Petitioner sustained injuries in a work accident on April 2, 2009, when a heavy pipe, weighing over 100 pounds, struck his right shoulder and neck;

2. Petitioner's testimony regarding his accident, mechanism of injury, and physical complaints following the accident is unrebutted and corroborated by the histories documented by his medical providers following the accident;

3. Petitioner was physically capable of performing his full-duty job for Respondent before the undisputed accident at issue. Before his accident, Petitioner did not require work restrictions, surgery, physical therapy, or narcotic pain medicine for his cervical spine or right shoulder condition;

4. Respondent does not dispute that Petitioner is physically incapable of resuming his pre-accident job duties;

5. There is no evidence of any intervening accident or event that occurred between the accident date and the hearing date, that breaks the chain of causation;

6. Regarding the medical opinions in this case, the Arbitrator found the opinions of Dr. Chmell persuasive, compelling, and substantiated by the treating medical records, Dr. Chmell's exam findings, and the chain of events in this case. Accordingly, the Arbitrator places significant weight on the opinions of Dr. Chmell;

7. Dr. Chmell noted that the mechanism of injury is a competent cause of Petitioner's right shoulder and cervical spine injuries and that Petitioner was asymptomatic and physically capable of performing his full job duties before the accident (PX 19, p. 10). Regarding the progression and deterioration of Petitioner's right shoulder condition, Dr. Chmell acknowledged that the initial MRI did not show a torn rotator cuff while the 2013 study did exhibit such a finding. Dr. Chmell noted that Petitioner's rotator cuff in the initial MRI wasn't completely torn although that study indicated tendinosis which signals damage, deterioration, and weakness. Dr. Chmell opined that the "process continued to the point where it tore" (Id, p. 28). While the torn glenoid labrum was surgically debrided during the initial surgery, such debridement resulted in posterior subluxation of the humeral head that caused further deterioration of the shoulder manifesting in arthritis and eventually a rotator cuff tear. The process of deterioration and tearing in the rotator cuff was initiated by Petitioner's work accident in April 2009;

8. Respondent's IME, Dr. Troy, who examined Petitioner on five occasions pursuant to Respondent's Section 12 request, opined that Petitioner's cervical spine condition was causally related to his work accident;

9. Dr. Troy conceded a causal relationship between the accident and Petitioner's right shoulder condition which necessitated surgery on August 10, 2010;

10. Although Dr. Troy suggests that the rotator cuff tear evident on September 10, 2013, MRI, is due solely to the ravages of time rather than the acute accident at issue, ignores the chain of events in this case and the well-established law on this issue, that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

Based upon the preponderance of credible evidence contained in the record, including the well-supported opinions of Dr. Chmell, the Arbitrator finds that the current condition in Petitioner's right shoulder and cervical spine is causally related to his April 2009 work accident.

WHETHER THE DISPUTED MEDICAL BILLS WERE REASONABLE AND NECESSARY

The Arbitrator has found a causal connection between Petitioner's April 2009 work accident and the current condition of ill-being in his right shoulder and cervical spine. After reviewing the above-mentioned disputed medical bills, the Arbitrator finds the preponderance of credible evidence in the record establishes that the disputed medical bills represent reasonable medical care and treatment necessitated by the April 2009 work accident.

The Arbitrator finds that Respondent is liable under Section 8(a) for all medical bills contained in Petitioner's Exhibit 25 and Arbitrator's Exhibit 1.

TEMPORARY BENEFITS

Based on the preponderance of credible evidence contained in the record, the Arbitrator finds that Petitioner is entitled to TTD benefits from September 28, 2009, through April 17, 2018 and is further entitled to maintenance benefits from October 27, 2016, through October 23, 2017, however, as the TTD and maintenance benefit periods overlap, Petitioner is not entitled to any additional maintenance benefits.

Respondent is entitled to a credit for the payment of $369,618 in TTD benefits.

AVERAGE WEEKLY WAGE

Based on the preponderance of credible evidence contained in the record, the Arbitrator finds Petitioner's average weekly wage to be $1,990.83.

NATURE & EXTENT OF PETITIONER'S INJURIES

The Arbitrator finds that Petitioner has established by a preponderance of the medical evidence in the record that he is permanently and totally disabled. In support, the Arbitrator relies upon the credible and persuasive opinions of Dr. Chmell who opined that Petitioner was physically incapable of returning to his job as a steamfitter and further found him incapable of sedentary duties such as answering phones due to the medications Petitioner takes to manage his chronic pain:

> *I don't think he can go back to his regular job as a pipe fitter from a physical standpoint. From the standpoint of employability, I think that he's not employable. I think we could think of a job where he's answering the phone, but even doing that with the medications he's on, he would likely have frequent periods of incapacity, where he would miss work. And when he was at work. He would have difficulty concentrating and staying on task eight hours a day, five days a week (Id., p 29-30).*

Dr. Segura also opined that Petitioner was disabled, in a "non-functional state", and would never have the physical capability to return to his original trade of pipe fitting. Dr. Segura further opined that Petitioner was unable to undergo training for sedentary work due to his constant and severe pain managed by a regimen of narcotic analgesic medications (Opana, Oxycodone), muscle relaxers (Flexeril), and benzodiazepines (Lorazapan).

Dr. Nolden opined that Petitioner was unable to resume work as a pipe fitter and later opined, "I would not expect him to return to any gainful employment in the near future, especially his previous position with the State of Illinois."

Respondent's IME. Dr. Troy agrees that Petitioner cannot return to his pre-accident job for Respondent as a steam fitter. Dr. Troy opined that Petitioner will likely require pain management for the remainder of his life

due to his chronic neck pain. Dr. Troy testified that Petitioner demonstrates mild to moderate generative changes at the C2-3 and C3-4 levels with mild degenerative changes at the C7-T1 level.

Regarding Petitioner's right shoulder, Dr. Troy testified that Petitioner requires surgical intervention to address his rotator cuff tear.

Although Dr. Troy testified that Petitioner could work a sedentary job from home, he failed to consider whether Petitioner could function in a full-duty job while under the influence of narcotic pain medications, muscle relaxers, and benzodiazepines.

Petitioner's testimony regarding his current condition is unrebutted. Petitioner testified that he never stops feeling pain, that his pain levels are dependent on how he slept the prior night, and that weeks go by when he is incapacitated by pain at a 10/10.

It is undisputed that Petitioner will require chronic pain management for the remainder of his life, as noted by Dr. Troy on November 6, 2017. For the last 14 years, Petitioner has undergone pain management with Dr. Sharma who continues to prescribe narcotic opioid pain medication for his chronic neck and right shoulder pain along with Xanax, a benzodiazepine.

Petitioner is now 63-years-old with a high school education and a singular work history in the plumbing/piping industry for over 37 years before his April 2, 2009 accident.

It is uncontested that Petitioner cannot return to his job as a steam pipe fitter for Respondent. Respondent does not dispute the fact that they cannot accommodate Petitioner's restrictions.

Petitioner's cervical spine is fused from C3 to C7, having undergone three anterior cervical discectomies and fusions causally related to his work accident. Petitioner has approximately 50% loss of motion in his cervical spine secondary to multilevel fusions from C3 to C7, according to Dr. Troy and Dr. Chmell whose examination found that Petitioner's cervical rotation and side bending was reduced by 50% or more. Dr. Chmell testified that Petitioner's cervical range of motion was "markedly diminished" noting "half of his neck is fused".

Petitioner is right-hand dominant and underwent right shoulder surgery on August 10, 2010. Currently, he has a superior labral tear and a rotator cuff tear for which surgery has been recommended but not performed. Dr. Chmell's examination of Petitioner's right shoulder noted tenderness in the subacromial/rotator cuff area, and atrophy of the supraspinatus and infraspinatus, the two major muscles in the rotator cuff. According to Dr. Chmell, atrophy of those muscles signals a poor prognosis for the rotator cuff, noting, the normal motion, strength, and function in the right rotator cuff would not be restored even if Petitioner's rotator cuff tear healed. Dr. Chmell's exam noted diminished motion with flexion 40 degrees below normal, extension 20 degrees below normal, external rotation 35 degrees below normal, and abduction 25 degrees below normal. Dr. Chmell further noted Petitioner's rotator cuff is being impinged upon by the acromion which is the "roof" of the shoulder which manifested in diminished right shoulder, elbow, wrist, and hand strength (Id.).

Dr. Troy noted Petitioner demonstrated right shoulder impingement symptoms with an underlying rotator cuff tear to the right shoulder. He noted that Petitioner's right shoulder pain symptoms have increased since his last evaluation in June 2016.

Petitioner has demonstrated, via medical evidence and opinions, that he is permanently and totally disabled. Although Petitioner submitted job search logs between October 27, 2016, and October 23, 2017, such evidence is unnecessary as the Arbitrator's award is not based on an odd-lot theory of recovery.

The Arbitrator recognizes that Respondent submitted a labor market survey. As the Arbitrator's award is not based on an "odd lot" theory, the Arbitrator does not place significant weight on this evidence. The Arbitrator notes again that all medical opinions in this case agree that Petitioner is unable to return to his medium-demand level position as a Pipe Fitter.

Regarding the evidence submitted by Respondent regarding Petitioner's various roles in the community. Petitioner served as the Wilmington School Board president for nearly 20 years, from 2005 through 2022, and continues to serve as a member of the School Board. Petitioner acknowledged that he coached baseball and softball through 2014, and he was the vice president of a softball association. Petitioner conceded that he is involved in volunteer work in the community, including with the cemetery board where he assists in laying burial plots and mowing grass. The Arbitrator has considered this evidence but does not consider Petitioner's volunteer work in the community evidence that he is physically capable of working a full-time, 40-hour-a-week job, even in a sedentary capacity. Petitioner's work in the community is voluntary and unpaid. He is not obliged to work and the hours that he does volunteer, are variable and dependent on how he is feeling on any given day. While his work on the school and cemetery boards may require in-person attendance at the meetings, this work is still voluntary. The meetings are likely infrequent with no penalty for non-appearance due to health concerns.

Regarding surveillance videos submitted from October 2015 and March 2021, depicting Petitioner lifting items, getting in and out of vehicles, walking, and driving, the Arbitrator has considered this evidence but does not find the surveillance footage negates a finding of permanent and total disability

ENTITLEMENT TO PENALTIES / FEES

Petitioner filed a Petition for Penalties under Sections 19(k) and 19(l), and Petition for Attorneys' Fees under Section 16 of the Illinois Workers' Compensation Act. Pursuant to Section 19(k) of the Illinois Workers' Compensation Act:

Pursuant to Section 19(l) of the Illinois Workers' Compensation Act:

In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000.00. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay 820 ILCS 305/19(l).

Section 16 of the Illinois Workers' Compensation Act provides an award of attorney's fees where an employer or insurance carrier "has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provision of paragraph (k) of Section 19 of the Act." 820 ILCS 305/16.

The imposition of Section 19(k) penalties and attorneys' fees under Section 16 are discretionary. Penalties and fees are assessed when the delay of payment is deliberate or results from bad faith or improper purpose. *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill.App.3d 798 (1st Dist. 2005). The imposition of Section 19(k) penalties and Section 16 attorney fees requires a higher standard of proof than an award of additional compensation. *Id.*

In the case at bar, although Respondent's IME, Dr. Troy, did not dispute a causal connection between Petitioner's cervical condition, and the work accident in this case, Respondent has paid TTD benefits to Petitioner from September 28, 2009, through April 17, 2018. The Respondent has paid these benefits and is entitled to a substantial credit based upon indemnity payments made up to April 30, 2023. There has been no allegation that medical bills were denied or unpaid.

The Arbitrator does not find a basis to award penalties and/or fees in this case. As such, the Petition for Penalties and fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030498
Case Name	George Gounaris v. Home Juice Corp
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0157
Number of Pages of Decision	25
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Courtney Schoch

DATE FILED: 4/8/2025

/s/Stephen Mathis, 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

GEORGE GOUNARIS,

Petitioner,

vs. NO: 22 WC 030498

HOME JUICE CORP.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, prospective medical care, and total temporary disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part 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 finds that the Arbitrator made a scrivener's error in the findings on the order. Under findings, the Arbitrator specified that Respondent is entitled to $0 under Section 8(j) of the Act, whereas the Rider to the Decision acknowledged the stipulation of the parties that Respondent is entitled to a credit of $32,365.50 for TTD benefits paid prior to the date of the hearing. The Commission hereby corrects the scrivener's error to award the credit and affirms and adopts all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,294.61 per week for a period of 53-6/7 weeks, commencing October 19, 2022, through the date of hearing on October 30, 2023 (inclusive),that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $10,230.45 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that having found Petitioner's current condition of ill-being to be causally related to the work accident of September 15, 2022, prospective medical benefits sought by Petitioner in the form of a lumbar spine surgery, specifically a posterior surgical decompression at L4-5 and L5-S1 with anterior lumbar fusion, per the recommendation his treating physician, Dr. Pelinkovic are hereby awarded.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $32,355.50 for TTD benefits paid prior to the date of hearing.

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 $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.

April 8, 2025

o-2/19/25
SM/msb
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	22WC030498
Case Name	George Gounaris v. Home Juice Corp
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Courtney Schoch

DATE FILED: 3/15/2024

/s/Jacqueline Hickey, Arbitrator

Signature

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

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

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

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

George Gounaris
Employee/Petitioner

v.

Home Juice Corp.
Employer/Respondent

Case # **22** WC **030498**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **October 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. X Other: Prospective Medical

FINDINGS

On **September 15, 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 $**100,979.84**; the average weekly wage was $**1,941.92**.

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

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**32,365.50** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**32,365.50**.

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

ORDER

Respondent shall pay outstanding reasonable and necessary medical services of $**10,230.45**, as provided in Sections 8(a) and 8.2 of the Act, subject to the Fee Schedule.

Respondent shall pay Petitioner temporary total disability benefits of $**1,294.61**/week for **53-6/7** weeks, commencing **10/19/22** through **10/30/23**, as provided in Section 8(b) of the Act.

The Arbitrator finds Petitioner's current condition ill-being is causally related to the accident of 9/15/22 and furthers awards prospective medical benefits he seeks in the form of a lumbar spine surgery, specifically a posterior surgical decompression at L4-5 and L5-S1 with anterior lumbar fusion, per the recommendations of his treating physician, Dr. Pelinkovic.

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

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

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

Jacqueline C. Hickey

Signature of Arbitrator

March 15, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

GEORGE GOUNARIS,	)	
	)	
Employee/Petitioner,	)	
	)	Case Number: **22 WC 030498**
	)	
v.	)	**Arbitrator Hickey**
	)	
HOME JUICE CORP.,	)	
	)	
Employer/Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on October 30, 2023, in Chicago, Illinois, before Arbitrator Jacqueline Hickey on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). Issues in dispute are causation, medical bills, and TTD. Arbitrator's Exhibit 1 (Ax 1); (T. 4-6).

FINDINGS OF FACT

Background

Petitioner George Gounaris was 56 years old and an employee of Home Juice Corp. on September 15, 2022, working as a truck driver. (AX1; T. 10) He had been working for Respondent for 32 years, 31 of them as a truck driver. (T. 10-11) His duties involved delivering 800-850 cases of beverages per day to gas stations, grocery stores, mini markets, and hospitals using a 40,000-pound truck. (T. 10-11) Petitioner estimated that each case weighed 25 to 45 pounds. (T. 10) Petitioner was paid on commission based upon how many cases he delivered; he typically worked eight to ten hours per day, with a minimum of eight hours between the hours of 5:00 AM and 4:00 PM. (T. 12-13)

Testimony of Matthew Lamb- Respondent witness

Matthew Lamb testified on behalf of Respondent. He is a General Manager at the Melrose Park location of Home Juice. (T. 57-58) He has worked for Respondent employer for 14 years. (T. 57-58) Mr. Lamb oversees the day-to-day operations between deliveries, warehouse, and staff of 62 employees. (T. 58) He has worked with Petitioner, George Gounaris, for 14 years. (T. 58) Petitioner was a good worker. (T. 81) Petitioner's job duties were heavy in nature. (T. 81) Mr. Lamb testified Petitioner worked as a driver. (T. 59) As a driver, Petitioner took the truck loaded with between 300-900 cases to a list of accounts. (T. 59) Petitioner had a heavy route. (T. 59) Petitioner had a helper with him most of the time. (T. 59) He delivered the cases by taking them

off the truck, placing on a hand cart, wheeling into the store, and then obtaining payment from store owner. (T. 59) After Petitioner obtained payment, he then went to the next account to make another delivery. (T. 59) This is the type of work performed every day. (T. 59) Mr. Lamb identified Respondent's Exhibit 3 as Home Juice's Driver Weekly Attendance Report. (T. 60) The report identified drivers on a daily basis. (T. 60) Petitioner was a senior driver. (T. 60) Petitioner's route was route 15. (T. 60) It was common for drivers to have helpers, especially for more senior drivers, as they had bigger and better routes. (T. 61) Senior drivers had helpers almost all of the time. (T. 61) Regarding roles for drivers versus helpers, the driver had more responsibility. (T. 61) The driver was responsible for the money and had the main responsibility for the route. (T. 61-62)

Prior Medical Condition

In 1996, twenty-six years prior to September 15, 2022, Petitioner had a lumbar microdiscectomy at L4-5. (PX 3, p. 95; T. 12) In the years since, he experienced only occasional mild pain. (PX 3, p. 95) Between the microdiscectomy and September 15, 2022 work accident, Petitioner had no further treatment to his lower back. (T. 12)

Accident

On September 15, 2022, at approximately 10:00 a.m., Petitioner was at work delivering beverages from his truck. He had a helper named Cody Mathis. (T. 23) Petitioner was operating a two-wheeler loaded with a vertical stack of beverage cases weighing 300-400 pounds. (T. 13) The two-wheeler was almost six feet tall. (T. 14) Petitioner used a plate metal ramp to push the two-wheeler up and over the curb onto the sidewalk. (T. 13-14) On that day, however, it was wet outside and one of the wheels on the two-wheeler slipped while he was navigating the ramp. (T. 13-14) The wheel slid off the ramp and hit the curb, causing the whole load to shift. (T. 14; PX 3, p. 95.) Maintaining control of the two-wheeler with his right hand, Petitioner reached out with his left hand and attempted to keep the 300-400-pound load from toppling. (T. 14, 16) However, as Petitioner grabbed the plastic wrap and flexed, he felt a sharp pain in his lower back. (T. 17; PX 3, pp. 95, 97) A few cases from the top of the load fell and the glass bottles within them shattered. (T. 17) Mr. Mathis witnessed this occur. (T. 23, 50)

Petitioner testified that his lower back was very painful and that he had never felt anything like it before. (T. 17-18) Petitioner took a few minutes to regroup, then resumed working. (T. 18) He thereafter worked a few more hours to finish his day. (T. 19) Mr. Mathis did most of the work for the rest of that day. (T 23-24) That night, Petitioner's back was very stiff and very sore. (T. 20) He called off from work the next day, reporting the accident to his supervisor Debbie. (T. 20, 49-50) Petitioner returned to work the following Monday; he continued to come in to work regular duty. He gave it a few weeks, thinking his back might heal on its own. (T. 21) However, his condition kept worsening and he felt increasingly unable to tolerate his entire shift. (T. 21; PX3, p. 95) This new pain was nothing like the mild pain he occasionally experienced before the accident. (PX 3, p. 95) After three and a half weeks, Petitioner sought medical care at Concentra in Bloomingdale. (T. 21)

Summary of Medical Treatment

On October 13, 2022, Petitioner presented to Concentra Occupational Health Centers for treatment. Petitioner reported that on September 15, 2022, around 10:00 a.m. he was pushing a two-wheeler up a ramp when the tires slipped from ramp and hit a curb, he twisted to catch it from falling, and felt a sharp pain in his lower back area. He reached with his left arm to try to stop packages from falling and felt a pain in lower back. (PX 3, p. 95) He was complaining of lower back pain radiating bilaterally into his buttocks. (PX 3, p. 95) He reported that the pain was worse when leaning forward to do the dishes or when laying on his back, and better when laying prone. He reported continuing to work regular duty at work but has been increasingly unable to tolerate his regular shift. (*Id.*) On physical examination, Petitioner was noted to have limited range of motion in his lower back, particularly with flexion. (PX 3, p. 98) Straight leg raise tests were positive on both the left and right. (*Id.*) X-rays revealed disc space narrowing at L5-S1 with facet hypertrophy, reflecting mild degenerative change without acute osseous abnormality of the lumbar spine. (PX 3, p. 89) Petitioner also underwent alcohol and drug screens at this appointment. (T. 34, 51) Petitioner was assessed to have a lumbar strain. (PX 3, p. 98) He was prescribed Acetaminophen, Cyclobenzaprine, and Diclofenac, and was referred to physical therapy. (PX 3, pp. 98-99) Petitioner was allowed to work with restrictions of lifting up to 10 pounds occasionally and push/pull up to 15 pounds occasionally. (PX 3, p. 100)

Petitioner attended physical therapy from October 14, 2022, until November 9, 2022. (See PX 3, pp. 9-86) At his initial visit of October 14, 2022, Petitioner reported lower back pain at 9/10 in his bilateral lumbosacral area. (PX 3, p. 80) At his final PT visit of November 9, 2022, Petitioner reported pain at 7/10 across his right lumbosacral area. (PX 3, p. 10) Petitioner reported that he had gone for a short walk earlier that day and then lay down to rest; however, he had difficulties getting back up after and was now very sore. (*Id.*) Petitioner reported that he was very upset and tired of the pain, and that he had scheduled an appointment with a spine specialist. (*Id.)*

On November 14, 2022, Petitioner presented to Dr. Howard Freedberg at Suburban Orthopaedics on referral from his primary care physician. (PX 4, p. 83) Petitioner complained of constant throbbing pain in his lower back - 6/10 with activity and 9-10/10 while at work - with stiffness, tingling in his right lumbar region, occasional numbness down his left leg, increased frequency of the need to urinate, and difficulty sleeping. (*Id.*) He also reported no relief after attending physical therapy for four weeks. (*Id.*) Petitioner related his history of injury on September 15, 2022. (PX 4, p. 83) Petitioner reported that he was now taking 1600mg of Advil daily for the pain. (*Id.*) He disclosed his prior medical history of L5 surgery 26 years prior, from which he had recovered well with minor soreness and no limitations. (*Id.*) On physical examination, Dr. Freedberg noted positive tenderness in Petitioner's right sacroiliac joint and limited lumbar range of motion due to pain. (PX 4, p. 84) X-rays taken that day showed severe degenerative changes with bone-on-bone in the lumbar spine at L5-S1, degenerative disk disease, possible spondylolisthesis at L4-5, and small osteophytes at multiple levels. (PX 4, p. 85) Dr. Freedberg diagnosed Petitioner with a lumbar sprain/strain, spondylolisthesis, L5-S1 degenerative disk disease, and prior surgery at L5-S1 26 years ago. (PX 4, p. 85) Dr. Freedberg ordered a lumbar MRI with contrast, took Petitioner off work, prescribed a home exercise program, and medications (Mobic, Tramadol, Flexeril, and a Medrol Dose Pack). (*Id.*)

On November 22, 2022, Petitioner underwent a lumbar MRI study revealing a left paramedian disk herniation at L2-3 impinging the left lateral recess and encroaching the floor of the left foramen; a paracentral disk protrusion at L3-4 impinging both neural foramina and causing a mass effect on the left L3 nerve root; at L4-5, disk dehydration and slight grade 1 anterior spondylolisthesis with lateral recess and central canal stenosis relating to moderate degenerative arthrosis and encroachment on the floor of the neural foramina; and at L5-S1, narrowing and dehydration of the disk with a left hemilaminectomy defect and a extruded fragment migrating in the left lateral recess impinging the proximal left S1 nerve root, plus paracentral disc encroachment, spurring, and facet arthrosis causing moderate to severe bilateral foraminal stenosis with a mass effect on the exiting L5 nerve roots. (PX 4, pp. 90-91) Radiologist Douglas Arnson stated that marrow edema within the L5 pedicles, greater on the right, raised suspicion for unilateral nondisplaced spondylolysis or a pedicular stress fracture. (PX 4, p. 91)

On December 1, 2022, Petitioner returned to Dr. Freedberg complaining of constant back pain at 7-8/10 with radiation into his left hip and left leg. (PX 4, p. 78) Dr. Freedberg reviewed Petitioner's MRI; he maintained his diagnosis and referred Petitioner to Dr. Dalip Pelinkovic for treatment of his spine condition. (PX 4, pp. 80-81)

On December 8, 2022, Petitioner presented to Dr. Pelinkovic for a spine surgery consultation. (PX 4, p. 70) Petitioner reported that he was working full duty before the accident, and that he had a microdiscectomy at L5 26 years prior with a good recovery post-surgery and minor soreness that was manageable from home. (PX 4, p. 70) He reported constant lumbar pain between 7/10 and 10/10 with numbness and tingling in his lower back and radiation down his left buttock and the back of his left thigh, as well as increases in lumbar pain with sitting, standing, walking, lying down, and bending; sleep disturbance; and the ability to walk 5 minutes before needing to rest. (PX 4, pp. 70-71)On physical examination, Dr. Pelinkovic noted lower back tenderness at the waistline with muscle spasms; pain produced with forward flexion; and decreased sensation to touch on the left side in the L5-S1 distribution. (PX 4, pp. 71-72) Dr. Pelinkovic further noted that Petitioner had a positive straight leg raise test on the left side and Waddell signs were negative. (PX 4, p. 72)

Dr. Pelinkovic reviewed Petitioner's lumbar MRI report and the associated films. (PX 4, pp. 73-76) Dr. Pelinkovic diagnosed Petitioner with L4-5 spondylolisthesis with spinal stenosis; L5-S1 disc herniation; and post laminectomy syndrome. (PX 4, p. 76) Dr. Pelinkovic kept Petitioner off work, ordered epidural steroid injections, and ordered the use of an infrared heating pad to minimize the need for narcotic medication. (PX 4, pp. 76-77) Dr. Pelinkovic opined: "To a reasonable degree of medical and surgical certainty, it is more likely than not that that the patient's current condition is causally related to the injury of 09/15/22." (PX 4, p. 77) He further opined that Petitioner's medical care to date had been reasonable and appropriate. (*Id*.)

On December 16, 2022, Petitioner was seen by pain management physician Dr. Dmitry Novoseletsky on referral from Dr. Pelinkovic. (PX 4, p. 65) Petitioner reported low back pain and a feeling of constant pressure, especially at night, which made it impossible for him to lie on his back. (*Id*.) He reported difficulty sleeping, soreness when walking, and radiation of the pain to his left buttock and hamstring, causing numbness. (*Id.*)Petitioner again reported his history of injury: he was pushing 350-400 pounds of product up a wet ramp using a dolly when the dolly hit

the curb, causing the load to tip over. (PX 4, p. 65) He attempted to stop it, producing immediate lower back pain. (*Id.*) On physical examination, Dr. Novoseletsky noted spinous process tenderness at S1, L5, and L4, as well as limited range of flexion and extension due to pain. (PX 4, p. 66) Dr. Novoseletsky noted that Waddell signs were negative. (PX 4, p. 67) Dr. Novoseletsky reviewed the lumbar MRI. (*Id.*)

Dr. Novoseletsky opined that Petitioner was suffering from an extruded disc fragment at L5-S1 putting pressure on the S1 nerve root, which he stated fit with Petitioner's clinical presentation. (PX 4, p. 68) He ordered a left L5-S1, S1 transforaminal epidural steroid injection to address any inflammatory cause of the pain, potentially to be followed by a lumbar median branch block depending on the results of the injection. (*Id.*)

On January 24, 2023, Dr. Novoseletsky performed a left transforaminal epidural steroid injection at L5-S1 and S1 under fluoroscopic guidance. (PX 4, p. 88) Dr. Novoseletsky then discharged him with instructions to return in two weeks. (*Id.*)

On February 6, 2023, Petitioner returned to Dr. Novoseletsky reporting that he had obtained no relief from the injection and that his symptoms remained unchanged. (PX 4, p. 60) Dr. Novoseletsky referred Petitioner back to Dr. Pelinkovic to discuss surgical options. (PX 4, p. 63)

On February 9, 2023, Petitioner followed up with Dr. Pelinkovic reporting constant back pain at 8-9/10 radiating down his left leg into the hamstring, tingling down his legs into the hamstrings bilaterally, and difficulty with prolonged standing or lying down. (PX 4, p. 51) On physical examination, Dr. Pelinkovic again noted decreased sensation in the left L5-S1 distribution and a positive straight leg raise test on the left. (PX 4, p. 53) He again noted no Waddell signs. (*Id*.) He maintained his diagnosis of L4-5 spondylolisthesis with spinal stenosis, L5-S1 disc herniation, and hemilaminectomy syndrome. (PX 4, p. 57) Dr. Pelinkovic opined that Petitioner had failed conservative treatment, with PT worsening his pain and injections providing only limited relief. (PX 4, pp. 57-58) Due to the failure of conservative treatment and Petitioner's worsening symptoms, Dr. Pelinkovic recommended posterior surgical decompression at L4-5 and L5-S1 with anterior lumbar fusion. (PX 4, p. 58.) Petitioner agreed to the surgery. (*Id*.) Dr. Pelinkovic reiterated his causal opinion as well as his opinion that treatment to date had been reasonable and necessary. (*Id.*) He also advised the patient to remain off work. (*Id.*)

Section 12 Examiner- Dr. Colman

On April 4, 2023, Dr. Matthew Colman of Midwest Orthopaedics at Rush examined the Petitioner at the request of Respondent, pursuant to Section 12 of the Act. The Petitioner provided a consistent history of the accident on September 15, 2022, specifically advising the doctor that on that date he was attempting to move a two-wheeler loaded with 400 pounds of product up a ramp when it slid off the skid plate and began to topple over. He reached forward with his left arm and upper body to try and prevent the two-wheeler from falling, but immediately upon doing so felt a sharp pain in his low back. (RX 9, Respondent's Ex. No. 2, p. 3) As time has moved on, the pain has progressed into pain shooting into his left hip and into the left hip, with persistent low back pain, worse with standing or doing dishes or being on his feet for greater than five minutes at a time. (*Id.*) The Petitioner also reported a pre-existing history concerning his low back, including a hemilaminectomy surgery done over two decades ago. (RX 9, Respondent's Ex. No. 2, p. 3) He

admitted to normal aches and pains in the low back prior to the work injury, but the pain he is now experiencing is quite significant from any sort of normal aches and pains he was having before the injury. (*Id.*) He also reported to Dr. Colman that following the injury, he did try to work for about a month, but unfortunately due to the persistent pain he could not [continue] and so has been off work since. (*Id.*)The physical examination by Dr. Colman showed a normal and full range of motion of the lumbar spine, including flexion and extension, although these motions did elicit pain. (RX 9, Respondent's Ex. No. 2, p. 4) He had normal lateral bending and was nontender to palpation along the lumbar paraspinal musculature. (*Id.*) X-rays taken on that date demonstrated L4-5 anterolisthesis and severe degenerative disc disease at L5-S1. There was also a large residual disc herniation on both the right and left at L5-S1 with disc space collapse. Dr. Colman notes that the disc herniations appear chronic and not acute given the lack of surrounding inflammation and their general qualitative appearance. (RX 9, Respondent's Ex. No. 2, p. 4) In the "Interrogatories" portion of his report, Dr. Colman notes he did not detect signs of secondary gain such as pain out of proportion or loss of pain with distraction, nor did he detect any Waddell signs. (RX 9, Respondent's Ex. No. 2, p. 5) Dr. Colman also expressed the opinion that the Petitioner's current state of ill-being was not related to the work accident of September 15, 2022. He notes the imaging shows a significant and chronic degenerative lumbar condition and the mechanism of injury was not sufficient to cause an appreciable aggravation or acceleration of this condition. (*Id.*)

Dr. Colman further notes the mechanism of injury was a sudden reaching motion ("The patient reached out in a flexed forward position to attempt to stop it [two-wheeler] from falling and felt a sharp pain in the low back."). There was no contusion or fall. In his opinion, the reaching incident caused a minor sprain or strain of the lumbar spine and has no relation to the Petitioner's current condition which is due entirely to his degenerative disease. (RX 9, Respondent's Ex. No. 2, p. 9) He further expresses the opinion the cause of Petitioner's current condition is a mere manifestation of the degenerative disease, which is progressing according to normal course. (*Id.*) Finally, while he does not believe the Petitioner engaged in any injurious practice which delayed or hampered his recovery, he does believe that if a traumatic injury had truly occurred on September 15, 2022, leading to significant back and leg pain, the patient would have sought immediate medical attention. (*Id.*)

As for future treatment, Dr. Colman states that a posterior lumbar decompression and fusion is a reasonable treatment recommendation for the patient's degenerative condition. (RX 9, Respondent's Ex. No. 2, p. 6) He further states that such treatment would not be causally related to the accident on September 15, 2022, since that incident at most caused a lumbar sprain or strain and has no relation to the patient's manifestation of significant lumbar degenerative disease, including instability and spinal stenosis. (*Id.*) As for the ability to work, he states that but for the significant degenerative lumbar spinal stenosis and instability, the patient could work in a full duty capacity without restrictions, but given the degenerative condition, he should be placed on sedentary duty until such time as proper treatment can be rendered for that condition. (*Id.*)

Petitioner's Medical Treatment (continued)

On April 24, 2023, Petitioner returned to Dr. Pelinkovic with continued complaints of sharp, throbbing back pain radiating into his left hamstring with occasional numbness. (PX 4, p. 26) Petitioner reported that his back pain had worsened to 8.5-9/10. (*Id.*) Petitioner reported that he was still taking Hydrocodone and Meloxicam as needed. (*Id*.) Dr. Pelinkovic reviewed Dr. Colman's Section 12 report; he remarked that Dr. Colman is not an accident reconstructionist qualified to determine whether the accident could have produced long-standing ill effects. (PX 4, p. 29) Dr. Pelinkovic noted that Petitioner's post-accident symptoms did not ever get better, a fact that he opined is inconsistent with Dr. Colman's theory that Petitioner had at most sustained a minor strain. (*Id*.)

On May 4, 2023, Petitioner returned once more with complaints of low back pain. (PX 4, p. 17) Dr. Pelinkovic expanded on his rebuttal to Dr. Colman in these records, stating that Dr. Colman lacked the training to calculate whether the mechanism of injury "exerted sufficient force to the lumbar spine" to cause a structural injury. (PX 4, p. 24) Dr. Pelinkovic further opined, "a spine with degenerative changes is more prone to trauma tha[n] a completely healthy spine." (*Id.*)

On June 8, 2023, Petitioner returned to Dr. Freedberg for follow-up. (PX 4, p. 13) Petitioner reported continued lower back pain at 8-9/10 radiating down his left leg behind the knee, with some numbness and tingling in his left buttocks. (*Id*.) On physical examination, Petitioner remained tender to palpation in the lumbar and sacroiliac areas, with limited range of motion, 4/5 strength with heel and heel walk, and a sensory deficit in the dorsal area of the foot. (*Id.*) Dr. Freedberg opined that Petitioner had a lumbar sprain with spondylosis and L5-S1 degenerative disc disease and kept Petitioner off work. (PX 4, p. 13) He stated that he agreed with Dr. Pelinkovic's recommendation for surgery; he sent Petitioner back to Dr. Pelinkovic for further treatment. (*Id*.)

On June 22, 2023, Petitioner followed up with Dr. Pelinkovic complaining of pain and symptoms unchanged since his last visit. (PX 4, p. 9) On physical examination, Petitioner had tenderness at the lumbosacral junction; lower back pain reproduced with forward flexion; significant lower back pain and spasms reproduced with reaching and rotation; and bilateral buttock pain reproduced with straight leg raises. (*Id*.) Dr. Pelinkovic further noted decreased sensation in the L5-S1 distribution, left more than right, as well as diminished deep tendon reflexes 1+ bilaterally for the patella and Achilles. (*Id*.) Dr. Pelinkovic maintained his recommendation for lumbar decompression and fusion surgery. (PX 4, p. 10)

On September 14, 2023, Petitioner returned to Dr. Pelinkovic once more. (PX 4, p. 6) On that date, Petitioner reported radiating, sharp, constant lower back pain at 10/10, for which he was only taking Advil for symptom management at that time. (*Id*.) Petitioner remained unchanged on physical examination and Dr. Pelinkovic continued to recommend a spinal decompression and fusion at L4-5 and L5-S1, which Petitioner continued to agree to. (PX 4, p. 8)

Testimony of Dr. Howard Freedberg- treater

The deposition of Dr. Howard S. Freedberg was taken on June 22, 2023. Dr. Freedberg is a board-certified general orthopedist, and board certified in sports medicine as well. (PX 5 p. 5). Dr. Freedberg first treated Petitioner on November 14, 2022. (PX 5, p. 7). Petitioner reported injury while using a dolly on September 15, 2022, loaded with 350 to 400 pounds of product. (*Id.*) As he was lifting the dolly onto a ramp (which was wet), the load tipped over and as he attempted to stop it, he felt a twinge and a sharp pain in his lower back. (*Id.*) He waited about four weeks before seeing a doctor and was then seen at Concentra and participated in about four weeks of physical therapy without any relief. (*Id.*)

The Petitioner came to his office with low back pain, including throbbing, stiffness, difficulty with sleeping and an inability to perform his truck driving and unloading work. (PX 5, p. 8) He reported only minor soreness with no limitations following his back surgery 26 years ago. (*Id.*) Based on the Petitioner's complaints, physical examination and review of x-rays, Dr. Freedberg diagnosed L5-S1 degenerative disc disease and possible L4-5 spondylolisthesis. (*Id.,* p. 9) He ordered an MRI scan of the lumbar spine. (*Id.*) Dr. Freedberg testified the MRI scan showed multiple levels of problems with the back, and since the patient has already failed physical therapy by that point and medications were not helping, he elected to send him over to Dr. Pelinkovic. (PX 5, p. 9) He does not operate on the spine and Dr. Pelinkovic is a spine surgeon. (*Id.*, p. 11)

To a reasonable degree of medical and surgical certainty, it is the opinion of Dr. Freedberg that the accident of September 15, 2022, was a cause or contributing factor to his diagnosis concerning Petitioner's lumbar spine. (PX 5, p. 12) He testifies to the lack of any record of treatment to Petitioner's low back from the surgery 26 years ago to the date of accident, and Petitioner was able to work full duty for many years after that surgery. (*Id.*) Dr. Freedberg also testified that trying to stop a load that weights 350 to 400 pounds can be enough to produce a problem in the spine and the Petitioner's symptomology since that time. (*Id.*) Dr. Freedberg testified that he disagreed with Dr. Colman's opinion concerning the mechanism of injury; he testified that Petitioner's mechanism of injury absolutely can be a culpable mechanism to produce a strain and produce problems in the spine, inclusive of the pain and exacerbating any pre-existing changes. (*Id*.)

Dr. Freedberg also testified to the multiplicity of findings on the Petitioner's MRI scan and inability to determine whether those findings reflect acute findings produced as a result of the accident or an exacerbation of pre-existing findings. (PX 5, p. 14) He notes an MRI scan provides great information but does not answer this question. (*Id.*) Dr. Freedberg also refers to what he calls a "homeostatic balance," which is the body's ability to deal with the stresses imparted to it. (PX 5, p. 14) After the accident, the Petitioner lost that homeostatic balance, either as a result of a new injury or exacerbation of the pre-existing issues, or a compilation of both. (*Id.,* pp. 14-15) In sum, Petitioner was working and doing fine for many years and after the accident occurred, he could no longer do so. In Dr. Freedberg's opinion, that represents a significant or material exacerbation of Petitioner's pre-existing condition. (*Id.*)

Testimony of Dr. Dalip Pelinkovic- treater

On July 21, 2023, Dr. Pelinkovic testified at an evidence deposition. (PX 6.) Dr. Pelinkovic is an orthopedic surgeon specialized in spine surgery. (PX 6, p. 5) Dr. Pelinkovic has been licensed to practice medicine since 1996, was board certified in 2010 and re-certified in 2020. (*Id*.) Dr. Pelinkovic first saw Petitioner on December 8, 2022. (PX 6, p. 6). Petitioner was referred to Dr. Pelinkovic by Dr. Freedberg. (PX 6, p. 6-7). Dr. Pelinkovic testified his understanding is that on September 15, 2022, Petitioner was pushing a dolly up a ramp, the load was about to tip over, Petitioner attempted to stop the load from tipping over and hurt his back. (PX 6, p. 8) Petitioner sought medical attention a few weeks later from Concentra and underwent physical therapy which did not help him, and then saw Dr. Freedberg. (*Id.*)

Dr. Pelinkovic reviewed the MRI images, which showed that Petitioner had a disk herniation at L5-S1, slippage and instability at L4-5. (PX 6, pp. 9-10) It is his understanding Petitioner had a laminectomy more than 10 years prior but worked full duty up to the accident. (PX 6 p. 10). Dr. Pelinkovic testified to a reasonable degree of medical and surgical certainty that Petitioner's conditions of ill-being in his lumbar spine at L4-5 and L5-S1 are causally related to his work accident of September 15, 2022. (PX 6, p. 10) Dr. Pelinkovic based this opinion on his experience in this matter, on his history, physical examinations, reviews of the diagnostic imaging, and on the fact that Petitioner was working full duty prior to the work accident. (PX 6, pp. 10-11) Dr. Pelinkovic testified that Petitioner still has constant back pain radiating down his left leg at 8-9/10 with limitations secondary to that pain, and that Petitioner is not getting better. (PX 6, p. 11) He reiterated that this condition is causally related to Petitioner's accident. (PX 6, p. 11-12)

Dr. Pelinkovic recommended decompression and fusion at L4-5 and L5-S1 due to instability at L4-5, to realign the canal, "unkink" the spine and stabilize it where there's instability. The two-level decompression is to release the pressure on the nerve and stabilization to stabilize the spine. (PX 6 p. 13).

Dr. Pelinkovic testified that he disagrees with Dr. Colman's causal opinion. (PX 6, p. 14) Dr. Pelinkovic stated that neither he nor Dr. Colman are qualified as an accident reconstructionist to determine the exact biomechanical forces exerted on Petitioner's body during the accident. (*Id*.) Dr. Pelinkovic further testified that Dr. Colman could not know that the disk issues appearing on Petitioner's MRI predated the accident, as there was no pre-accident MRI to compare it to. (*Id*.) Dr. Pelinkovic testified that it is normal for someone Petitioner's age to have degenerative changes in the spine, and that injuries to older spines are more common than injuries to a younger person. (PX 6, p. 15)

Testimony of Dr. Matthew Colman- Section 12 Examiner

The deposition of Dr. Matthew Colman, M.D., was taken on August 15, 2023. Dr. Colman is an orthopaedic surgeon specializing in spine surgery, working out of Rush University, Midwest Orthopaedics, in Chicago. (RX 9, p. 5) Dr. Colman's review of the medical records is noted in his IME report. (RX 9, p. 10) In summary, majority of records reviewed are from October 2022 through March 2023. (*Id.*) Dr. Colman opined the Petitioner's current condition of ill-being is not related to the work accident of September 15, 2022, but rather is a manifestation of his significant degenerative condition, and he did not believe the mechanism of injury was sufficient to cause an acceleration or aggravation of that degenerative condition. (RX 9, p. 16) He testified that Grade 1 degenerative spondylolisthesis is not a traumatic condition, but rather a chronic radiographic finding which occurs over many, many years of wear and tear for the patient. (*Id.*) Furthermore, he testified there are certain conditions like fracture or acute disc herniations which have a very characteristic acute appearance on MRI, which the Petitioner didn't have. (*Id.,* p. 17) Lastly, if it's unclear, he looks for local inflammation or surrounding edema to indicate an acute process. If he doesn't see anything acute and the patient's symptoms are explained by the underlying degenerative condition, he has a difficult time relating the state of ill-being back to a work injury. (*Id.*) It is his understanding of the accident that Petitioner reached out and flexed forward to attempt to stop the two-wheeler from falling and felt the onset of sharp low back pain. (RX 9, p. 17) He didn't fall or get struck by machinery; he simply reached out suddenly to stop it from falling. (*Id.,* p. 18) While the mechanism of reaching out could cause perhaps a minor soft tissue sprain or strain, such a mechanism wouldn't be expected to cause objective imaging findings. (*Id.*) Dr. Colman testified that he asked Petitioner about the one-month gap in treatment following the accident on September 15, 2022, and Petitioner reported that he just tried to work through the pain and eventually sought care. (RX 9, p. 21) Dr. Colman didn't find this to be a "very consistent answer." (*Id.*) He felt if Petitioner had sustained a significant trauma on September 15, 2022, leading to debilitating back and leg pain, it's unlikely he would have just worked through it for a month. (*Id.,* pp. 21-22) Most people would seek medical attention for a problem that was that significant. (*Id.,* p. 22) As such, it was his opinion the Petitioner more likely sustained a sprain or strain and the current state of ill-being is more likely than not a manifestation of his degenerative condition, with no relation to the accident of September 15, 2022. (*Id.*) Regarding imaging, Dr. Colman testified it can be very challenging to tell the difference between a chronic and an acute disc herniation, but noted an acute disc herniation generally looks [to be] more of a gray material indicating an acute herniation of the nucleus pulposis, and there's usually surrounding edema in the epidural space and surrounding tissues. (RX 9, p. 23) A chronic disc herniation is more black in character and has no surrounding edema. (*Id.*)

On cross-examination, Dr. Colman testified the accident history in the medical records do reference less of a reach and more of a twisting motion to prevent an object from falling, but that's the extent of his understanding. (RX 9, p. 31) As for the Petitioner's pre-accident history, he wasn't given any medical records for the interval period from the prior lumbar surgery 20 or more years prior to the date of accident in September 2022. (RX 9, p. 32) When questioned, the Petitioner advised him he had normal aches and pains over the years before the recent injury but didn't note any periods of being off work or any other significant events. (*Id.*, pp. 33-34) He also agreed that in his practice as a treating orthopaedic surgeon, he has had patients that work through their pain and continue to do their jobs ("I would hope that everybody would try to do their best with their job duties and manage their pain, sure."). (*Id.*, p. 35)

Social Media Evidence

The Respondent submitted screenshots of Petitioner's Facebook page into evidence. (RX 10) Petitioner's posts were visible in the screenshots. (T. 40) Petitioner testified that many of the pictures were not recent, with some as old as five to seven years old. (T. 40-41) According to Petitioner, the date the pictures were posted and the date the pictures were taken was often not the same. (T. 44-45) Some photos depicted a trip to visit his ailing mother in Greece, from July 28 through August 30, 2023. (T. 42) The photos which depict this trip include photos 1A, 1B, 2A, 2B, 3A and 5A (RX 10) Photo 3B is a photo of Petitioner with his mother, taken several years ago and posted in May 2023. (RX 10; T. 45) Petitioner testified that the flight to Greece was nine-and-a-half hours non-stop, and that the return flight was ten-and-a-half hours. (T. 48) Petitioner did not engage in any physical activities in Greece—he seen sitting in every photo. (T. 52-54) He was not restricted from traveling to Greece by any doctor (T. 52), either by Dr. Colman (T. 55) or Dr. Pelinkovic. (T. 56)

Other photos were taken at a Chicago Bulls game at the United Center in November 2022. (RX 10; T 46, 54.) Photos 4A and 4B were taken by Petitioner when he attended the game on November 18, 2022 (RX 10; T. 46), which he posted that day or the day after. (T. 47) Petitioner merely spectated; he did not participate in any athletic activity there. (T. 54)

Post-Accident Employment and Termination

Petitioner did not work the day after the accident (September 16, 2022), as his back was very stiff and very sore, and he called his supervisor Debbie to report the accident and that he would not be in to work that day. (T. 20) The Home Juice Driver Weekly Attendance Report notes that Petitioner was off work that day due to back pain ("back still hurts"). (RX 3, pp. 1-2)

Petitioner thereafter worked his regular job without restrictions through October 13, 2022. (T. 30) He worked with a helper from the date of accident until he first sought medical treatment. (T. 22), which is confirmed by the Driver Weekly Attendance Reports. (RX 3, pp. 3-6) During this period, he noticed his condition was worsening and it became harder for him to finish his days at work. (T. 21). He explained the reason for not seeking medical treatment prior to October 13, 2022, was that over the years, he would get pains and aches that would heal on their own within a week or two, but this one kept getting progressively worse. (*Id.*).

He was off again on October 14, 2022, due to "back injury." (RX 3., p. 7) After the weekend, Petitioner worked light-duty on October 17 and October 18, 2022. (T. 22) The first time Petitioner was taken completely off work was in November 2022. (T. 34-35) Petitioner was not taken off work until after Petitioner was terminated by Respondent. (T. 35)

On October 19, 2022, Respondent terminated Petitioner from his employment, citing violation of its "General Policies and Rules of Conduct, group III, #12: failing a drug or alcohol test taken as a result of an occurrence at work." (RX 7) Petitioner acknowledged signing the acknowledgment page for receipt of a copy of the General Policies and Rules of Conduct. (RX 6; T. 32). Petitioner testified and acknowledged that failing a drug or alcohol test was subject to immediate

termination. (T. 32). Petitioner acknowledged he had his CDL license between date of accident on September 15, 2022, and October 13, 2022. (T. 33) Petitioner acknowledged he was subject to DOT regulations. (*Id.*) Petitioner was notified of termination based on failed drug or alcohol test by Matt Lamb. (T. 34) He was also provided with a letter of termination. (RX 7; T. 34)

Petitioner was not tested for drugs/alcohol on the date of the occurrence; Petitioner's test for alcohol or drug use occurred on October 13, 2022. (T. 34, 51, 76) Petitioner testified he was not taking drugs of any kind on September 15, 2022. (T. 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). A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an

accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

In this case, Petitioner's credible testimony establishes such a chain of events. No evidence was submitted showing that in the twenty-six years prior to September 15, 2022, Petitioner had any treatment to his lower back. Following lumbar surgery twenty-six years ago, Petitioner experienced "normal" aches and pains in his lower back, for which he did not seek medical treatment. Prior to September 15, 2022, Petitioner was working eight-to-ten-hour days driving a truck and unloading up to 850 cases of product. There is no dispute a work-related accident took place on September 15, 2022. Petitioner was delivering beverages from his truck and was operating a two-wheeler loaded with a vertical stack of beverage cases weighing 300-400 pounds. As he was pushing the two-wheeler up a metal ramp over a curb, one of the wheels on the two-wheeler slipped and slid off the ramp, hitting the curb and causing the whole load to start tipping over. Maintaining control of the two-wheeler with his right hand, Petitioner reached out with his left hand and attempted to keep the 300-400-pound load from toppling. However, as Petitioner grabbed the plastic wrap around the load and flexed, he felt a sharp pain in his lower back. Petitioner testified that his lower back was very painful and that he had never felt anything like it before.

Petitioner testified that he contacted his supervisor ("Debbie") to report the accident and took the next day off due to pain in his back. This is verified by the notation in the Driver Weekly Attendance Report for September 16, 2022 ("off, back still hurts"). The Petitioner testified he thereafter continued to perform his regular work activities for the next month, with the assistance of a helper. He also testified that while performing his regular work activities through October 13, 2022, his condition became progressively worse, until such time as he called off work on October 14, 2022, due to a "back injury," as noted in the Driver Weekly Attendance Report for that date.

The Arbitrator finds Petitioner's reason for delaying medical treatment to be credible. Someone who noticed "normal" aches and pains over the years, which would typically resolve within a few weeks, may not immediately seek medical treatment. In addition, the testimony of Petitioner as well as Matthew Lamb, witness for Respondent (as well as the documents submitted by Respondent) establish that Petitioner had a helper for assistance in performing his work duties from the date of accident until he finally took a day off due to his back injury on October 14, 2022. Apart from the chain of events noted above, there is also the medical question as to whether the Petitioner's current condition of ill-being is causally related to the accident of September 15, 2022, as an aggravation of a pre-existing condition, or whether the Petitioner's current condition is related strictly to the pre-existing condition itself.

Employers take their employees as they find them. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002). Thus, even though an employee has a preexisting condition that may make him or her more vulnerable to injury, recovery for an accidental injury will not be denied as long as the employee establishes that the employment was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Cases involving aggravation of a preexisting condition concern primarily medical questions and not legal ones. That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's

condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Nanette Schroeder v. The Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC (4th Dist., 2017).

It is the Commission's function to choose between conflicting medical opinions. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 4, 31 Ill.Dec. 789, 394 N.E.2d 1166, 1168 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 232, 168 Ill. Dec. 756, 590 N.E. 2d 78, 82 (1992). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 4, 31 Ill.Dec. 789, 394 N.E.2d 1166, 1168 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 232, 168 Ill. Dec. 756, 590 N.E. 2d 78, 82 (1992).

In this case, Petitioner's treating physicians, Dr. Freedberg and Dr. Pelinkovic, both testified as to the causal relationship between the work accident of September 15, 2022, and Petitioner's current condition of ill-being regarding his lumbar spine. Dr. Freedberg pointed to the Petitioner's lack of medical treatment to his low back for the twenty-six years from a previous surgery to seeking treatment after the accident. He also opined the mechanism of injury (flexing the low back and reaching over the two-wheeler to stop a 350–400-pound load from tipping over) was sufficient to cause Petitioner's subsequent symptoms and exacerbate the pre-existing condition of the back. He also testified as to the difficulty in discerning from an MRI scan what findings are acute and what are solely degenerative in nature.

Dr. Pelinkovic based this opinion on his experience in this matter, on his history, physical examinations, reviews of the diagnostic imaging, and on the fact that Petitioner was working full duty prior to the work accident. Furthermore, Dr. Pelinkovic testified that it is normal for someone Petitioner's age to have degenerative changes in the spine, and that injuries to older spines are more common than injuries to a younger person. Finally, he testified that without having a pre-accident MRI scan to compare, it is impossible to determine that all findings on the post-accident MRI scan were pre-existing in nature.

In contrast, Dr. Colman, the Section 12 Examiner, is of the opinion the Petitioner's current condition of ill-being is solely related to a pre-existing degenerative condition, other than a possible lumbar sprain/strain. He essentially bases this opinion on three factors: the mechanism of injury (reaching) was not sufficient to cause an aggravation of the pre-existing lumbar condition, the MRI findings do not show an acute injury and Petitioner would not have waited a month after the accident to seek treatment. The Arbitrator is not persuaded by his opinion for the reasons explained below.

The Petitioner testified to trying to control the falling two-wheeler (loaded with 350-400 pounds of product) with his right hand, while simultaneously bending and reaching in a twisting fashion with his left hand, trying to grab cases of product on the top of the two-wheeler, to keep them from falling. He testified to an immediate sharp pain in his low back with this motion. Dr. Colman first testified that he had the "impression" that Petitioner "reached out with a forward bending movement" to prevent the two-wheeler from falling, but then admitted that the medical records actually described it as more of a twisting motion. Dr. Colman gave no indication in either his

Section 12 report or his deposition testimony that he understood Petitioner was actually grabbing onto shifting piles of heavy product rather than just the two-wheeler itself.

Regarding the MRI findings, Dr. Colman testified that he looks for "gray material" as a sign of an acute disc herniation, with a chronic disc herniation being blacker in appearance, with no sign of edema. By his reading of the MRI scan, he did not see signs of an acute injury and felt the findings represented a degenerative, pre-existing condition. He did agree, however, that reading an MRI scan to tell the difference between an acute and degenerative disc herniation can be "very challenging." The Arbitrator also notes the radiologist's report regarding Petitioner's MRI of November 22, 2022, explicitly indicates the presence of marrow edema at L5. Regarding Dr. Colman's opinion concerning the gap in treatment between the date of accident and the Petitioner's first visit to Concentra, the Arbitrator (as noted above) does not consider such a delay to be unreasonable in this situation and based on Petitioner's history. Furthermore, Dr. Colman subsequently admitted that he has personally treated patients who did, in fact, work through their pain and continue to carry out their job duties after being injured. The Arbitrator also notes that according to both the medical records and Petitioner's credible testimony, Petitioner's condition did not start out at maximum severity: rather, it grew progressively worse over time. Dr. Colman himself opined that Petitioner's subjective complaints were consistent with the medical records and with Dr. Colman's own physical examination, and that he detected no Waddell signs and no signs of secondary gain.

For the foregoing reasons, the Arbitrator finds the opinions of Dr. Freedberg and Dr. Pelinkovic to be more persuasive than those of Dr. Colman on the issue of causal connection, and relies on the treating physicians in finding that Petitioner's condition of ill being is causally related to his work accident. **Based on the chain of events in this matter, as well as all of medical evidence and witness testimony, the Arbitrator finds the Petitioner's current condition of ill-being regarding his lumbar spine to be causally related to the work accident of September 15, 2022.**

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:

Respondent disputes its liability for Petitioner's outstanding medical bills on the basis of causation. The Arbitrator has found *supra* that Petitioner's condition of ill-being concerning his lumbar spine is causally related to the accident.

Dr. Pelinkovic has opined that Petitioner's treatment was medically necessary and reasonable. Dr. Colman conceded that Petitioner's treatment had overall been reasonable but disputed the reasonableness of epidural steroid injections in particular on the basis of his theory that Petitioner had sustained nothing more than a sprain/strain in his work accident. Dr. Pelinkovic stated that the injections were intended to address any inflammatory cause of Petitioner's pain after the failure of physical therapy. Having found the Petitioner sustained an aggravation of his pre-existing lumbar condition as a result of the work accident and that his current condition is more than just a sprain/strain, the Arbitrator finds all treatment rendered to Petitioner following the work accident, including all treatment rendered by Concentra, Suburban Orthopedics, and Alikai Health, to be reasonable and necessary.

In light of the above, having reviewed the bills and records of treatment, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all of the said treatment. Petitioner has submitted evidence establishing $10,230.45 in unpaid, outstanding medical bills; the Arbitrator finds that Petitioner is owed the same. (PX2.)

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:

Concentra Urgent Care:	**$787.84**
Suburban Orthopedics:	**$2,585.00**
Alikai Health:	**$6,857.61**
Total:	**$10,230.45**

Respondent's workers' compensation insurance carrier paid various medical benefits totaling $12,400.40 and the parties stipulated that Respondent would be entitled to a credit for those bills already paid.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. The Arbitrator notes that the issue of "prospective medical" was not specially notated under "Other" on the request for hearing form however this issue was clearly in dispute between the parties and one of the reasons this matter appears to have proceed to trial. Opinions regarding prospective medical was testified to and/or discussed in the medical records/IME report by both the treating physicians and IME doctor. Therefore, there is no surprise to either party that the Arbitrator makes a finding here about prospective medical. The Arbitrator therefore awards Petitioner the prospective medical care he seeks.

Petitioner seeks prospective care in the form of a lumbar spine surgery, specifically a posterior surgical decompression at L4-5 and L5-S1 with anterior lumbar fusion, per the recommendations of his treating physician, Dr. Pelinkovic. As previously stated, Respondent disputes causation and its section 12 examiner, Dr. Colman, opined the Petitioner's current condition of ill-being is not related to the work accident of September 15, 2022, but rather is a manifestation of his significant degenerative condition, and he did not believe the mechanism of injury was sufficient to cause an acceleration or aggravation of that degenerative condition. (RX 9, p. 16) As for future treatment, Dr. Colman states that a posterior lumbar decompression and fusion is a reasonable treatment recommendation for the patient's degenerative condition. (RX 9, Respondent's Ex. No. 2, p. 6) He further states that such treatment would not be causally related to the accident on September 15, 2022, since that incident at most caused a lumbar sprain or strain and has no relation to the patient's manifestation of significant lumbar degenerative disease, including instability and spinal stenosis. (*Id.*)

Dr. Pelinkovic testified to a reasonable degree of medical and surgical certainty that Petitioner's conditions of ill-being in his lumbar spine at L4-5 and L5-S1 are causally related to his work accident of September 15, 2022. (PX 6, p. 10) Dr. Pelinkovic based this opinion on his experience in this matter, on his history, physical examinations, reviews of the diagnostic imaging, and on the fact that Petitioner was working full duty prior to the work accident. (PX 6, pp. 10-11) Dr. Pelinkovic testified that Petitioner still has constant back pain radiating down his left leg at 8-9/10 with limitations secondary to that pain, and that Petitioner is not getting better. (PX 6, p. 11) He reiterated that this condition is causally related to Petitioner's accident. (PX 6, p. 11-12) Dr. Pelinkovic recommended decompression and fusion at L4-5 and L5-S1 due to instability at L4-5, to realign the canal, "unkink" the spine and stabilize it where there's instability. The two-level decompression is to release the pressure on the nerve and stabilization to stabilize the spine. (PX 6 p. 13).

Once again, the Arbitrator relies on the persuasive and credible opinions of Dr. Pelinkovic. The Arbitrator finds Petitioner's current condition ill-being is causally related to the accident of 9/15/22 and furthers awards prospective medical benefits he seeks in the form of a lumbar spine surgery, specifically a posterior surgical decompression at L4-5 and L5-S1 with anterior lumbar fusion, per the recommendations of his treating physician, Dr. Pelinkovic. The Arbitrator further finds that preoperative and post operative care in the form of medications, therapy, pain management etc., would also be reasonable and necessary treatment for Petitioner.

Regarding Issue L, whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010).

On October 13, 2022, Petitioner presented to Concentra Occupational Health Centers for treatment. He was complaining of lower back pain radiating bilaterally into his buttocks. He reported that the pain was worse when leaning forward to do the dishes or when laying on his back, and better when laying prone. He reported continuing to work regular duty at work but was increasingly unable to tolerate his regular shift. On physical examination, Petitioner was noted to have limited range of motion in his lower back, particularly with flexion. Straight leg raise tests were positive on both the left and right. X-rays revealed disc space narrowing at L5-S1 with facet hypertrophy. Petitioner also underwent alcohol and drug screens at this appointment.

Petitioner was assessed with a lumbar strain. He was prescribed Acetaminophen, Cyclobenzaprine, and Diclofenac, and was referred to physical therapy. Petitioner was allowed to work with restrictions of lifting up to 10 pounds occasionally and push/pull up to 15 pounds occasionally.

Petitioner attended physical therapy from October 14, 2022, until November 9, 2022. At his final PT visit of November 9, 2022, Petitioner reported pain at 7/10 across his right lumbosacral area. He also reported that he was very upset and tired of the pain, and that he had scheduled an appointment with a spine specialist.

On November 14, 2022, Petitioner presented to Dr. Howard Freedberg at Suburban Orthopaedics on referral from his primary care physician. Petitioner complained of constant throbbing pain in his lower back - 6/10 with activity and 9-10/10 while at work - with stiffness, tingling in his right lumbar region, occasional numbness down his left leg, increased frequency of the need to urinate, and difficulty sleeping. On physical examination, Dr. Freedberg noted positive tenderness in Petitioner's right sacroiliac joint and limited lumbar range of motion due to pain. X-rays taken that day showed severe degenerative changes with bone-on-bone in the lumbar spine at L5-S1, degenerative disk disease, possible spondylolisthesis at L4-5, and small osteophytes at multiple levels. Dr. Freedberg diagnosed Petitioner with a lumbar sprain/strain, spondylolisthesis, L5-S1 degenerative disk disease, and prior surgery at L5-S1 twenty-six years ago. Dr. Freedberg ordered a lumbar MRI with contrast, took Petitioner off work, prescribed a home exercise program, and medications (Mobic, Tramadol, Flexeril, and a Medrol Dose Pack).

The Respondent provided Petitioner with a light duty position within his restrictions and he worked in this position on October 17 and 18, 2022. He was terminated by Respondent on October 19, 2022, due to a failed drug test performed on October 13, 2022. This termination was as per Respondent's company policy.

Petitioner has continued to treat with Suburban Orthopedics from November 14, 2022, to the date of hearing on October 30, 2023. He has not been released by his treating physicians to return to work during the course of his treatment at Suburban Orthopedics.

Respondent disputes its liability to pay TTD based upon causal connection. As noted above, however, the Arbitrator finds that Petitioner's condition of ill-being regarding his lumbar spine is causally connected to his work accident of September 15, 2022. Respondent also contends that but for the failed drug test, taken in accordance with workplace policies, procedures, and in accordance with DOT regulations, Petitioner would yet be employed by Respondent, and Respondent would have work available to accommodate any restrictions. The Arbitrator is not persuaded by this argument, especially in light of the Supreme Court's holding in *Interstate Scaffolding, Inc.*

Similar to this case, the Petitioner in *Interstate Scaffolding, Inc.,* was working in a light duty position when he was terminated by his employer for violation of company policy (i.e., writing religious slogans on shelving in a storeroom). The Supreme Court rejected the employer's argument that since the employee was terminated by his own volition due to a violation of company policy, they did not owe the employee TTD benefits:

> "Whether an employee has been discharged for a valid cause, or whether the discharge violates some public policy, are matters foreign to workers' compensation cases. An injured employee's entitlement to TTD benefits is a completely separate issue and may not be conditioned on the propriety of the discharge.

> For the reasons stated above, we hold that an employer's obligation to pay TTD benefits to an injured employee does not cease because the employee had been discharged--whether or not the discharge was for "cause." When an injured employee has been discharged by his employer, the determinative inquiry for deciding entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. If the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work-related injury, the employee is entitled to TTD benefits."

Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n, 236 Ill. 2d 132, 149 (2010).

While the Petitioner's termination may have been per the Respondent's policies, the Petitioner's entitlement to TTD benefits cannot be conditioned on the propriety of the discharge. The only question is whether Petitioner's condition has stabilized or whether he continues to be temporarily totally disabled. According to the medical treatment records, Petitioner's condition had not stabilized by October 19, 2022, or by the date of hearing on October 30, 2023. The medical evidence shows that Petitioner continues to be temporarily totally disabled as a result of his work-related injury. Furthermore, Petitioner did not abandon his light duty employment with Respondent; rather, he was terminated due to violation of a company policy, based on the allegedly positive drug test conducted nearly a month after the accident.

Based on the above, the Arbitrator finds the Petitioner is entitled to receipt of TTD benefits for the period of October 19, 2022, through the date of hearing on October 30, 2023 (inclusive), a period of 53-6/7 weeks, at a rate of $1,294.61 per week.

The parties have stipulated that Respondent is entitled to a credit of $32,365.50 for TTD benefits paid prior to the date of hearing.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jacqueline C. Hickey
Arbitrator

March 15, 2024
Date

March 15, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC009952
Case Name	INSURANCE COMPLIANCE v. S&C CONSTRUCTION AND PAINTING
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0158
Number of Pages of Decision	6
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas Bowman
Respondent Attorney	

DATE FILED: 4/10/2025

/s/Christopher Harris, 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)
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois Department of Insurance, Insurance Compliance Department, Petitioner, v. Steve Huddleston, individually and DBA S&C Construction and Painting, Respondents.	)	NO: 24 WC 9952 23 INC 28

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois Department of Insurance, Insurance Compliance Department, brings this action against the above-captioned Respondents alleging violations of Section 4(a) of the Illinois Workers' Compensation Act (the Act) and Section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (the Rules). Upon proper and timely notice, the parties appeared and proceeded to hearing before Commissioner Christopher Harris on March 13, 2025 in Springfield, Illinois. Petitioner was represented by the Office of the Illinois Attorney General and Respondents appeared without counsel. A record was taken.

Petitioner claimed that Respondents knowingly and willfully lacked workers' compensation insurance from October 12, 2021 through October 25, 2024, or 1,108 days. Petitioner seeks the maximum fine allowed under the Act of $500.00 per day for each day that Respondents allegedly did business and failed to provide coverage for its employees – for a total of $554,000.00. In addition to said amount, Petitioner seeks $8,719.96 covering the same period for unpaid workers' compensation premiums. (T.10-11; Ex. 10).

For the reasons stated below, and after due consideration of the record in its entirety and being advised of the applicable law, the Commission finds that Respondents knowingly failed to provide coverage as required under Section 4(a) of the Act and Section 9100.90 of our Rules. The Commission further finds that Respondents' knowing and willful failure or refusal to comply with these pertinent provisions shall result in a penalty set in accordance with Section 4(d) of the Act.

FINDINGS OF FACT

Michael Cummins, an investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing that he became familiar with Steve Huddleston and S&C Construction and Painting (hereinafter S&C) after receiving notification of an underlying workers' compensation claim filed by Donald Mort against S&C and the Injured Workers' Benefit Fund (IWBF). The Commission notes that according to CompFile, its electronic filing system, this claim is presently pending before the Arbitrator as claim No. 22 WC 30318. Mr. Cummins further represented that Mr. Huddleston's business was covered by the automatic coverage provisions of Section 3 of the Act and that according to his investigation, Mr. Huddleston had employees but no workers' compensation insurance. (T.6-8).

The parties stipulated on the record to allow submission of Exhibits 1 through 11 into evidence. (T.4-5). Mr. Cummins was the only witness to testify and he referred to some of these exhibits while explaining the steps he took in his investigation. He confirmed that he reviewed the Illinois Secretary of State's database and learned that S&C was not incorporated. Exhibit 6 was a certification from the Office of the Secretary of State, dated January 19, 2024, which stated that their records did not disclose any corporation entitled S&C Construction and Painting as having been incorporated or licensed to transact business in Illinois at any time. (T.8; Ex. 6).

Mr. Cummins further stated that S&C did not have an account with the Illinois Department of Employment Security which indicated to him that S&C was not paying unemployment taxes for its employees. (T.8; Ex. 7).

Mr. Cummins also testified that he received verification from the National Council on Compensation Insurance (NCCI) that S&C never had a workers' compensation policy. The Commission has designated NCCI as its agent for the purpose of collecting proof of coverage information on Illinois employers who have purchased workers' compensation insurance from carriers. The certification labeled as Exhibit 5 stated that a thorough search of NCCI's business records on January 19, 2024 for the period of July 20, 2005 to March 14, 2023 did not reveal that any policy information had been filed showing proof of workers' compensation insurance for S&C Construction & Painting from July 20, 2005 to March 16, 2020, and from March 18, 2021 to March 14, 2023. Their records did show that S&C had a policy with an effective date of March 17, 2020 and an expiration date of March 17, 2021, but apparently that policy was cancelled on November 11, 2020. (T.8; Ex. 5).

Mr. Cummins additionally reviewed S&C's social media postings on Facebook, dated October 12, 2021 through March 16, 2022, and noted job advertisements and photographs of individuals working at different sites. (T.8-9; Ex. 11). Mr. Cummins then testified that he spoke with the Petitioner in the underlying workers' compensation claim, Mr. Mort, who confirmed that Steve Huddleston was the owner of S&C and that he normally worked with up to six other people on various job sites. (T.9). Finally, Mr. Cummins testified that the Illinois Workers' Compensation Commission's self-insurance administration office had provided him with a

certified record stating that neither S&C nor Mr. Huddleston was a self-insured entity. (T.9-10; Ex. 9).

Mr. Huddleston, on behalf of Respondents, did not testify at the hearing and did not present any witnesses. He further made no objections and asked no questions during either parties' case-in-chief. Mr. Huddleston also indicated having no issues with the questions asked or what was said during Petitioner's case-in-chief. (T.14-15).

Additional evidence submitted at the hearing per the parties' stipulation included Exhibit 1, Affidavits of Service of the Notice of Insurance Compliance Hearing. The Affidavits documented that Steven B. Huddleston was served with notice on September 25, 2024 and substitute service was made on Steve Huddleston on January 7, 2025. (Ex. 1). Exhibits 2, 3 and 4 are the Notice of Non-Compliance, dated March 14, 2023, sent to Steve Huddleston, individually and DBA S&C Construction and Painting, with the returned certified mailing envelope and tracking information. (Exs. 2-4). Exhibit 8 were records from the Illinois Department of Revenue which stated that no returns or forms were processed as of February 13, 2024 for S&C Construction and Painting. (Ex. 8).

CONCLUSIONS OF LAW

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "[t]he erection, maintaining, removing, remodeling, altering or demolishing of any structure"; "[c]onstruction, excavating or electrical work"; and "[a]ny enterprise in which sharp edged cutting tools, grinders or implements are used, including all enterprises which buy, sell or handle junk and salvage, demolish or reconstruct machinery." *820 ILCS 305/3(1),(2),(8).*

The Commission finds that Respondents' business falls within Sections 3(1), 3(2), and 3(8) of the Act. While there was no direct testimony as to the exact nature of Respondents' business during the alleged period of non-compliance, the Commission notes that Respondents operated under the name of S&C Construction and Painting. Mr. Huddleston also made no objections to the Facebook posts by profile name S&C Construction and Painting. Those posts depicted photographs of workers performing various activities related to construction, remodeling, altering and/or demolishing. The posts further mentioned siding work and requested the help of an experienced carpenter with their own hand tools. The Commission finds that the hearing record sufficiently demonstrated that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. *820 ILCS 305/4(a)*. Section 9100.90(a) of our Rules similarly provides that any employer subject to Section 3 of the Act shall insure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation using an insurance carrier authorized, licensed or permitted to do such insurance

business in Illinois." *50 Ill. Adm. Code 9100.90(a)*. Section 9100.90(c)(3)(E) of our Rules further provides that a certification from a Commission employee stating that "an employer has not been approved as a self-insurer shall be deemed prima facie evidence of that fact." *50 Ill. Adm. Code 9100.90(c)(3)(E)*. Section 9100.90(c)(3)(D) of our Rules also states that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." *50 Ill. Adm. Code 9100.90(c)(3)(D)*.

If the Commission determines:

> [A]fter reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense." *820 ILCS 305/4(d)*.

The Commission finds that by application of Section 3 of the Act, the Respondents were required to maintain workers' compensation insurance as instructed in Section 4(a) of the Act and by extension, Section 9100.90 of our Rules. The Respondents herein were provided with reasonable notice of the insurance compliance hearing and Respondents, who represented themselves at said hearing, had the opportunity to introduce evidence, call and examine witnesses and cross-examine witnesses pursuant to Section 9100.90(c)(3)(A). Respondents chose not to do so and concluded the hearing without demonstrating their compliance with Section 4(a) the Act for the claimed period and also offered no testimony or evidence as to why compliance had not been accomplished, again per our Rules.

The evidence further established that Respondents at one time had a workers' compensation policy that was cancelled prematurely. The apparent lack of insurance compelled Mr. Mort to name the IWBF as a co-Respondent in his pending workers' compensation claim. Exhibits 1-4 demonstrated that Petitioner notified Respondents of their non-compliance. The certified record from the Commission's self-insurance administration office also stated that no certificate of approval to self-insure was issued by the Illinois Workers' Compensation Commission to S&C Construction and Painting or its owner Steve Huddleston for the period of July 20, 2005 through March 14, 2023. The NCCI reviewed this same period and found that S&C only had an effective policy from March 17, 2020 through November 11, 2020.

The Commission finds that the evidence reasonably supports a finding that the Respondents knowingly and willfully failed and/or refused to comply with the provisions of Section 4(a) of the Act. With regard to the assessment of penalties pursuant to Section 4(d) of the Act, the Commission notes that at the hearing, Petitioner sought a fine for the specific period of October 12, 2021 through October 25, 2024. The submitted proofs, however, does not confirm whether or not the Respondents had workers' compensation insurance from March 15, 2023

through October 25, 2024 and there was no testimony in this regard. Accordingly, the Commission finds that Petitioner only proved that Respondents failed to comply with Section 4(a) of the Act and our Rules from October 12, 2021 through March 14, 2023, or 457 days.

Furthermore, with respect to Petitioner's request for an additional penalty for unpaid workers' compensation premiums, the Commission finds that Petitioner is not entitled to any such an award based on the lack of testimony and evidence explaining or corroborating Petitioner's calculation and its accord with Section 4(a-1) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Steve Huddleston, individually and DBA S&C Construction and Painting, pay to the Illinois Workers' Compensation Commission the sum of $228,500.00, representing 457 days of non-compliance with the Act and Rules at $500.00 per day as provided for in Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedures provided by Section 9100.90(e) of our Rules: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission or by an electronic format prescribed by the Commission and accepted by the Illinois Office of the Comptroller; and (2) payment shall be mailed or presented within thirty (30) days of the final Order of the Commission or the order of the court of review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 South LaSalle Street, 13th Floor
Chicago, Illinois 60603

Respondent may contact the Department of Insurance Workers' Compensation Compliance Division for instructions on making payment(s) electronically.

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

April 10, 2025

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

CAH/pm
4/9/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006554
Case Name	Charles Adams Jr v. Walgreens Distribution Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0159
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Telthorst

DATE FILED: 4/10/2025

/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

Charles Adams, Jr.

Petitioner,

vs. NO. 22WC006554

Walgreens Distribution Center,

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 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. 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 13, 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 $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.

APRIL 10, 2025

SJM/sj
o-3.19.25
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	22WC006554
Case Name	Charles Adams Jr v. Walgreens Distribution Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	James Telthorst

DATE FILED: 12/13/2023

/s/Maureen Pulia, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 12, 2023 5.19%

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)

CHARLES ADAMS, JR.,
Employee/Petitioner

v.

WALGREENS DISTRIBUTION CENTER,
Employer/Respondent

Case # **22** WC **6554**

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 **11/29/23**. 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. ☒ 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, **10/15/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**47,840.00**; the average weekly wage was $**920.00**.

On the date of accident, Petitioner was **62** 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 $**24,660.19** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**24,660.19**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

Petitioner and Respondent stipulate that all benefits due and owing petitioner through 8/11/23 have been paid.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $613.33/week for 15-5/7 weeks, commencing 8/12/23 through 11/29/23, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services for petitioner's right shoulder, from 10/15/20 through 11/29/23, 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 reasonable and necessary post-operative medical services recommended by Dr. Bradley for petitioner's right shoulder, 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.

Maureen H. Pulia

Signature of Arbitrator

December 13, 2023

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 62 year old split case stocker, sustained an accidental injury to his right shoulder that arose out of and in the course of his employment by respondent on 10/15/20. Petitioner has worked for respondent for 17 years.

As a split case stocker petitioner takes full cases off the cage, puts them on rollers, cuts the tops off, rolls them down to the bays, and loads the cases from the rollers into the bays. The cases vary in sizes from 1-50 pounds.

On 10/15/20 petitioner picked up a box that was 3 feet by 3 feet, and weighing over 50 pounds. As he attempted to swing it onto the rollers the box slipped out of his right hand. When he went to catch it, everything just popped from his neck down to his right wrist. Petitioner testified that prior to this date he never had any treatment for his right shoulder.

Petitioner was first seen at nurse triage on 10/15/20. He stated that he was on the phone with them for an hour and a half, and the nurse arranged for him to see respondent's primary care physician the next day. The next morning, petitioner was examined by Nurse Practitioner (NP) Nancy Boyd for his acute right shoulder pain at Walgreens Healthy Living Center.

On 10/19/20 petitioner returned to NP Boyd. He reported that his right shoulder pain was getting worse. NP Boyd made an orthopedic referral to Dr. McIntosh.

On 11/3/20 petitioner presented to Physician's Assistant (PA) Justin Northcutt at Crossroads Specialty Clinic where Dr. McIntosh practices. He complained of pain at the base of his neck that went down into his right shoulder and upper arm. He reported that the pain was constant and he could not really lift his arm since the accident. Following an examination, and x-rays of the right shoulder, Northcutt performed a cortisone injection into his right subacromial space, and prescribed Tramadol and a course of physical therapy. He took petitioner off work.

On 11/4/20 petitioner began a course of physical therapy at Mulvaney Rehab Services, Ltd.

On 11/17/20 petitioner underwent an MRI of the right shoulder. The impression was mild to moderate insertional subscapularis tendinopathy without a tear.

On 11/23/20 petitioner followed up with PA Northcutt. Petitioner reported that the injection and Meloxicam helped decrease his pain some. He also noted that physical therapy was helping him increase his strength. However, petitioner still had shoulder pain in the front of his right shoulder that radiated down into the middle part of his upper arm. His pain was worse with overhead activities. Following an

examination and review of the MRI, PA Northcutt prescribed a Medrol Dosepak, and continued petitioner in physical therapy.

Petitioner returned to PA Northcutt on 12/14/20. Petitioner reported that he was a bit better but was still having pain. He noted that he had limited physical therapy because he was waiting on work comp to authorize more visits. His range of motion was limited due to tightness and pain. He reported limited relief from the Medrol Dosepak. Following an examination, PA Northcutt performed a repeat cortisone injection.

On 1/4/21 petitioner returned to PA Northcutt. He reported that his right shoulder pain and tightness was persisting, but it was getting better. He noted that the injection decreased his pain, and his strength has improved with physical therapy. He noted that the tightness was inhibiting his progress in therapy. He reported constant pressure on the outside of his shoulder. PA Northcutt recommended a diagnostic shoulder arthroscopy. He noted that petitioner's exam was consistent with impingement. He released petitioner to light duty work only using his left hand, and no work above his chest or shoulders.

On 1/25/21 petitioner underwent a right shoulder arthroscopy with bicep tenotomy, and open decompression with bursectomy. This procedure was performed by Dr. Jeffrey McIntosh. Petitioner followed up post-operatively with Dr. McIntosh on 1/27/21. At that time, he had petitioner begin home exercises. On 2/9/21 petitioner complained of "stiff as it can be and spasms right arm." He reported that the spasms were in his forearm and biceps area. On 3/2/21 petitioner reported that he was improving daily. His current pain was 2/10, but he noted that it was 15/10 when doing home exercises.

Petitioner returned to Dr. McIntosh on 3/30/21. He noted that he was making slow but steady progress in therapy, but still had a fair amount of discomfort. He continued to complain of stiffness and soreness in the shoulder. Dr. McIntosh continued petitioner off work and in therapy.

On 4/26/21 petitioner's progress note from therapy indicated that his shoulder was slowly progressing. He could raise his arm above his head and out to the side. However, he continued to report difficulty sleeping at night due to the shoulder pain. He rated his pain at 3-4/10.

On 4/27/21 petitioner returned to Dr. McIntosh. He reported a constant ache and tightness in his right shoulder when he lifted it in any direction. He noted that physical therapy and his home exercise program were causing increased pain and tightness in his shoulder. Nonetheless, he stated that therapy was helping tremendously. Petitioner also noted that he still experienced weakness, but it was slowly improving through therapy. Dr. McIntosh released petitioner to light duty with restrictions of no lifting

more than 5 pounds with the right upper extremity, no work above his chest or shoulder, and no repetitive work with the right upper extremity.

Petitioner testified that he returned to light duty work on 5/4/21.

On 5/24/21 petitioner saw PA Northcutt and reported that he continued to be sore even with his light duty restrictions. He noted that he was now progressing slowly in physical therapy. PA Northcutt continued petitioner in physical therapy to help him regain the rest of his motion and strength. His light duty restrictions were continued.

On 6/22/21 petitioner was seen by Dr. McIntosh. Petitioner noted that his shoulder was doing well. He had no pain with resting, but with motion his shoulder got tight and had a slight ache. Dr. McIntosh examined petitioner and continued him with a home exercise program. His work restrictions were also continued.

On 7/23/21 petitioner followed up with Dr. McIntosh. Petitioner testified that he was going to physical therapy once a week to get his shoulder stretched. Petitioner had decreased range of motion, along with stiffness and tightness in his right shoulder. He also reported weakness and pain in his right shoulder. Petitioner continued to have difficulty lifting things overhead. It was noted that petitioner was able to do most activities below shoulder level. Dr. McIntosh was concerned that that petitioner may have damage to the rotator cuff, event though it was not present at the time of surgery. Dr. McIntosh was concerned that petitioner was not progressing as quickly as he would like, with respect to regaining his strength. He ordered a repeat MRI of the right shoulder. He continued petitioner's work restrictions.

On 8/19/21 petitioner underwent a repeat MR Arthrogram of the right shoulder. The impression was no full thickness rotator cuff tear; mild osteoarthritis of the glenohumeral joint; tendinopathy of the extra articular long head of the biceps tendon; and, tear of the intra-articular long head of the biceps tendon.

Petitioner returned to Dr. McIntosh on 8/25/21. After reviewing the results of the MR Arthrogram, Dr. McIntosh performed another cortisone injection into the subacromial space. Following his examination, Dr. McIntosh had no etiology for petitioner's continued pain.

On 9/22/21 petitioner last followed up with Dr. McIntosh. Petitioner continued to complain of right shoulder pain. He was also unable to lift overhead. He also noted that it felt like his bicep cramped up at times. Dr. McIntosh noted that despite his surgery and medications, petitioner still complained of constant pain. He also noted that the last cortisone injection provided petitioner with no relief. Following an examination Dr. McIntosh was of the opinion that petitioner's symptoms were consistent with

adhesive capsulitis, given his significant decrease in range of motion. Dr. McIntosh recommended a shoulder manipulation.

On 10/13/21 petitioner underwent a Section 12 examination performed by Dr. James Stiehl, an orthopedic surgeon, at the request of the respondent. Petitioner presented a history of his illness. Dr. Stiehl performed a medical record review from 10/15/20 through 7/23/21, and a review of the MRI of the right shoulder, and also examined petitioner. Based on this information, Dr. Stiehl was of the opinion that petitioner had impingement syndrome of his right shoulder and a minor neck strain, along with symptomatic chronic cervical radiculopathy involving his neck and right upper extremity. Dr Stiehl was of the opinion that petitioner injured himself lifting a box, and as a result, sustained a minor neck sprain with impingement syndrome of the shoulder from the outset, documented with radicular symptoms into his right shoulder and upper extremity. He did not see any obvious discrete injury to petitioner's right shoulder.

Dr. Stiehl opined that petitioner sustained a minor strain of the cervical spine that exhibited itself as cervical radiculopathy, that led to subsequent problems and ultimately to a surgical procedure. Dr. Stiehl knew of no prior history for petitioner, and had no idea exactly the amount of cervical disease petitioner had. Dr. Stiehl noted that he had reviewed no records prior to 10/15/20 and did not even see a cervical spine workup to know exactly the amount of cervical disease. However, since petitioner was 63 years of age, he assumed that that petitioner would have significant degenerative abnormalities of his cervical spine.

Dr. Stiehl was of the opinion that petitioner had recovered from the impingement syndrome and cervical strain, and was now dealing with chronic cervical radiculopathy and evidence of arthrofibrosis of his right shoulder, which is a typical complication of cervical radiculopathy. He believed petitioner was not in need of any additional treatment related to his injury on 10/15/20. He believed petitioner was dealing with a chronic cervical radiculopathy that had not resolved, and most probably was a pre-existing condition that developed unrelated to the injury on 10/15/20. Dr. Stiehl was of the opinion that petitioner needed treatment for his cervical spine issue, that includes epidural steroid injections, physical therapy, and imaging studies of his cervical spine. Dr. Stiehl was of the opinion that petitioner would have recovered from the typical impingement syndrome decompression operation within 2-3 months following the injury. He was of the opinion petitioner needed no further treatment for his work injury.

Dr. Stiehl was of the opinion that petitioner was probably at maximum medical improvement for his work related right shoulder cervical strain as of 4/25/21, and regardless of the cause, he did not believe petitioner was at an end of healing for the degenerative cervical spine problem. Dr. Stiehl was of

the opinion that petitioner needed permanent restrictions that prevent him lifting more than 50 pounds from floor to waist, lifting more than 10 pounds to shoulder height, and lifting anything overhead. Dr. Stiehl was of the opinion that petitioner had a frozen right shoulder, that relates to a cervical spine problem, and not to his right shoulder. He was of the opinion that any problems related to biceps tenotomy or wrist pain had reached maximum medical improvement.

On 2/28/22 petitioner presented to Dr. Matthew Bradley at Metro East Orthopedics. He complained of right shoulder and right wrist pain. He also complained of limited range of motion of the right shoulder, as well as constant pain and stiffness in the shoulder. Dr. Bradley reviewed the MRI of the right shoulder dated 8/20/21 and intra-operative photos from the surgery on 1/25/21. Following his examination, Dr. Bradley assessed adhesive capsulitis status post shoulder arthroscopy, and exacerbation of chronic right wrist degenerative disease. Dr. Bradley recommended an order for hydrodilatation of the right shoulder followed by aggressive therapy.

On 2/28/22 petitioner presented to Dr. Ravi Yadava and underwent a fluoroscopically guided hydrodilitation technique utilizing corticosteroid and hylagan for his right shoulder.

On 3/28/22 petitioner returned to Dr. Bradley. He reported that he had improved, but still had pain present in his right shoulder. He also noted that his range of motion had significantly improved. Dr. Bradley was of the opinion that overall petitioner was showing significant improvement. He instructed petitioner to continue with his rehabilitation and physical therapy. Dr. Bradley also performed a corticosteroid injection into the shoulder joint space, as well as the subacromial space.

On 5/23/22 petitioner followed up with Dr. Bradley. Petitioner continued to reported soreness in the shoulder. He stated that the injection did not make much difference. Dr. Bradley noted that overall, petitioner's range of motion and function had significantly increased though petitioner did not feel his pain had improved. Dr. Bradley noted that petitioner had a history of fibromyalgia which he treated with Tramadol and Lyrica, and that petitioner had developed some capsulitis post arthroscopy that seemed to have significantly improved. He continued petitioner in physical therapy. He released petitioner to light duty work.

On 7/18/22 petitioner returned to Dr. Bradley reporting that his motion had improved in therapy, but he continued to have significant pain with pretty much any motion of his right shoulder. Petitioner also pointed to directly over his AC joint as another location of his pain. Dr. Bradley performed another corticosteroid injection.

On 11/21/22 when petitioner returned to Dr. Bradley he noted that he was most concerned about his shoulder, as it was really limiting him. He also reported severe tightness of the shoulder with any kind of motion greater than 60 degrees in abduction or flexion plane. Dr. Bradley noted that the exact etiology of petitioner's pain was unclear to him. He ordered a repeat MRI of the right shoulder. He continued petitioner on light duty.

On 11/21/22 petitioner underwent an MR Arthrogram of the right shoulder. The impression was no rotator cuff pathology; that the long head of the biceps tendon was not visualized, and that could represent with sequela of a full-thickness tear with a distal retraction or prior biceps tenotomy; an intact glenoid labrum; and, minimal acromioclavicular degeneration.

On 12/5/22 petitioner followed up with Dr. Bradley. Dr. Bradley reviewed the MRI and confirmed the results. Petitioner reported that his condition was unchanged. Dr. Bradley did another corticosteroid injection into the right shoulder. Dr. Bradley continued petitioner on light duty.

On 2/27/23 petitioner followed-up with Dr. Bradley. Petitioner reported that the injection he received on 12/5/22 provided him with relief for a month to a month and a half. He stated that he was still in therapy. Petitioner testified that he could no longer bowl or fish. He still complained of loss of motion and pain. Dr. Bradley was of the opinion that petitioner developed some postoperative adhesive capsulitis, and conservative treatment for this had failed. Therefore, Dr. Bradley recommended a subacromial decompression and bursectomy with capsular debridement and release where indicated. Petitioner was continued on light duty restrictions.

On 4/19/23 petitioner underwent a Section 12 examination with Dr. Michael Nogalski, an orthopedic surgeon, at the request of the respondent. Petitioner provided a history of the injury, and Dr. Nogalski reviewed medical records provided by respondent. Dr. Nogalski noted that petitioner had a recent diagnosis of diabetes, and was placed on Metformin. He noted that petitioner believed he was prediabetic for several years.

Following his examination and review of the medical records beginning with the date of injury, Dr. Nogalski assessed right shoulder pain with limited motion, fibromyalgia, and degenerative cervical spine disease. In response to questions from the respondent, Dr. Noglaski was of the opinion that the injury on 10/15/20 was not the cause of petitioner's current right shoulder condition. Dr. Nogalski was of the opinion that petitioner sustained a strain to his shoulder on 10/15/20, and more likely than not, has had cervical radicular/fibromyalgia issues. He believed petitioner returned back to a level of functional strength and range of motion. Dr. Noglaski was of the opinion that subsequent symptoms and problems

in his right shoulder would reasonably relate to petitioner's fibromyalgia and/or adhesive capsulitis that developed on an idiopathic basis after 7/23/21. He was further of the opinion that petitioner's diabetic condition places him at risk for adhesive capsulitis and would be a contributory factor toward the development of his condition after optimal treatment by Dr. McIntosh for a shoulder strain. Dr. Nogalski did not believe petitioner needed any further surgery for his right shoulder related to the injury on 10/15/20.

Dr. Nogalski was of the opinion that further physical therapy attempts at optimizing petitioner's scapular and cervical function may be of benefit. Dr. Nogalski was also of the opinion that consideration could be given towards diagnostic and potentially therapeutic arthroscopy of petitioner's shoulder, but it would be unrelated to the injury on 10/15/20. He believed petitioner reached maximum medical improvement with respect to the injury on 10/15/20 on 7/23/21. He was of the opinion that petitioner had good range of motion and strength at that time. He related the soreness in the shoulder to someone who had a surgical procedure and had fibromyalgia, and/or some overlay of cervical disease. Dr. Nogalski testified that if petitioner had no further treatment, he would have permanent restrictions of no lifting over chest level, and no lifting more than 20 pounds.

Respondent made an accommodation determination on 7/11/23 that petitioner may lift at most 20 pounds to shoulder level with no overhead reaching, and is restricted to lifting up to the horizontal or chest level, but would not be able to frequently perform overhead reaching. This accommodation determination was effective 4/19/23.

On 8/11/23 petitioner underwent an examination and manipulation under anesthesia, arthroscopic subacromial decompression with bursectomy, and arthroscopic anterior and posterior capsular release. This procedure was performed by Dr. Bradley. His post-operative diagnosis was right subacromial impingement and postsurgical right capsulitis. Petitioner followed up with Dr. Bradley. On 8/24/23 Dr. Bradley was of the opinion that petitioner was doing well overall. He noted that petitioner had pain while in therapy and that they were stretching him. Dr. Bradley noted a little better motion that before surgery. He continued petitioner in aggressive therapy.

On 10/19/23 petitioner last followed-up with Dr Bradley prior to the hearing on 11/29/23. Dr. Bradley noted that petitioner was doing well overall. He also noted that petitioner's motion was significantly better than it was before surgery. He made mention of petitioner continuing to have tightness at the extremes of all planes of motion, and some fairly significant weakness. Dr. Bradley noted that petitioner's passive range of motion was nearly full. He continued petitioner in therapy 2 times a week and introduced a home exercise program. Dr. Bradley performed an intra-articular and

subacromial injection to help with the inflammation and post operative scar tissue formation. Dr. Bradley continued petitioner off work.

On 10/20/23 the evidence deposition of Dr. Matthew Bradley, an orthopedic surgeon, was taken on behalf of the petitioner. Dr. Bradley opined that petitioner's current condition of ill-being as it relates to his right shoulder and wrist were a continuation or kind of a flow due to his treatment. He opined that it did not sound like petitioner had any adhesive capsulitis in his shoulder prior to his injury on 10/15/20. He was further of the opinion that it sounded like petitioner had a pretty normal shoulder prior to the injury. He opined that petitioner's current symptoms and diagnoses stem from the surgery that Dr. McIntosh did, which stem from the injury petitioner had, so it is all kind of a continuum. Dr. Bradley was of the opinion that one of the most common things that can happen after shoulder surgery is that the patient gets a stiff frozen shoulder. Dr. Bradley did not have a causal connection opinion between the right wrist and injury on 10/15/20.

Dr. Bradley testified that during his surgery he noted a lot of scar tissue and adhesions, pretty much throughout petitioner's entire shoulder. As a result, Dr. Bradley testified that the majority of the surgery was aimed at kind of breaking down and releasing all of the scar tissue that had formed. Dr. Bradley opined that petitioner's need for surgery with him was the direct result of the previous surgery he had, which was ultimately the result of the injury. He further opined that it all flowed from the initial injury on 10/15/20. Dr. Bradley was of the opinion that following the first surgery petitioner was given a significant amount of nonoperative treatment, including a bunch of injections and hydrodilatation, and physical therapy, and did not improve. Therefore, Dr. Bradley believed that petitioner would not have improved without the second surgery.

Dr. Bradley testified that he reviewed the report of Dr. Nogalski and strongly disagreed with his statement that following his surgery and treatment with Dr. McIntosh petitioner had returned to a level of functional strength and range of motion. Dr. Bradley noted that what Dr. Nogalski did not say was that petitioner had returned to his baseline, or the level of function that he was at before his injury. He further noted that when he first examined petitioner, he was certainly not normal, and certainly not in an extremely functional capacity by any means. Dr. Bradley also testified that even Dr. McIntosh in his last note did not feel that petitioner was at a functional level, and even suggested a manipulation surgery.

Dr. Bradley also disagreed with Dr. Nogalski's opinion that petitioner's subsequent symptoms and problems in his shoulder would have been related to his fibromyalgia and/or adhesive capsulitis, which Dr. Nogalski believed developed on an idiopathic basis after 7/23/21. Dr. Bradley noted that petitioner had fibromyalgia and diabetes long before he had his injury, and did not develop adhesive capsulitis. Dr.

Bradley opined that one of the most common side effects or complications of surgery is adhesive capsulitis, and that petitioner's adhesive capsulitis was a direct sequela of his surgery, and not some idiopathic fibromyalgia in a patient that has had fibromyalgia for years. Dr. Bradley further opined that petitioner was not at maximum medical improvement on 7/23/21. He noted that on that day petitioner still did not have normal motion, and had very minimal internal and external rotation. Additionally, Dr. McIntosh was recommending another surgery on that date.

On cross examination, Dr. Bradley testified that he saw no issues with anything that Dr. McIntosh did before or after surgery. Dr. Bradley agreed that diabetes mellitus can cause or contribute to the development of adhesive capsulitis. Although Dr. Bradley was of the opinion that fibromyalgia may be a contributing factor to petitioner's condition, and causing some of the pain, he was of the opinion that it was not the sole reason for petitioner's pain in his right shoulder. Dr. Bradley was of the opinion that he could get petitioner back to his full baseline from before the date of the injury. He was of the opinion that he could get petitioner back to doing his full duty job. Dr. Bradey was of the opinion that frozen shoulders are some of the hardest cases out there.

On 11/6/23 the evidence deposition of Dr. Michal Nogalski, an orthopedic surgeon, was taken on behalf of respondent. Dr. Nogalski opined that there is no causal connection between the petitioner's current condition of ill being as it relates to his right shoulder and the injury on 10/15/20. He further opined that as of 4/19/23 petitioner was not in need of any additional medical care for any of his condition. Dr. Nogalski opined that petitioner had reached maximum medical improvement as of 4/19/23. He further opined that petitioner could return to work with permanent restrictions of no lifting over chest level and no lifting more than 20 pounds.

On cross examination Dr. Nogalski testified that he reviewed no medical records prior to 10/15/20, and was not aware of any right shoulder problems prior to the injury on 10/15/20. Dr. Nogalski agreed that petitioner was working full duty on 10/15/20. Dr. Nogalski was of the opinion that petitioner did not have ongoing pain in February of 2022, but rather new pain or a new problem. However, Dr. Noglaski was of the opinion that after treating with Dr. McIntosh petitioner continued to report pain, and reported some pain and decreased range of motion of his right shoulder on 4/19/23. Dr. Nogalski testified that he did not know how long petitioner has had fibromyalgia, and had no idea if it ever caused petitioner to seek treatment for his right shoulder prior to 10/15/20. Dr. Nogalski agreed that petitioner's adhesive capsulitis could have been a result of his first surgery with Dr. McIntosh. Dr. Nogalski did not know if petitioner had any restrictions prior to 10/15/20.

Petitioner testified that following his surgery on 7/11/23 he was much better. He stated that he is in physical therapy and it is helping. Petitioner testified that he is hoping to get back to full duty work. Petitioner stated that his next visit with Dr. Bradley is on 12/7/23.

Petitioner testified that he never turned down light duty when it was offered. He testified that he was working light duty right up to the date he had surgery with Dr. Bradley on 7/11/23.

Petitioner testified that he is a borderline diabetic. He stated that sometimes he is over the number and sometimes he is under. He testified that he has been a borderline diabetic for 2 years. Petitioner further stated that he has been diagnosed with fibromyalgia for approximately 30 years. He testified that it is throughout his body, and not in just one particular part. He stated that it is just an "all over body disease." Petitioner testified that neither of these diseases have ever prevented him from working full duty.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner claims his current condition of ill-being as it relates to his right shoulder is causally related to the injury on 10/15/20. Respondent disputes. The parties stipulated that petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent on 10/15/20.

Causal connection opinions were offered by Dr. Stiehl, Dr. Nogalski and Dr. Bradley. The arbitrator notes that no medical records prior to 10/15/20 were reviewed by Dr. Stiehl, Dr. Nogalski or Dr. Bradley. Additionally, the arbitrator notes that petitioner had fibromyalgia for 30 years prior to this injury on 10/15/20. Petitioner testified that he has been on the borderline of being diabetic and not being diabetic for two years. The arbitrator finds that no medical records were offered into evidence to support a finding that petitioner had any prior right shoulder or cervical problems before 10/15/20.

It is unrebutted that on 10/15/20 petitioner sustained an injury when a box that weighed over 50 pounds slipped out of his right hands and he tried to catch it. When petitioner did this, he stated that everything just popped from his neck down to his right wrist. Petitioner was triaged that day via telehealth. The next day he was seen at Walgreens Health Living Center for his acute right shoulder pain. He was then referred to Dr. McIntosh's office and initially treated with PA Northcutt. Petitioner complained of constant pain at the base of his neck down his right shoulder and arm. The pain was constant and he could not lift his right arm since the accident. Petitioner underwent conservative treatment that included injections, Tramadol and physical therapy. This treatment did not fully resolve his complaints. Petitioner continued with pain in the front of his right shoulder, and with overhead activities. An MRI showed mild to moderate insertional tendinopathy without a tear. Additional

conservative treatment was provided with additional injections, and a Medrol Dosepak. However, petitioner continued with pain and tightness in his right shoulder.

When conservative treatment did not work Dr. McIntosh performed a right shoulder arthroscopy with biceps tenotomy, and open decompression with bursectomy. Post-operatively petitioner continued with stiffness, spasms and pain in his right shoulder and arm. Physical therapy helped some, but petitioner continued with a constant ache and tightness in his right shoulder when he lifted his right arm in any direction. Petitioner returned to light duty with restrictions, but still experienced soreness.

On 7/23/21 after months of post-operative conservative treatment, Dr. McIntosh noted that petitioner still had decreased range of motion, along with stiffness and tightness in the right shoulder. He also noted that petitioner had right shoulder pain and weakness, and difficulty lifting things overhead. Dr. McIntosh had petitioner undergo a MR Arthrogram of the right shoulder. Dr. McIntosh performed another injection that provided petitioner with no relief. He was of the opinion that petitioner's symptoms were consistent with adhesive capsulitis and he recommended a shoulder manipulation. At no time did Dr. McIntosh ever place petitioner at maximum medical improvement for the injury he sustained on 10/15/20.

Respondent had Dr. Stiehl examine petitioner. Dr. Stiehl was of the opinion that petitioner had impingement syndrome of his right shoulder, a minor neck strain, along with symptomatic chronic cervical radiculopathy involving his neck and right upper extremity. The arbitrator notes that no medical evidence was offered to support a finding that petitioner had any preexisting chronic cervical radiculopathy. Despite petitioner's immediate right shoulder complaints following the injury, as well as his diagnostic tests, and Dr. McIntosh's findings, Dr Stiehl was somehow of the opinion that petitioner did not sustain any obvious discrete injury to his right shoulder.

Dr. Stiehl opined that petitioner sustained a minor strain of the cervical spine that exhibited itself as cervical radiculopathy, that led to subsequent problems and ultimately to a surgical procedure. However, the arbitrator finds it significant that petitioner had no diagnostic tests performed on his cervical spine, or surgery related to his cervical spine. Additionally, although Dr. Stiehl admitted that he knew of no prior history for petitioner as it relates to his cervical spine, and admitted that he had reviewed no records prior to 10/15/20, and did not even see a cervical spine workup of petitioner's cervical spine, Dr. Stiehl assumed just because petitioner was 63 years of age, that that petitioner would have significant degenerative abnormalities of his cervical spine, despite the fact that there exists no credible evidence to support it.

Dr. Stiehl was of the opinion that petitioner had recovered from the impingement syndrome and cervical strain, and was now dealing with chronic cervical radiculopathy and evidence of arthrofibrosis of his right shoulder, despite that fact that he could not reference any credible medical evidence to support this finding. Dr. Stiehl was also of the opinion that the petitioner was not in need of any additional treatment related to his injury on 10/15/20, despite Dr. McIntosh's recommendation for a shoulder manipulation given petitioner's ongoing right shoulder complaints since the injury on 10/15/20. Dr. Stiehl was further of the opinion that petitioner would have recovered from the typical impingement syndrome decompression operation within 2-3 months following the injury, and was at maximum medical improvement for his right shoulder since 4/25/21, despite the fact that petitioner's right shoulder complaints have continued since the date of injury. Dr. Stiehl believed petitioner was suffering from degenerative cervical spine problems, despite the fact that petitioner had never undergone any workup for his cervical spine.

Based on the above, the arbitrator finds Dr. Stiehl's findings and opinions are not supported by any credible evidence, and are speculative at best. For these reasons the arbitrator finds the opinions of Dr. Stiehl not persuasive at all.

The respondent also had the petitioner examined by Dr. Nogalski. Dr. Nogalski, like Dr. Stiehl opined that petitioner's current condition of ill-being as it relates to his right shoulder is not causally related to the injury on 10/15/20. He also opined that petitioner had cervical radiculopathy with no credible medical evidence to support this diagnosis. Dr. Nogalski was of the opinion that petitioner had returned back to a level of functional strength and range of motion, despite the fact that every treating record supports a finding that petitioner has not returned to a level of functional strength and range of motion in his right shoulder since 10/15/20. Dr. Nogalski was of the opinion that petitioner's problems in his right shoulder were related to his fibromyalgia and/or adhesive capsulitis that developed on an idiopathic basis after 7/23/21. The arbitrator finds these opinions less than persuasive and unsupported by the credible evidence, especially given that there is no medical evidence to support a finding that petitioner's right shoulder condition is related to his fibromyalgia or diabetic condition. However, the arbitrator finds there is credible contrary medical evidence to support a finding that petitioner's right shoulder adhesive capsulitis is a result of his surgery by Dr. McIntosh on 1/25/21. Dr. Nogalski was of the opinion that petitioner merely sustained a right shoulder strain as a result of the injury on 10/15/20, which the arbitrator finds is not supported by the credible evidence. The arbitrator also finds Dr. Nogalski's opinion that petitioner reached maximum medical improvement for his right shoulder on 7/23/21, totally contradictory to the credible medical evidence that shows petitioner still had decreased

range of motion, stiffness, tightness, pain, weakness, and difficulty lifting things overhead on 7/23/21. The arbitrator also notes that on 7/23/21 Dr. McIntosh was recommending a repeat MRI of the right shoulder. Why would he be doing this if petitioner had reached maximum medical improvement?

Additionally, the arbitrator notes that Dr. Nogalski further contradicted himself by claiming petitioner had reached maximum medical improvement for his shoulder on 7/23/21, but then was of the opinion that consideration could be given towards a diagnostic and potentially therapeutic arthroscopy of petitioner's right shoulder, unrelated to the injury on 10/15/20. Given petitioner's ongoing right shoulder complaints since 10/15/20, the arbitrator sees no scenario where any treatment to the right shoulder at this point would not be causally related to the injury on 10/15/20. The arbitrator also finds Dr. Nogalski's opinion that petitioner's soreness in his right shoulder is related to someone who had a surgical procedure and fibromyalgia, and/or some overlay of cervical disease unpersuasive, especially given the fact that there is no credible medical evidence to support a finding that petitioner has cervical disease, or that petitioner's right shoulder is related to his fibromyalgia. The arbitrator finds it significant that petitioner has had fibromyalgia for 30 years and never had any right shoulder pain related to his fibromyalgia. Petitioner also testified that fibromyalgia is an "all over body disease" and not related to a specific body part.

Based on the above, the arbitrator also finds Dr. Nogalski's findings and opinions are not supported by any credible evidence, and speculative at best. For these reasons the arbitrator finds the opinions of Dr. Nogalski not persuasive at all.

The last causal connection opinion was offered by Dr. Bradley. Petitioner began treating with Dr. Bradley after Dr. McIntosh recommended a right shoulder manipulation for petitioner's adhesive capsulitis. Dr. Bradley also assessed adhesive capsulitis status post right shoulder arthroscopy. Dr. Bradley also tried additional conservative treatment options with some improvement in range of motion and function, but not as it related to petitioner's right shoulder pain. As a result, Dr. Bradley performed an examination and manipulation under anesthesia, an arthroscopic subacromial decompression with bursectomy, and an arthroscopic anterior and posterior capsular release. Dr. Bradley opined that petitioner's current condition of ill-being as it relates to his right shoulder is causally related to the injury on 10/15/20. He noted there is no evidence to support a finding that petitioner ever had adhesive capsulitis in his right shoulder prior to 10/15/20. In fact, petitioner had a pretty normal shoulder before that based on petitioner's history and lack of any medical records to the contrary. Dr. Bradley was of the opinion that petitioner's current condition of ill-being as it relates to his right shoulder stems from the surgery that Dr. McIntosh performed, which stems from the injury petitioner had on 10/15/20. Dr.

Bradley noted that a stiff frozen shoulder is one of the most common things that can happen after a shoulder surgery, and this is what happened to petitioner. Dr. Bradley noted that the majority of his surgery was aimed at breaking down and releasing all the scar tissue that had formed as a result of Dr. McIntosh's surgery.

Dr. Bradley strongly disagreed with Dr. Nogalski's opinion that following his surgery and treatment with Dr. McIntosh petitioner had returned to a level of functional strength and range of motion. Dr. Bradley noted that Dr. Nogalski never stated that petitioner had returned to his baseline, or the level of function, that he was at before his injury on 10/15/20. Dr. Bradley noted that when he examined petitioner, he was certainly not normal, and certainly not in an extremely functional capacity by any means. Dr. Bradley was of the opinion that petitioner's adhesive capsulitis was a direct sequela of the surgery by Dr. McIntosh, and not some idiopathic fibromyalgia in a patient that has had fibromyalgia for years. Dr. Bradley opined that petitioner was not at maximum medical improvement on 7/23/21, given that petitioner still did not have normal motion, and had very minimal internal and external rotation. Dr. Bradley was of the opinion that even though fibromyalgia may be a contributing factor to petitioner's condition, and causing some pain, it is definitely not the sole reason for petitioner's pain in his right shoulder.

Based on the above, as well as the credible evidence, the arbitrator adopts the opinions of Dr. Bradley and 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 10/15/20. The arbitrator finds the opinions of Dr. Bradley were most persuasive, and based on the credible medical evidence. The arbitrator finds the opinions of Dr. Stiehl and Dr. Nogalski less than persuasive given that they were not supported by the credible evidence, and in many instances speculative at best.

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?

Having found 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 10/15/20, the arbitrator finds the medical services that were provided to petitioner for his right shoulder from 10/15/20 through 11/29/23, were reasonable and necessary.

Respondent shall pay reasonable and necessary medical services for petitioner's right shoulder, from 10/15/20 through 11/29/23, 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.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Having found 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 10/15/20, the arbitrator finds the petitioner is entitled to the post-operative medical services being recommended by Dr. Bradley for his right shoulder.

Respondent shall pay reasonable and necessary post-operative medical services recommended by Dr. Bradley for petitioner's right shoulder, as provided in Sections 8(a) and 8.2 of the Act.

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Having found 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 10/15/20, the arbitrator finds the petitioner is entitled to temporary total disability benefits for the period 8/12/23 through 11/29/23, a period of 14-6/7 weeks.

Respondent shall pay Petitioner temporary total disability benefits of $613.33/week for 15-5/7 weeks, commencing 8/12/23 through 11/29/23, as provided in Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC028161
Case Name	Michelle Romine v. State of Illinois - Department of Revenue
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0160
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

/s/Kathryn Doerries, Commissioner

Signature

25IWCC0160

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)
) SS.	☒ Affirm with changes
COUNTY OF)	☐ Reverse Choose reason
SANGAMON	☐ 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

MICHELLE ROMINE,

Petitioner,

vs. NO: 21 WC 028161

STATE OF ILLINOIS, DEPARTMENT OF REVENUE,

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 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 modifies the Conclusions of Law regarding Issue C on page eight, first paragraph, and strikes the last sentence which states the following: "In addition, Dr. Maender's opinion deserves greater weight, as he was the Petitioner's treating physician."

The Commission further modifies the Conclusions of Law regarding Issue J on page nine, second paragraph, and strikes the first sentence which states: "No evidence was presented to show that the medical services the Petitioner has received to date were unreasonable or unnecessary."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $937.11 per week for a period of 51.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 12.5% loss of use of the right hand and 12.5% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner for the reasonable and necessary medical services set forth in Petitioner's Exhibit #3, 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 in 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) (West 2013)*.

APRIL 14, 2025

KAD/swj
O30425
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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	21WC028161
Case Name	Michelle Romine v. State of Illinois - Department of Revenue
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

DATE FILED: 12/27/2023

THE INTEREST RATE FOR THE WEEK OF DCEMBER 27, 2023 5.08%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

December 27, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michelle Romine
Employee/Petitioner

v.

State of Illinois – Department of Revenue
Employer/Respondent

Case # **21** WC **028161**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Springfield**, on **11/27/23**. 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 **9/14/21**, 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 $**105,490.00**; the average weekly wage was $**2,028.65**.

On the date of accident, Petitioner was **43** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit for any payments made that would qualify under Section 8(j) of the Act.

ORDER

Respondent Shall pay all reasonable and necessary medical services as set forth in Petitioner's Exhibit 3, 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.

Respondent shall pay Petitioner permanent partial disability benefits of $937.11/week for 51.25 weeks, because the injuries sustained caused the 12.5% loss of use of the right hand and the 12.5% loss of use of the left hand, as provided in Section 8(e) of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

DECEMBER 27, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on November 27, 2023, on all issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's bilateral carpal tunnel syndrome; 3) liability for payment of medical expenses; and 4) the nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 43 years old and employed with the Respondent as a revenue tax auditor for approximately 16 years. (AX1, T. 10). Before that, she was a revenue tax specialist since 2001. (T. 10-11) As a revenue tax specialist, the Petitioner reviewed submissions by taxpayers to be put on formal payment installment agreements, monitored the installment agreements to insure compliance, insuring paperwork of liens and automatic payments and insuring everything was resolved and completed once the liability was satisfied. (T. 12) She said she used her computer daily – some data entry and a lot more command prompts. (T. 13)

The Petitioner testified that when she became a revenue tax auditor in 2005, the department was still using paper files, and she created auditor's reports in Excel spreadsheets, composed letters to taxpayers and wrote narratives and histories. (T. 15-16) She said she was on the computer the whole day. (T. 16) When the department began transitioning to paperless around 2015, she had to perform paper write-ups for narratives and paper audit histories of an contact or action performed. (T. 17-18) She said she was typing pretty much the whole day with the only difference being the amount of time to flip through hard copy papers because everything was consistently on the computer. (T. 19) She said her work station consisted of a metal desk, standard office chair

and desktop computer. (T. 20) She had no recollection of the department providing a gel pad or anything on which to rest her wrists, adding that at one point, she purchased one and brought it in to work. (T. 20-21)

She said the COVID pandemic drastically changed things because she was working from home for 2½ days on call using her personal laptop computer and desk. (T. 21) She said that when training workers, she had to do so via the computer rather than verbally instructing them. (T. 22) She also had to consult with other auditors and interact with superiors electronically. (T. 23) She said she was typing a lot more. (Id.) She said she was on the computer typing all day every day from March 2020 until the fall of 2021. (T. 25)

On cross-examination, the Petitioner was unable to state how many pages she typed in a day. (T. 44) She said a typical letter would be up to three pages, a narrative would be up to 12 pages. (T. 43, 45) She said auditor's reports consisted of typing mostly numerals in columns and words in a paragraph in an open field. (T. 48-49) She said a full correspondence packet could be from 10 to more than 20 pages. (T. 51-52) She said histories would consist of a paragraph each day for a new entry, the length of which was determined by what activities were performed on the case. (T. 53) She estimated typing 1-10 or more paragraphs for history summaries per day. (T. 54) She said her workload fluctuates daily. (Id.) She said narrative reports would run from three to 15 pages. (T. 55-56) She believed she typed continuously for four hours every day. (T. 60)

The Petitioner said she did not tell the Section 12 examiner an exact number of pages that she typed because she didn't have an estimate of how what she does converts into pages. (T. 60-61) She said the examiner did not ask her how long she typed per day. (T. 61)

The Petitioner stated that in the weeks and months leading up to August and September 2021, she began to notice numbness in her fingers that would progress into pain. (T. 25-26) She

said she noticed it while using the mouse and typing – especially after a more intensive day of typing to a trainee – and she would have to take a break to get feeling back into her hands. (T. 26)

On August 30, 2021, the Petitioner saw her primary care provider, Dr. Avinash Viswanathan at Memorial Health, and told him about her symptoms. (T. 27, PX4) Dr. Viswanathan referred the Petitioner for electromyography and nerve conduction studies (EMG/NCS), which were performed on September 14, 2021, by Dr. Edward Trudeau, a physiatrist at Hospital Sisters Health System. (T. 27, PX4, PX5) Dr. Trudeau diagnosed moderately severe bilateral carpal tunnel syndrome, with the right more severe than the left. (PX5) Dr. Viswanathan then referred the Petitioner to Dr. Christopher Maender, an orthopedic hand and upper extremity surgeon at the Orthopedic Center of Illinois. (T. 27-28)

The Petitioner saw Dr. Maender on November 5, 2021, and told him about her symptoms and her job. (T. 28, PX6) Given the severity of the Petitioner's condition, Dr. Maender recommended bilateral carpal tunnel releases. (PX6) He performed the surgeries on January 18, 2022. (T. 29, PX6)

In a letter to the Petitioner's counsel dated September 19, 2022, Dr. Maender stated that he reviewed correspondence containing the Petitioner's work activities and opined that carpal tunnel syndrome is not caused by repetitive typing activities, but typing and computer work is an aggravation of pre-existing compression of the median nerve at the level of the carpal tunnel. (PX6) He said that based on the Petitioner's history, her work activities aggravated her symptoms and led her to seek treatment. (Id.) As an exhibit to Dr. Maender's deposition, examined below, was a letter dated November 19, 2023, that described the Petitioner's work activities that were similar to those described in her testimony at arbitration. (PX7, Deposition Exhibit 4)

On May 16, 2023, the Petitioner underwent a Section 12 examination by Dr. R. Evan Crandall, a plastic surgeon at Aesthetic & Reconstructive Surgery Associates. (RX2, Deposition Exhibit 2) The Petitioner told Dr. Crandall that she thought her carpal tunnel syndrome began several years prior to her surgery, and the symptoms started prior to 2020. (Id.) She said she smoked one pack per week for 25 years and denied diabetes, thyroid disease, arthritis or bleeding disorders. (Id.) Dr. Crandall noted that the Petitioner self-reported being 5'1" and weighing 200 pounds, having a body mass index (BMI) of 38. (Id.) He said the Petitioner had two ovaries, had not been through menopause and denied any neck problems, high blood pressure or cardiac disease. (Id.)

The Petitioner described her work similarly to her testimony, stating that she had no idea how many keystrokes or pages she typed during a day and that every day was a little bit different. (Id.) When asked what she thought caused her problem and why, the Petitioner wrote: Years of working on the computer with compression of the wrists day in and day out. As the 2020 lockdown occurred, we moved from desktops to laptops working remotely. The aggravation worsened." She said everything had become typed during the pandemic because people were working from home. (Id.)

Dr. Crandall reviewed a job description for a state tax auditor with the Petitioner, who said it was an accurate description of her position. (Id.) Dr. Crandall noted that the job description lists qualifications and conditions of employment but was not an ergonomic evaluation and did not give any details about the amount of typing a person does. (Id.) An Illinois Department of Central Management Services Position Description similar to what Dr. Crandall described was included in the exhibits submitted by the Respondent. (RX1)

In his conclusions, Dr. Crandall stated that the Petitioner had pre-existing health conditions for risk factors for carpal tunnel syndrome of age, gender, high BMI and smoking. (RX2, Deposition Exhibit 2) He said he would need more information on how much typing the Petitioner did to determine whether work was an aggravating or causative factor of her condition. (Id.) He said high-level typing has been associated with causing carpal tunnel syndrome, but low-level typing has not been associated with causing or aggravating the condition based on studies such as those from the Mayo Clinic and the Journal of American Medical Association. (Id.) Dr. Crandall's report said the studies were enclosed, but they were not submitted as exhibits at the deposition or at trial. (Id.) He said in his reported that the Petitioner would have to type greater than four continuous hours on a steady basis for typing to be a risk factor. (Id.) He stated that based on what the Petitioner told him, he thought it was unlikely for a person who has to analyze documents and numbers would perform enough typing to be considered a cause of carpal tunnel syndrome, noting that there would be rest periods from typing while documents were being reviewed. (Id.)

Dr. Crandall testified consistently with his report at a deposition on September 19, 2023. (PX2) He stated that if it is established at a later point in the trial that the Petitioner typed continuously for more than four hours a day, her workplace activities were responsible for her bilateral carpal tunnel syndrome. (Id.) On cross-examination, Dr. Crandall acknowledged that carpal tunnel syndrome can be multifactorial. (Id.) He said comorbidities each has a negative effect on the median nerve in the contents of the carpal canal. (Id.)

Dr. Maender testified consistently with his records and September 19, 2022, letter at a deposition on November 7, 2023. (PX7) As to medical studies regarding a threshold for typing to be a cause of carpal tunnel syndrome, Dr. Maender said each case was different, and he did not think there was any study that showed a certain amount of time was causative. (Id.)

The Petitioner still works as a revenue tax auditor and continues to work remotely unless she has an in-person meeting. (T. 14, 24) She said her hands have progressed amazingly after the surgery, but she still has issues with gripping things like the cap on a soda bottle, picking up things like a key from a flat surface and having less strength to carry things with her hands. (T. 31-34) She said that on a keyboard-intensive day, she may feel some stiffness. (T. 35)

CONCLUSIONS OF LAW

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

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

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id*. Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec.

333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*.

Both Dr. Crandall and Dr. Maender opined that typing could cause or aggravate carpal tunnel syndrome. Dr. Crandall drew a distinction between high- and low-level typing, stating that typing more than four continuous hours per day would cause or aggravate carpal tunnel syndrome. However, he did not believe he had enough information about the quantity of the Petitioner's typing duties to say whether her work was a causative factor in her developing carpal tunnel syndrome. He did give a threshold of four hours of continuous typing for him to consider typing as a causative factor.

After reviewing a description of the Petitioner's typing duties, Dr. Maender did opine that the Petitioner's work aggravated her condition. He did not rely on a threshold for the amount of typing but said each case was different.

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

The claimant's injury need not be the sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability. *Cassens Transp. Co.,* 262 Ill. App. 3d 331. The appropriate question is whether the evidence can support an inference that the accident aggravated the condition or accelerated the processes which led to the claimant's current condition

of ill-being. *Id*. The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by the accident. *Id*. at 332.

The Petitioner's comorbidities of age, gender, weight and smoking support the fact that she already was a prime candidate for developing carpal tunnel syndrome. In light of the fact that Dr. Crandall did not give an opinion but merely a threshold for developing carpal tunnel syndrome, while Dr. Maender did give a causation opinion, the Arbitrator gives greater weight to the testimony of Dr. Maender. In addition, Dr. Maender's opinion deserves greater weight, as he was the Petitioner's treating physician.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The circumstantial evidence also supports a finding of causation/aggravation in that the Petitioner's symptoms increased when her typing activities increased during the COVID pandemic. The Arbitrator finds that the typing the Petitioner performed at her job was the element that aggravated her condition and caused her existing physical structure to give way under the stress of her labor.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injury arose out of and in the course of her employment.

Issue (F): Is Petitioner's current condition of ill-being, specifically his right shoulder injury, causally related to the accident?

Based on the causation findings above regarding whether the injury was in the course of and arose out of employment, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her bilateral carpal tunnel syndrome is causally related to the accident.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

No evidence was presented to show that the medical services the Petitioner has received to date were unreasonable or unnecessary. The Arbitrator finds that these services were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 3. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning

capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work as an auditor for the Respondent and has the same stresses on her hands. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 43 years old at the time of the injury. She has many work years left during which time she will need to deal with the effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner had an excellent result from her surgery but testified that she still had issues with grip, dexterity and strength. The Arbitrator puts some weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 12.5 percent loss of the right hand and 12.5 percent loss of the left hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC031873
Case Name	John R Sakanovic v. Pace Suburban Bus
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0161
Number of Pages of Decision	24
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Brian McManus Jr
Respondent Attorney	Gina Panepinto

DATE FILED: 4/14/2025

/s/Carolyn Doherty, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Sakanovic,

Petitioner,

vs. NO: 18 WC 031873

Pace Suburban Bus Services - Northwest Division,

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, medical expenses, prospective care, temporary total disability, and penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 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 $4,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

APRIL 14, 2025
O: 04/10/25
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	18WC031873
Case Name	John R Sakanovic v. Pace Suburban Bus
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Brian McManus Jr
Respondent Attorney	Gina Panepinto

DATE FILED: 10/3/2024

/s/ Jennifer Bae, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 1 2024 4.215%

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

JOHN SAKANOVIC,
Employee/Petitioner

v.

PACE SUBURBAN BUS SERVICES – NORTHWEST DIVISION,
Employer/Respondent

Case # **18** WC **031873**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JENNIFER BAE**, Arbitrator of the Commission, in the city of **CHICAGO**, on **JULY 10, 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 **September 29, 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 (temporary in nature).

In the year preceding the injury, Petitioner earned $**61,806.92**; the average weekly wage was $**1188.59**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

The Arbitrator finds that Petitioner sustained a causally related injury, the injury was temporary in nature that resolved within 6 weeks from the accident.

Respondent shall pay for any treatment that were included within 6 weeks from the accident, pursuant to the medical fee schedule and Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $792.39/week for 6 weeks, commencing October 6, 2018 through November 16, 2018, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner penalties/attorney's fee of $0, as provided in Section 16 of the Act; $0, as provided in Section 19(k) of the Act; and $0, as provided in Section 19(l) of the Act.

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

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

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

Jennifer Bae **OCTOBER 3 2024**

Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN SAKANOVIC, Petitioner, v. PACE SUBURBAN BUS SERVICE - NORTHWEST DIVISION, Respondent.	)	Case Nos. 18WC031873

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Mr. John Sakanovic ("Petitioner"), by and through his attorney, filed an Applications for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014)* Petitioner alleged that he sustained an accidental injury on September 29, 2018 while employed by Pace Suburban Bus Services, Northwest Division ("Respondent"). A hearing was held on July 10, 2024 with the following Issues: causation, temporary total disability benefits, and penalties. Petitioner specifically reserved medical bills and prospective medical issues.

Petitioner testified in support of his claim. Respondent submitted a report prepared by Dr. Hythem Shadid, Section 12 examiner, addressing the disputed issues. (EX 11) The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Job Duties

Petitioner, a 51-year-old man, testified that he began working for Respondent in February of 2013 as a bus operator. (T. 15-16) A document dated August 9, 2018 was a copy of Petitioner's FMLA application that listed having "severe chronic migraines." (T. 19; PX 1) This document did not have any information about Petitioner having a back injury. (T. 19-20)

Accident

On September 29, 2018, Petitioner testified that he started work around 2 pm and was scheduled to work from 3 pm to 11 pm. (T. 20) He explained that it was a straight run without a split shift. (T. 20) Toward the end of his shift, Petitioner testified that he was exhausted because he had a hectic day and was behind the schedule as he approached Village of Rosemont. (T. 21) He picked up passengers from Elk Grove Village who were upset with him because he was running behind the schedule. (T. 21-22) Petitioner explained that it was dark and rainy all afternoon, as he was approaching the CTA terminal on River Road, he drove into a left turning lane at the intersection of River Road and Diversey. (T. 22) As the light begin to change to red, he began to proceed through the intersection because he did not want to slam on the break and flip the bus hurting passengers. (T. 22) Petitioner explained that he accelerated and in a split second, he made an impact with a SUV driven by a lady. (T. 23) Petitioner testified that the front part of his bus hit the front left wheel of the SUV. (T. 26)

The video of the accident (EX 1) without audio submitted by the Respondent showed the following: a view of the driver and front windshield, a view of the bus aisle and compartment including passengers, a view of the front and middle entrance/exit, and view of the bilateral exteriors of the bus. The bus was seen driving in wet conditions with wipers moving at various speeds. A driver was in a white uniform observed driving the bus with a bicycle attached to the front of the bus. At approximately 22:38:56, the bus slowed down before entering an intersection prior to making a left turn. The overhead camera showed an oncoming black vehicle entering the field-of-view as the driver attempted make a left turn. The bus and the oncoming black vehicle slowed down slightly and then the driver-side front corner of the bus struck the front driver-side wheel area of the black vehicle. The driver was seen making a slight back-and-forth shoulder movement at the time of impact while seated. He remained seated as he made a phone call. He stood up around 22:41:30 and exited the bus at 22:42:44 without any difficulty. He interacted with passengers and was seen getting on and off the bus several times. He put his baseball cap on his head as he interacted with multiple individuals on and off the bus. Paramedics arrived. After surveying the bus and talking to the police, the driver moved the bus out of the intersection to another location. He was observed moving freely as he completed some paperwork.

On cross-examination, Petitioner admitted that his head did not hit the driver's side window and that his head did not thrash around after the impact. (T. 59) He testified that he knew that he was going to be terminated. (T. 60) Petitioner was terminated on October 24, 2018 as this was his third accident at work. (T. 62)

After the accident, Petitioner testified that he felt shocked and "scared to the point of almost wetting his pants." (T. 26) He felt a "mild low back pain" at the time of the accident but he "completely ignored it." (T. 26-27)

Six days after the accident, Petitioner testified that his friend drove him to Edwards Hospital in Naperville Emergency Room when he experienced low back pain with shooting pain radiating to his left hip down to his left leg. (T. 29)

Summary of Medical Records

On October 5, 2018, Petitioner presented to Edward Hospital Emergency Room. (EX 2) Petitioner stated that he was a bus driver involved in an accident on September 29, 2018. (EX 2 p. 7) He claimed that "he was restrained and about to accelerate through a green light when a car pulled front of him" causing an accident. (EX 2 p. 7) He reported feeling "a slight twinge in his back" and did not seek treatment. (EX 2 p. 7) He reported having low back pain radiating to his pelvis and that the pain was worse when he extended his back or ambulated. (EX 2 p. 7) He wanted to be checkout since the accident occurred at work prior to beginning of his vacation. (EX 2 pp. 7-8) X-rays were obtained of the lumbar spine and pelvis. (EX 2 p. 10) After viewing the x-ray of the lumbar spine, Dr. Alan Nazerian noted that there was no fracture, no subluxation, no pars defect, no scoliosis, no disc narrowing, no malalignment, no disc height loss, no facet arthropathy, no destructive bony process or paraspinal calcifications. (EX 2 p. 9) He further noted that Petitioner had normal bones, no significant arthropathy or acute abnormality, no visible soft tissue swelling and no effusion. (EX 2 p. 9) He concluded Petitioner had congenital shortening of the lumbar pedicles which was a developmental finding where the vertebrae pedicles, or the bony sides of the spinal canal, are shorter than normal at birth which can lead to degenerative disc and facet disease including disc bulges and protrusions. (EX 2 p. 9) An MRI was recommended since Petitioner was "more prone to disc issues." (EX 2 p. 10) He was diagnosed with "strain of lumbar region" and informed Petitioner to take Ibuprofen and/or Valium for discomfort. (EX 2 p. 10) He was told not to "go back to work until he is cleared by corporate." (EX 2 p. 20) He was informed to follow up with Dr. Jeffrey Williamson Link on October 8, 2018. (EX 2 p. 10) There was no record that he followed up with Dr. Link.

On October 16, 2018, Petitioner sought a consultation with Dr. Bruce Montello at Midwest Sports Medicine & Orthopaedic Surgical Specialists, LTD. (EX 4) His chief complaint was "low back pain with radiating pain down his left buttock after he was involved in a motor vehicle accident on 9/25/2018. (EX 4 p. 64) He described his pain as sharp, shooting, aching, and throbbing. (EX 4 p. 64) He said the pain was aggravated when sitting, standing, and walking for long periods of time. (EX 4 p. 64) Lumbar spine examination revealed a "significant paraspinal tenderness in the lumbar region with some radiation into the left buttock and down the leg" and "range of motion is diminished with lumbar flexion as well as extension." (PX 4 p. 67) He was diagnosed with intervertebral disc disorder and lumbar radiculopathy. (PX 4 p. 68) Petitioner was placed on no work status with recommendation for physical therapy for range of motion, pain and swelling control, ambulation and muscle strengthening for two to three times per week for four to six weeks. (EX 4 p. 68) An MRI of his lumbar spine was ordered. (EX 4 p. 68) He was recommended to follow-up in 3-4 weeks. (EX 4 p. 68)

On October 23, 2018, Petitioner walked into Edward Hospital Emergency Department seeking treatment but left without the approval of the staff. (EX 2 p. 32) He stated that he had anxiety and concern regarding billing. (EX 2 p. 32)

On November 6, 2018, Petitioner followed up with Dr. Montello. (EX 4) He reported having minimal improvement in his symptoms since the last visit. (EX 4 p. 52) He reported difficulty getting up from a seated or laying position with "nerve pain down the left leg into the knee." (EX 4 p. 52) He denied numbness or tingling. (EX 4 p. 52) He was diagnosed with intervertebral disc

disorders with radiculopathy of the lumbar and lumbosacral regions. (EX 4 p. 53) Petitioner was placed on no work status with recommendation for physical therapy for range of motion, pain and swelling control, ambulation and muscle strengthening for two to three times per week for four to six weeks. (EX 4 p. 54) He was recommended to follow-up in 6 weeks. (EX 4 p. 54)

By November 20, 2018, therapist Emily Rimler of Doctors of Physical Therapy noted that Petitioner had attended a total of 8 sessions with minimal changes reported. (EX 4 p. 74) It was noted that Petitioner was following up with his doctor and may be having an MRI. (EX 4 p. 74)

On January 14, 2019, Petitioner sought treatment at United Heartland Outreach for adult preventive care. (EX 7) The medical records indicated that Petitioner was seen by primary care and licensed clinical professional counselors for a combination of his musculoskeletal complaints, chronic migraines, and mental health concerns including bipolar disorder. He was prescribed tramadol, meloxicam and cyclobenzaprine.

On February 13, 2019, Petitioner presented himself to Heartland Health Outreach with "chronic pain, ongoing since 9/18 d/t multiple MVAs; most recent MVA occurred on 9/29/2018 while patient was driving a Pace vehicle; he was then terminated on 10/24/2018; ongoing legal case that has been filed against Pace." By this time, Petitioner completed 8 sessions of physical therapy that helped with back pain. He was diagnosed with migraine headache with aura chronic low back pain with left-sided radiculopathy. He was recommended to take Ibuprofen as needed. (EX 7)

On April 6, 2019, Petitioner presented to Heartland Health Outreach with a chief compliant of "lower back pain and hip, left leg, head hurting." He was diagnosed with migraine headaches with aura and left-sided lumbar back pain with radiculopathy. He was encouraged to perform a home exercise program. Meloxicam and cyclobenzaprine were refilled and sumatriptan succinate was prescribed for migraines. (EX 7)

On May 15, 2019, Petitioner presented to Heartland Health Outreach with a chief complaint of "medication refill, follow-up and issues sleeping and some nightmares." He was diagnosed with hemorrhoids, left-sided lumbar back pain with radiculopathy and migraine headaches with aura. Meloxicam and cyclobenzaprine were refilled and tramadol was prescribed. (EX 7)

An MRI of the lumbar spine was performed at Weiss Memorial Hospital on May 22, 2019 revealing a "left L4-5 foraminal/lateral disc protrusion distorting the left L4 nerve." (EX 8 pp. 3738-3739)

On June 5, 2019, Petitioner presented to Heartland Health Outreach with a chief complaint of "follow-up visit/refill meds for back." The MRI was reviewed and he was diagnosed with an L4-L5 disc bulge, left-sided lumbar back pain with radiculopathy. Petitioner's medication was refilled and referred to pain management. (EX 7)

On June 14, 2019, Petitioner presented to UI Hospital for "evaluation of his chronic low back pain since he was in an accident while driving a bus in September 2019. (EX 6) He T-boned an SUV. He participated in PT in October." The MRI was reviewed and he was diagnosed with a lumbar

radiculopathy and chronic low back pain. He was referred to physical therapy and recommended for a left paramedian L4-L5 epidural steroid injection. He was to continue with his medication.

On June 27, 2019, a consultation for physical therapy was completed at University of Illinois. (EX 6)

On July 8, 2019, Petitioner presented to Heartland Health Outreach with a chief complaint of "lab results, pain medications and sleeping problems." (EX 7) He said he had a pending epidural injection and was concern that pain could get worse. He reported having trouble sleeping due to pain and anxiety. He was diagnosed with hemorrhoids, depression/anxiety, migraine headache with aura, screening for metabolic disorder and left-sided lumbar back pain with radiculopathy. He was encouraged to follow-up with pain management. Medications were refilled.

Petitioner attended physical therapy on July 11, 2019 and July 17, 2019. (EX 6)

Petitioner presented to UI Hospital Emergency Room on August 1, 2019 after attempting physical therapy earlier that day noting "worsening urinary urgency and incontinence for a few weeks." Neurosurgery was consulted to rule out cauda equina syndrome. (EX 6)

On August 12, 2019, Petitioner presented to United Heartland Outreach with a chief complaint of "follow-up visit/refill on meds." He "declined injection and spine because he states that the doctor told him that it would not fix the problem, just decrease the pain." He was diagnosed with hemorrhoids, L4-L5 disc bulge and screening for metabolic disorder. An MRI was ordered of the lumbar spine and his medications were adjusted/refilled. (EX 7)

On September 11, 2019, Petitioner presented to United Heartland Outreach with a chief complaint of "follow-up visit/refill on meds." He was diagnosed with a lower urinary tract symptom, left-sided lumbar back pain with radiculopathy and depression/anxiety. His medications were refilled. Petitioner was encouraged to reschedule his MRI that he missed due to his concern for radiation. Social worker was contacted for his depression/anxiety. (EX 7)

A second MRI was completed on September 16, 2019 at Weise Memorial Hospital that revealed "no evidence of spinal canal stenosis" and a "stable left disc protrusion at L4-5 abutting the L4 nerve." (PX 8 pp. 3736-3737)

On September 25, 2019, Petitioner presented to United Heartland Outreach with a chief complaint of "routine physical exam/result for MRI/rash on his body." He was diagnosed with a nonspecific skin eruption/rash and left-sided lumbar back pain with radiculopathy. He was encouraged to follow-up with pain management and tramadol authorization requested. He was prescribed topical Benadryl for his rash. (EX 7)

On October 10, 2019, Petitioner received an L4-L5 left paramedian lumbar epidural steroid injection ("LESI") from Dr. Rohit Choudhary. (PX 7 pp. 3842-3846)

On October 21, 2019, Petitioner presented to United Heartland Outreach with a chief complaint of "follow-up visit back pain." (EX 7) He reported worsening symptoms and the injection done

on 10/10/2019 caused "hot flashes and trouble sleeping" with elevated blood pressure and feelings of "racing heart." He requested a "referral to surgeon to see if surgery is an option." He was following up with general surgery regarding his fissure/hemorrhoids and was recommended against surgery at this time. He was diagnosed with lower urinary tract symptoms, left-sided lumbar back pain with radiculopathy, hemorrhoids, and anal fissure. Routine labs were ordered and he was referred to neurosurgery at UI Hospital.

On October 24, 2019, Petitioner presented to UI Hospital Pain Medicine and reported four days after injection, his pain was worse and he suffered from headaches for four days. He received referral for blood pressure and heart rate work-up. (EX 6)

On November 6, 2019, Petitioner presented to UI Hospital Pain Medicine for a follow-up "for continued management of chronic low back pain since he was in an MVA as a bus driver 9/18/2018 when he T-boned a SUV. Prior treatment includes physical therapy for 8 sessions. He was last seen for left p.m. L4-L5 LESI on 10/10/2019 with worsening pain for several days and elevated BP for 2 weeks. He is hesitant about additional injections. Has referral to see neurosurgery." (EX 6)

On November 21, 2019, Petitioner presented to UI Hospital – Social Work "to engage in talk therapy." (EX 6)

On December 3, 2019, Petitioner presented to Heartland Health Outreach for mental health assessment. He reported musculoskeletal complaints, psychosocial history, and current mental health complaints. He was diagnosed with PTSD and major depression. He was prescribed mirtazapine, Lexapro, and prazosin. (EX 7)

On December 17, 2019, Petitioner presented to Heartland Health Outreach. Petitioner reported having "little better" mood but still had emotional roller coaster. He described anger and frustration. He was diagnosed with PTSD and major depression. His medications were adjusted/refilled. (EX 7)

On December 18, 2019, Petitioner presented to Heartland Health Outreach with a chief complaint of "all medication refilled." He reported meeting with pain management but was unable to see a surgeon. He was diagnosed with anger with no current homicidal or suicidal plan and left-sided lumbar back pain with radiculopathy. His meds were refilled and was to continue with pain management. (EX 7)

On January 6, 2020, Petitioner presented to Heartland Health Outreach with a chief complaint of "follow-up visit/refill on meds for his back." He reported worsening low back pain and a recent loss prescription of tramadol. He reported seeing the neurosurgeon on December 18, 2019 and was referred to see a different neurosurgeon. He reported being unsure if he wanted to have a surgery and feeling depressed. He was diagnosed with left-sided lumbar back pain with radiculopathy and depression/anxiety. His meds were refilled and was encouraged to follow-up with neurosurgery. (EX 7)

Also on January 6, 2020, Petitioner met with Dr. Michael Colton at Heartland Health Outreach related to his depression/anxiety. He was diagnosed with PTSD, migraine headache with aura and major depression. His medications were adjusted/refilled. (EX 7)

On January 14, 2020, for a neurosurgery referral, Petitioner met with Allison Blood. He was referred to the pain clinic for a second injection. (EX 6)

On January 30, 2020, Petitioner presented to UI Hospital Pain Medicine. Medical records stated that he wanted another neurosurgery opinion prior to having another injection. Previous notes indicated that he was not a surgical candidate. He was diagnosed with an L4 radiculopathy refractory to PT and previous injection. Again, Petitioner was not a surgical candidate and a second opinion with Dr. Slavin was recommended. (EX 6)

On February 5, 2020, Petitioner presented to Heartland Health Outreach with report of having pain in his low back and pain down left leg. He requested a refill of Mobic and tramadol and requested an off work note. He was diagnosed with heartburn, history of Barrett's esophagus and left-sided lumbar back pain with radiculopathy. (EX 7)

Also on February 5, 2020, Petitioner met with Dr. Dempsey at Heartland Health Outreach for a follow-up visit reporting worsening nightmares and persistent pain. He was diagnosed with PTSD and major depression. His medications were adjusted/refilled. (EX 7)

On February 24, 2020, Petitioner met with Dr. Dempsey for a follow-up. He reported intolerable psychological symptoms. He was diagnosed with PTSD and major depression. His medications were reviewed/adjusted. (EX 7)

On March 25, 2020, Petitioner was able to refill his tramadol and had a limited assessment due to Covid-19. (EX 7)

On April 22, 2020, Petitioner had a telemedicine evaluation for pain management with UI Hospital with Dr. Konstantin Slavin. (EX 7 pp. 3833-3835) It was noted that Petitioner had previously met with Dr. Engelhard in December 2019. (EX 7 p. 3833) After reviewing the MRI and medical records, Dr. Slavin opined that he agreed with his colleague that Petitioner was not a candidate for any surgical intervention "as there is no herniation of the disk that will require operative decompression. The bulging disk and disk protrusion definitely irritate the nerve, but indication is not serious enough to justify the risks associated with he surgical procedure." (EX 7 p. 3834) He recommended additional physical therapy and FCE. (EX 7 p. 3834)

On April 22, 2020, Petitioner had a telemedicine visit with Dr. Dempsey. He reported persistent nightmares, difficulty sleeping and a recent episode of incontinence. He was diagnosed with PTSD, major depression, and bipolar and related disorder. His medications were reviewed/adjusted. (EX 6)

On May 22, 2020, Petitioner was involved in a rear end motor vehicle accident with reported loss of consciousness. Petitioner did not seek immediate medical attention but presented himself to UI Hospital Emergency Room on May 26, 2020 complaining of headaches, dizziness, episodes of

emesis and 9/10 pain particularly of the neck and shoulder. Multiple diagnostics including CT of the brain and cervical spine in addition to x-rays of multiple body parts revealed no acute findings. (EX 7)

On June 23, 2020, Petitioner had a telemedicine visit with Dr. Dempsey. He reported having a rear-ended motor vehicle accident with severe neck and shoulder pain with concussion and reported having fear and anxiety. He was diagnosed with PTSD and bipolar and related disorder. His medications were adjusted/refilled. (EX 6)

On June 24, 2020, Petitioner presented to Heartland Health Outreach with a chief complaint of "follow-up visit/refill on med back pain." He reported being in a car accident where he was rear-ended and reported having a concussion and whiplash. Since the accident, Petitioner said he had pain in neck and right shoulder, neck pain radiating down his right arm, pain in right lower rib cage, and worsening migraines. He requested a refill for sumatriptan. He was unable to find a chiropractor. He was recommended for a FCE but missed his appointment. He was diagnosed with cerumen impaction, acute neck pain, urinary incontinence, fecal incontinence, and heartburn. He was referred to UIC Pain Medicine. His medications were adjusted/refilled. (EX 6)

Petitioner received a right L4-5 transforaminal epidural steroid injection on July 20, 2020 that gave him relief of right-sided symptoms. (EX 7)

On July 23, 2020, Petitioner presented to Heartland Health Outreach with a chief complaint of neck pain "with stiffness and clicking in his neck and jaw and pain radiating to the right shoulder." He was diagnosed with cerumen impaction, right tinnitus, acute neck pain, history of Barrett's esophagus, lower urinary tract symptoms, left-sided lumbar back pain with radiculopathy and hemorrhoids. He was prescribed cyclobenzaprine and encouraged to schedule physical therapy. (EX 6)

On August 3, 2020, Petitioner saw Dr. Dempsey with concerns of homelessness, past relationships, and his future. He was diagnosed with PTSD and bipolar related disorder. His medications were adjusted/refilled. (EX 7)

On August 25, 2020, Petitioner presented to UI and met with Dr. Edward Villa. He was diagnosed with GERD and questionable Barrett's esophagus. (EX 6)

On September 29, 2020, Petitioner presented to Heartland Health Outreach with a chief compliant of "joint pain in left leg and hip." He was diagnosed with left-sided lumbar back pain with radiculopathy. (EX 7)

On October 12, 2020, Petitioner saw Dr. Dempsey. He reported persistent neck and back pain but missed a recent epidural injection appointment. He was diagnosed with PTSD and bipolar and related disorder. His medications were adjusted/refilled. (EX 7)

On October 24, 2020, Petitioner sought emergency treatment for head and face accident. He testified that a bathroom door hit him in the head. (T. 77-78)

On November 2 3030, Petitioner was involved in a motor vehicle accident with loss of consciousness and 1 day hospitalization at Rush Hospital.

On November 24, 2020, Petitioner presented to Heartland Health Outreach with a chief complaint of body pain. He was diagnosed with otitis externa, left-sided lumbar back pain with radiculopathy and migraine headache with aura. He was referred to his primary care physician and pain management. His medicines were adjusted/refilled. (EX 7)

On December 21, 2020, Petitioner saw Dr. Dempsey for a routine follow-up. He was diagnosed with PTSD and bipolar and related disorder. His medications were adjusted/refilled. (EX 7)

On January 12, 2021, Petitioner presented to Heartland Health Outreach with a chief complaint of "headache and joint pain" with worsening migraines since most recent motor vehicle accident. He was diagnosed with right lateral epicondylitis and administered a corticosteroid injection. He was referred to neurology for possible Botox injections. His medication was reviewed/adjusted. (EX 7)

On February 25, 2021, Petitioner presented to the UI Hospital Emergency Room after a fall on ice with subsequent head trauma. (T. 78; EX 7 pp. 3720-3724)) CTs of the head, cervical spine, and lumbar spine, in addition to x-rays of the left elbow and pelvis were obtained revealing no acute osseous abnormalities. A third MRI of the lumbar spine was obtained revealing "degenerative disc disease with diffuse posterior disc bulge at L4-L5, causing mild narrowing of the thecal sac and minimal neural foraminal narrowing" without caudal equina syndrome. He was referred to outpatient management. (EX 7 pp. 3720-3724)

On March 8, 2021, Petitioner saw Dr. Dempsey for a follow-up and discussed his persistent low back pain. He noted "I have been doing physical therapy…I do not want to go for the minimally invasive spinal fusion. Does the surgeon just want to make money. I put my care in your hands 3 years ago. Some days I can handle things and some days I do not. I did not go to the hospital after my last accidental 4 days after. The lawyer said I should have gone immediately." He was diagnosed with bipolar and related disorder. His medications were refilled. (EX 7)

On March 9, 2021, Petitioner had a follow up with Heartland Health Outreach where he reported having exacerbation of pain since recent snowstorm fall. (EX 6 p. 114) On March 26, 2021, at a neurology consultation, Petitioner reported having a motor vehicle accident with loss of consciousness in May and November of 2020. (EX 6 p. 324) He was diagnosed with right lateral epicondylitis, lower urinary tract symptoms, L4-L5 disc bulge, anal fissure, and migraine headache with aura. FCE was ordered in addition to an MRI of his right elbow because no relief from recent injection.

On March 26, 2021, Petitioner met with Dr. Yasaman Kianirad at UI Hospital at the request of Dr. Jeremy Pripstein of Heartland Health Outreach. (EX 7 p. 3713) Dr. Kianirad noted that Petitioner's neurological examination was normal but that underlying psychiatric conditions were effecting his symptoms. He recommended an MRI of the brain for possible neuropsychology evaluation. (EX 7 pp. 3713-3719)

On April 6, 2021, Petitioner met with Dr. Pripstein for a follow-up. He was diagnosed with congestion of nasal sinus and right lateral epicondylitis. He was again recommended an MRI of his right elbow and to use nasal decongestion medication as needed. (EX 6)

On May 27, 2021, a CT scan of the brain was completed at UI Hospital. The scan revealed no evidence of acute intracranial hemorrhage, no evidence of calvaria fracture or extracranial soft tissue contusions, and normal ventricles for age with prominent cortical sulci. (EX 6)

On June 5, 2021, Petitioner met with Dr. Madhuri Thota of Heartland Health Outreach. He complained of pain in right hip and leg. He reported having severe shooting pain down his right buttock and leg. Petitioner was prescribed pain medication. He requested an MRI of his lumbar spine but Dr. Thota recommended conservative management. (EX 7)

On June 13, 2021, Petitioner presented to UI Hospital Emergency Room complaining of right lower back and hip pain radiating to the right ankle after attempting to get up from a friend's couch. (T. 81) He was diagnosed with chronic bilateral low back pain with right-sided sciatica and administered ketorolac and supportive measures noting improvement in the emergency room following treatment. He was recommended an outpatient follow up. (EX 6)

On June 16, 2021, Petitioner met with Dr. Dempsey and informed him about visiting the ER after experiencing "excruciating pain." He was diagnosed with bipolar and related disorder. His medications were refilled. (EX 7)

On June 18, 2021, Petitioner had a telemedicine evaluation with Dr. Steven Brint, Neuroscience Pain Center. Dr. Brint noted that Petitioner underlying psychiatric conditions were particularly effecting his symptoms. He was recommended to continue with his medication and an MRI of the brain. (EX 7)

On July 1, 2021, Petitioner presented to Heartland Health Outreach and met with RN Kristin Allen. (PX 7 p. 3399) He complained of chronic back pain and was told to continue taking his medications as needed for pain. (PX 7 p. 3404) Petitioner also met with Dr. Kelly Rhodes for psychiatric evaluation. (EX 7 p. 3534) He reported having difficulty with family and having nightmares. (EX 7 pp. 3537-3538) His medications were adjusted/refilled.

On July 13, 2021, Petitioner met with Dr. Pripstein for a follow-up. He was diagnosed with left-sided lumbar back pain with radiculopathy. An MRI was ordered for the lumbar spine and a referral to pain management for "possible epidural injections." (EX 7)

On August 23, 2021, Petitioner met with Dr. Dempsey and reported "my nightmares are worse." He was diagnosed with bipolar and related disorder. His medications were refilled. (EX 7)

On August 24, 2021, Petitioner met with Dr. Pripstein for a follow-up after an epidural injection of his right L4-L5 disc herniation. He reported feeling some relief and he was scheduled for a follow-up with the pain physician. He was diagnosed with left-sided lumbar back pain with radiculopathy that improved. He was recommended to continue with pain management. His medications were refilled. (EX 7)

On August 26, 2021, Petitioner met with Dr. Rani Chovatiya, UI Hospital OCC Neuroscience Center Pain Center with "new excruciating pain down his lateral right leg without inciting event" with occasional bowel/bladder leakage. An MRI of the lumbar spine and right hip was ordered. (EX 7 pp. 3677-3684)

On September 27, 2021, Petitioner met with Dr. Dempsey with a chief complaint of mental health and persistent low back pain. He was diagnosed with bipolar and related disorder. His medications were adjusted. (EX 7)

On September 28, 2021, Petitioner met with Dr. Pripstein for a follow-up. Petitioner reported having right hip pain and that he was not improving after physical therapy. He was diagnosed with right lateral epicondylitis, fecal incontinence, and left-sided lumbar back pain with radiculopathy. His medications were refilled. (EX 7)

On October 1, 2021, Petitioner met with Dr. Chovatiya. He reported new excruciating pain down his lateral right leg and right hip. He was recommended to continue with physical therapy and an MRI of the right hip was ordered. (EX 7 pp. 3685-3693)

On October 10, 2021, at a follow up with UI Hospital Pain Medicine, Petitioner continued to complain of right sided back pain, left sided back pain, and that he was unable to walk longer than 15 minutes. No surgical recommendation was made. (EX 6 p. 297)

On November 1, 2021, Petitioner met with Dr. Dempsey for a mental health visit. He was diagnosed with bipolar and related disorder. His medications were adjusted/refilled. (EX 7)

An MRI dated November 5, 2021 revealed a "preserved right hip joint with subtle findings of FAI (femoral acetabular impingement)" and a strain of the gluteal tendons. (EX 7)

On November 8, 2021, Petitioner met with Dr. Pripstein and asked for a breath test. (EX 7 p. 3862). It was noted that Petitioner was waiting to have an updated MRI as he was feeling "worse secondary to recent fall." (EX 7 p. 3862)

On December 13, 2021, Petitioner saw Dr. Hythem Shadid, Respondent's Section 12 examiner. (T. 38; EX 11)

On July 18, 2023, Petitioner sought treatment with Dr. Mathew Coleman of Midwest Orthopaedics at Rush. (EX 9) A new patient evaluation noted low back pain with a history of the September 29, 2018 bus accident but no information regarding other subsequent motor vehicle accidents or slip and fall accidents. Petitioner informed Dr. Coleman about his low back pain radiating to his left hip and glute region with occasional radiation to his left leg. On examination, Dr. Coleman found "he is ambulating with a single crutch on the left side. Full range of motion to cervical spine with flexion and extension to 50 to 60 degrees respectively. Full range of motion to lumbar spine with flexion and extension to 90 and 30 degrees respectively. No tenderness to palpation of midline or paraspinal musculature of cervical, thoracic, or lumbar spine. Full active and passive ROM to all four extremities." The diagnosis was low back pain, unspecified. (EX 9 pp. 3756-3766)

Dr. Coleman reviewed the MRI from 2019 that showed a far-lateral L4-L5 disc herniation causing compression in the left lateral recess and left foraminal stenosis. The MRI from 2021, he noted that the disc seemed to resolve to a moderate sized herniation in the far-lateral region of L4-L5, which he found consistent with an acute disc herniation that is likely related to his injury that he sustained on September 29, 2018. He recommended Petitioner to obtain a new MRI of the lumbar spine to evaluate the disc space at L4-L5. He noted that Petitioner could be a candidate for a left L4-L5 microdiscectomy. There were no work restrictions. (EX 9 pp. 3756-3766)

On November 27, 2023, an MRI of the lumber spine was completed at Rush University Medical Center. The findings included degenerative disc disease, mild to moderate bilateral foraminal narrowing at L3-L4 unchanged, mild left foraminal narrowing at L3-L4 due to shallow disc protrusion which was new since the prior study. (EX 9 pp. 3770-3771)

On December 5, 2023, at a follow up with Dr. Coleman, Petitioner reported having aggravation of his symptoms that included persistent lower-back pain that radiated down to his left hip and gluteal region. He reported that occasionally, he had shooting pain radiating down to his left lower extremity. He stated that he experienced heaviness and pain in his left lower extremity for five years while sitting for more than 20 minutes. He reported having a temporary relief from his symptoms from steroid injections and physical therapy throughout the summer. The last injection was in May of 2023 that gave a relief for two months. He denied having any back issue prior to his motor vehicle accident where he was t-boned from the right side. He recalled that his pain spread from his left side to his right side two years ago that was debilitating in nature. He reported working as a food delivery person in 2021 but experienced shooting pain in his right lower extremity after lifting a moderate weight few times. He claimed that he was paralyzed for one month. (EX 9 pp. 3752-3755)

Dr. Coleman's examination noted that Petitioner appeared well with no acute distress. He noted that ambulation was non-antalgic, non-broad-based, non-shuffling, and without the use of an assistive device. There was no reference to a new lumbar MRI that was completed on November 27, 2023. Petitioner was diagnosed with low back pain unspecified. The treatment discussion with Petitioner noted his preference for non-surgical treatment that included acupuncturist (referral, EX 9 3768-3769) and chiropractic care (referral to Thomas Lotus, EX 9 p. 3867). There was no surgical recommendation or work restrictions. (EX 9 pp. 3752-3755)

There was a stipulation that Petitioner did not inform Dr. Coleman about other motor vehicle accidents or slip and fall accidents. (T. 91)

Section 12 Examiner – Dr. Hythem Shadid

Petitioner met with Dr. Shadid on December 13, 2021. After a physical examination, review of all medical records including diagnostic films, and video from the accident, Dr. Shadid prepared his report dated January 18, 2022. (EX 11)

Dr. Shadid opined that Petitioner's current physical condition for his lumbar spine is chronic low back pain and his MRIs showed evidence of mild, age-related degenerative changes. (EX 11 p.

11) Based on a reasonable degree of medical and surgical certainty, Dr. Shadid opined that Petitioner's current physical conditions are not related to the accident because (1) he had no evidence of injury at the time of the accident (any lumbar spine injury would have caused pain immediately or within minutes not days); (2) there is no objective evidence of a lumbar spine injury on any of his diagnostic imaging including three MRIs; (3) he has not responded to four rounds of physical therapy in the last three years; (4) he did not report a work comp claim until after he learned that he was being terminated; and (5) he did not seek medical care until six days following the injury. In addition, Dr. Shadid viewed the video of the accident and noted that it was "an overall low energy motor vehicle accident that did not cause airbag deployment, window breakage or significant disruption to the position of either Mr. Sakanovic (driver) or his passengers. Mr. Sakanovic appeared in no acute distress at any time during the 41:07 video or display other pain behavior." (EX 11 p. 25) He concluded that the force and nature of the incident was insufficient to support Petitioner's current complaints. (EX 11 p. 25) He further opined that Petitioner did not need additional treatment noting that he had been in treatment for three plus years. (EX 11 p. 25) Dr. Shadid found no objective evidence to explain Petitioner subjective complaints as to the other motor vehicle accidents and slip and fall on ice. (EX 11 p. 26) And finally, with regard to Petitioner's initial diagnosed of lumbar strain, Dr. Shadid opined that Petitioner would have been at MMI within 6 weeks from the accident. (EX 11 p. 26)

Petitioner's Current Condition

Petitioner testified that he is not better after all these years and was in pain sitting when testifying. He said he was able to do the bare minimum because of pain. He said he could not lift anything over 15 pounds. He testified that he learned the hard way that sciatica moves from the left to right and that in 2021, he was paralyzed for a whole month. He stated, "I cannot drop this, okay, because I am crippled." (T. 52) Petitioner testified that he has been a Social Security Disability recipient since March 20, 2023 for post traumatic pain syndrome, chronic migraines, and PTSD. (T. 33, 93)

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony,

as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be an unreliable witness. Petitioner was unable or refused to answer many of the questions. At times, he was unresponsive to the questions posed to him. He exhibited hostility and embellished his previous and current conditions during the trial. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and found material contradictions.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63, 442 N.E.2d 908 (1982).

Here, it is clear that a motor vehicle accident occurred on September 29, 2018 when Petitioner t-boned a black SUV in an intersection while attempting to make a left turn running a red light.

Petitioner sought treatment six days after the accident at Edward's Hospital Emergency Room. (EX 2 pp. 9-10)) After X-rays were obtained of the lumbar spine and pelvis, Dr. Nazerian noted that there was no fracture, no subluxation, no pars defect, no scoliosis, no disc narrowing, no malalignment, no disc height loss, no facet arthropathy, no destructive bony process or paraspinal calcifications. He further noted that Petitioner had normal bones, no significant arthropathy or acute abnormality, no visible soft tissue swelling and no effusion. He concluded Petitioner had congenital shortening of the lumbar pedicles which was a developmental finding where the vertebrae pedicles, or the bony sides of the spinal canal, are shorter than normal at birth which can lead to degenerative disc and facet disease including disc bulges and protrusions. He recommended Petitioner to obtain an MRI of the lumbar spine to monitor this birth condition for further degeneration. Finally, Dr. Nazerian diagnosed Petitioner with "strain of lumbar region" and informed Petitioner to take Ibuprofen and/or Valium for discomfort. (EX 2 p. 10) Petitioner was placed on off work status until "cleared by corporate." (EX 2 p. 20)

Petitioner followed up with Dr. Montello on October 16, 2018 and diagnosed with intervertebral disc disorder and lumbar radiculopathy. (EX 4 p. 68) He was placed on off work and recommended to complete physical therapy. (EX 4 p. 68)

The Arbitrator notes the following accidents: (1) May 22, 2020 rear ended motor vehicle accident with reported loss of consciousness, headaches, dizziness, episodes of vomiting, 9/10 pain level of the neck and shoulder; (2) October 24, 2020 head and face injuries; (3) November 3, 2020 motor vehicle accident with loss of consciousness with 1 day hospitalization; (4) February 25, 2021 slip and fall on ice with injuries on left side of his body and head; (5) June 13, 2021 falling off a couch.

The Arbitrator notes thus far, Petitioner had four rounds of physical therapy with no improvement. The Arbitrator further notes that Petitioner's treating physicians, Drs. Blood, Slavin and Neckrych opined that Petitioner was not a surgical candidate. In addition, after reviewing the most recent MRI of the lumbar spine from November 27, 2023, the most recent treating physician, Dr. Coleman did not recommend any type of surgery or place Petitioner on any work restrictions related to this accident. Furthermore, Dr. Coleman was not informed or aware of any of the motor vehicle accidents or slip and fall accident that occurred after this accident.

The Arbitrator further notes that Respondent's IME, Dr. Shadid opined that Petitioner's MRIs showed evidence of mild, age-related degenerative changes and found that his lumbar spine condition is chronic low back pain. (EX 11) Dr. Shadid further opined that this accident is not causally related to Petitioner's current physical condition in part because Petitioner did not have any evidence of injury at the time of the accident because any lumbar spine injury would have caused pain immediately or within minutes and not days; there were no objective evidence of a lumbar spine injury in the three diagnostic imaging (MRIs); Petitioner had not responded to four rounds of physical therapy in the last three years; the force and nature of the accident was insufficient to support Petitioner's current subjective complaints; and Petitioner had other motor vehicles accidents including a slip and fall on ice. (EX 11) Finally, Dr. Shadid concluded that Petitioner would have been at MMI within 6 weeks from this accident.

The following were noted in Dr. Shadid's physical examination of Petitioner on December 13, 2021: (1) Petitioner had no difficulty with active range of motion to his right hip yet would not permit any passive range of motion; (2) inconsistencies between subjective complaints and objective findings; (3) lake of response to multiple modalities of treatment over the court of 3 years; (4) marked tenderness to light touch; and (5) when distracted, Petitioner had no difficulty performing many of the same tasks he refused to perform including simple walking. (EX 11 p. 26)

It is for the reasons above, the Arbitrator finds that Petitioner did sustain a causally related injury, the injury was temporary in nature that would have resolved within 6 weeks from the accident, and MMI at 6 weeks after the accident as opined by Dr. Shadid.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Dr. Nazerian diagnosed Petitioner with "strain of lumbar region" and informed Petitioner to take Ibuprofen and/or Valium for discomfort. (EX 2 p. 10) Dr. Shadid concluded that Petitioner would have been at MMI within 6 weeks from this accident. As such, the Arbitrator orders Respondent to pay for any treatment that were included within 6 weeks from the accident, pursuant to the medical fee schedule and Section 8(a) and 8.2 of the Act.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).
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 has already found that Petitioner sustained a causally related injury that was temporary in nature and would have resolved within 6 weeks from the accident. The medical records showed that Petitioner was placed on off-work status on October 6, 2018.

Based on the above, the Arbitrator finds Respondent liable for 6 weeks of temporary total disability benefits (10/6/2018 through November 16, 2018) at a rate of $792.39 per week.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See 820 ILCS 305/19(l).

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515 (1998). When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions, penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill.App.3d 798, 805 (2005).

Section 19(k) and 16, in pertinent part, both refer to instances where the position taken "does not present a real controversy" and it "frivolous." Section 16 refers to this language found in Section 19(k) as well. See 820 ILCS 305/16, 19(k) (West 2012). These penalties and fees address deliberate conduct or actions undertaken in bad faith.

Overall, the Arbitrator finds that Petitioner is not entitled to penalties and fees under Section 19(k), 19(l) and Section 16 because Respondent's nonpayment of benefits was neither unreasonable nor vexatious. Respondent's conduct does not demonstrate bad faith or improper purpose. See below for further analysis.

The Arbitrator finds that Respondent's nonpayment of benefits was not unreasonable or vexatious a the time benefits were denied or were not paid. Respondent presented a bona fide dispute on causation issue. While Petitioner contends that denial was unreasonable, vexatious, and not in good faith, the evidence presented at the trial indicates otherwise. The parties presented a voluminous medical records and Dr. Shadid's IME report. The Arbitrator finds that Respondent's reliance on Dr. Shadid's medical opinion was reasonable despite the fact that it conflicted with some of the Petitioner's treating physicians. Respondent's reliance was objectively reasonable under the circumstances. *Reynolds v. Illinois Workers' Comp. Comm'n.*, 395 Ill.App.3d 966, 971, 916 N.E.2d 1099, 1102-3 (3rd Dist. 2009); *Electro-Motive Division v. Industrial Comm'n.*, 250 Ill.App.3d 432, 436, 621 N.E.2d 145, 148 (1993). Here, the initial treating physician, Dr. Nazerian found that Petitioner was born with congenital shortening of the lumbar pedicles that can lead to degenerative disc and facet disease including disc bulges and protrusions. Dr. Nazerian diagnosed Petitioner with "strain of lumbar region." Further, Dr. Shadid opined that Petitioner's MRIs

showed evidence of mild, age-related degenerative changes and found that his lumbar spine condition was chronic low back pain. (EX 11) Dr. Shadid further opined that the force and nature of the accident was insufficient to support Petitioner's current subjective complaints. (EX 11) Dr. Shadid is a board-certified orthopedic surgeon who within a reasonable degree of medical certainty, found no causal connections. It was not unreasonable for Respondent to rely on these opinions as the basis for their denials at that time.

Therefore, the Arbitrator declines to award either penalties under Section 19(k) and 19(l), or fees under Section 16. Accordingly, nonpayment of benefits was neither unreasonable nor vexatious.

For the reasons stated above, Petitioner is entitled to an award of benefits under the Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

OCTOBER 3 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC016100
Case Name	Jada Henley v. State of Illinois - Illinois Department of Human Services - Ludeman Development
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0162
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Derek Lax
Respondent Attorney	Drew Dierkes

DATE FILED: 4/14/2025

/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

JADA HENLEY,

Petitioner,

vs. NO: 23 WC 16100

STATE OF ILLINOIS,
IDHS LUDEMAN DEVELOPMENT CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, 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 June 13, 2024 is hereby affirmed and adopted.

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

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

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

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

April 14, 2025

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

CAH/tdm
O: 4/10/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC016100
Case Name	Jada Henley v. State of Illinois - Illinois Department of Human Services - Ludeman Development
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Derek Lax
Respondent Attorney	Drew Dierkes

DATE FILED: 6/13/2024

/s/Nina Mariano; Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

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

June 13, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

25IWCC0162

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)

Jada Henley
Employee/Petitioner

v.

State of Illinois - IDHS Ludeman Development Center
Employer/Respondent

Case # **23** WC **016100**

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 **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **2/22/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **06/02/23**, 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 $**1,695.26**; the average weekly wage was $**741.68**.

On the date of accident, Petitioner was **28** 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 $**0.00** 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 $3,541.00 to Franciscan Health Olympia Fields, $409.00 to Mid America Orthopedics SC, $3,000.00 to Molecular Imaging DBA Med Legal Associates Corp, $8,020.00 to Premier Physical Therapy, $6,200.00 to Athenos Medical and $1,433.95 to Parkview Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

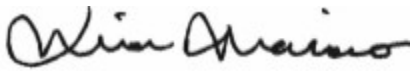
Respondent shall pay Petitioner temporary total disability benefits of $494.40/week for 36 1/7th weeks, commencing 6/14/23 through 2/22/24, as provided in Section 8(b) of the Act.

Respondent shall authorize prospective medical treatment plan recommended by Dr. Kyle MacGillis, including Right Carpal Ulner Tunnel and Distal Antebrachial Forearm Fascia Nerve Decompressions of the Entrapment areas secondary to the Petitioner's injury to right wrist and hand, and post rehabilitative care needed to reach MMI, as provided in Section 8(a) and 8.2 of the Act.

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

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

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



Signature of Arbitrator

June 13, 2024

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jada Henley	)		
	)		
Employee/Petitioner,	)	Case No.	23 WC 016100
v.	)		
	)		**Chicago, IL**
State of Illinois – IDHS Ludeman Development Center	)		
	)		
	)		
Employer/Respondent.	)		

Procedural History

This matter proceeded to hearing and proofs were closed on February 22, 2024, in Chicago, Illinois before Arbitrator Mariano pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act."). Attorney Derek Lax represented the Petitioner-Employee, Jada Henley ("Petitioner"). The Illinois Attorney General's Office represented the State of Illinois – IDHS Ludeman Development Center ("Respondent"). Issues in dispute include accident, causal connection, bills, temporary total disability, and prospective medical care and treatment. Arbitrator's Exhibit 1. All other issues have been stipulated. ARB 1. Petitioner's Exhibits 1 to 14 were admitted. Respondent's Exhibits 1 to 4 were admitted.

Findings of Fact

Job Duties

Petitioner testified that she had been hired and was working as a Support Service Worker for Respondent for about a month on the date of injury. Petitioner worked in the main kitchen starting around 5:30 a.m. and would be told what she was doing that day. Petitioner testified that

her duties would change on a day-to-day basis. Petitioner portioned out food using an ice cream scoop or would use a sealer machine to seal containers. Petitioner testified she was never trained on how to properly use the sealer machine. Petitioner testified that she had applied to the State of Illinois over the years but was never hired. Petitioner testified that she was excited to finally be hired by the Respondent.

Accident

Petitioner testified that on June 2, 2023, she was using the sealer machine for the Respondent. The Petitioner testified that the plastic used to seal the food on the machine kept getting stuck causing her to reach into the machine to remove the plastic. The Petitioner testified when she reached into the machine to pull the plastic off, the lever on the machine hit the side of her right wrist. The Petitioner testified that she attempted to work through the pain and went home for the night. Petitioner reported the accident to her supervisor, Shawnta Jenkins, the next morning as her pain was too severe and immediately was told to seek medical treatment. (RX 1) (PX 14) Notice of Injury is not in dispute.

The June 3, 2023 emergency room visit note from Franciscan Health Olympia Fields indicates that "she accidentally struck her right hand on a metal machine." Px1 at 17. The June 13, 2023 visit note from Dr. Gary Kronen at MidAmerica Orthopaedics indicates that Petitioner was "here today after sustaining a crush injury to her right hand and wrist while at work on 6/2/23 when a saline(sic) machine crushed her hand…" Px2 at 1. The July 11, 2023 visit note from Dr. Kyle MacGillis at Parkview Orthopaedic Group indicates that "she had another incident on 06/02/2023 when she hit the radial side of the wrist and along the volar aspect." Px5 a 13.

Petitioner testified that she has never injured her right wrist or hand before this accident.

Medical Records & Treatment Summary

The Petitioner testified and the medical records show that on June 3, 2023, Petitioner went to the emergency room at Franciscan Health Olympia Fields for evaluation of a right upper extremity injury that occurred yesterday while at work. PX 1. Petitioner's medical records show that she accidentally struck her right hand on a metal machine and complained of pain and swelling to her right hand and right shoulder. *Id.* X-rays of the shoulder and right hand were negative for fracture or dislocation. Id. She was diagnosed with right hand pain and right shoulder pain. The Petitioner was discharged home and was told to follow up with an occupational health provider. No work status note was given. *Id.*

The Petitioner testified and the medical records show that she followed up with Dr. Gary Kronen of MidAmerica Orthopedics on June 13, 2023. Petitioner was examined for her right upper extremity from a crush injury to her hand and wrist while at work. PX 2. The Petitioner was diagnosed with Right Wrist Scapholunate ligament injury, Right Wrist De Qervain Tendonitis, and Chronic Regional Pain Syndrome. The Petitioner was taken off work, an MRI was ordered along with Occupational Physical Therapy.

The Petitioner testified and the medical records show that she underwent an MRI at Molecular Imaging on July 6, 2023. PX 3. Impressions are as follows:

1.The carpal tunnel shows palmar bowing of the flexor retinaculum, thickened median nerve with altered signals most appreciated opposite the Right pisiform bone. Flattening of the median nerve opposite the hook of the hamate bone with altered signals within the carpal tunnel. Loss of fat signals within the carpal tunnel on T1 W1. Findings suggest (CTS) Carpal Tunnel Syndrome. Correlation with electrophysiological studies is recommended. 2. Mild intercarpal and carpometacarpal synovial effusion.

The Petitioner testified and the medical records show that she underwent a course of

Physical Therapy at Premier Physical Therapy which began on July 10, 2023, and continued through August 7, 2023. PX 4. The Petitioner was discharged from Physical Therapy on October 12, 2023. *Id.*

The Petitioner testified and the medical records show that on July 11, 2023, she saw Dr. Kyle MacGillis of Parkview Orthopaedic Group. PX 5. The Petitioner stated, "I was hurt at work," and she reported doing repetitive type work with an Ice Cream Scooper as well as works with heavy machinery upon which she hit the radial side of the wrist in a work incident on June 2, 2023. Dr. MacGillis diagnosed her with right wrist pain, positive for carpal tunnel with Phalen's maneuver, mild component of radial-sided wrist pain consistent with de Quervian's, and mild positive Finkelstein's maneuver. Dr. MacGillis prescribed medications and physical therapy. *Id*. On July 25, 2023, Dr. MacGillis noted Petitioner was moving significantly better, but was still reporting paresthesias in median nerve territory. Dr. MacGillis diagnosed her with persistent right sided carpal tunnel syndrome and ordered an EMG/NCV and gave light duty work restrictions of no use of the right upper extremity. *Id.*

The Petitioner testified and the medical records show that she underwent an EMG/NCV on August 3, 2023, with Dr. Drew S. Kandilakis at Athenos Medical. PX 6. Impressions are as follows:

1. **Right Median Distal Neuropathy, Wrist- Elbow segment with denervation of muscles innervated by this nerve.**
2. **Right Ulnar Distal Neuropathy Wrist-Elbow segment with signs of denervation in muscles innervated by this nerve**

Findings consistent with stated mechanism of injury.

The Petitioner testified and the medical records show she returned to Dr. MacGillis on August 8, 2023, to review the results of the EMG/NCV. PX 5. Dr. MacGillis recommended surgical release of the carpal tunnel, ulnar tunnel, and distal antebrachial forearm fascia with

fasciotomy. *Id.* Petitioner testified that she continued to follow up with Dr. MacGillis on September12, January 20, and February had subsequent visits to Dr. MacGillis on September 12, 2023, January 10, 2024, and February 8, 2024, and he continued to recommend surgery and along with the same work restrictions of no use of the right upper extremity. PX 5.

Return to Work

Petitioner had been given restrictions of one handed work, however Respondent never offered light duty. Petitioner has not received any benefits since the injury. Petitioner tried to find light duty work aside from Respondent, but was unsuccessful. Petitioner enrolled in online classes for a medical assistant.

Prior Work History

Petitioner previously worked for Department of Rehabilitation Services as a caretaker for her grandmother for about a year. Her job duties involved driving her to the store and doctor's appointments. Petitioner did not do household chores for her grandmother. Petitioner had no other jobs prior to working as her grandmother's caretaker.

Respondent's Witness Testimony

Ronnie McGregor testified as the only witness for the Respondent. He testified that he was the Director of Dietary Nutrition for the Respondent and was the main Supervisor of the Petitioner. Mr. McGregor testified that he did not witness the Petitioner's accident. Mr. McGregor testified that he was asked to take pictures of the machine that Petitioner injured herself on. RX 2 and 3. Mr. McGregor was also asked to make videos that demonstrated the use of the machine. RX 4. Mr. McGregor testified that he did not initially train the Petitioner on the use of the machine in question, and was not sure of who trained the Petitioner, or if anyone did whatsoever. Mr. McGregor testified that after he was informed of the Petitioner's accident that

he personally then trained the Petitioner on how to properly use the machine. Mr. McGregor indicated that he wrote this corrective measure on the Injury Report. PX 14. Mr. McGregor testified that he thought it was not possible for the Petitioner to injure herself on this machine, but he also indicated that he was not a medical professional.

Respondent's IME or Records Review Opinion

Respondent did not offer any evidence or a medical opinion at the time of trial related to Petitioner's current condition of ill-being or whether it was causally related to the accident of June 2, 2023.

Summary of Other Evidence

Respondent's Exhibit ("RX") 1 was a Workers' Compensation Employee's Notice of Injury signed by Petitioner. Petitioner testified Jenkins filled out the top half of the form and Ronnie McGregor filled out the bottom half. Under "Detail how injury occurred" is written "Hand got smashed trying to clean off stuck carrots" i. Rx1. Petitioner's Exhibit ("Px") 14 was a Supervisor's Report of Injury or Illness completed by Jenkins on June 3, 2023. Under "Description of Accident/Incident" it states "Shawnta Jenkins didn't see accident occur, but notice Jada Henley constantly shaking hand (right) so I asked her if she was okay and she stated that she slammed her hand in the sealer while sealing trays yesterday (6/2/23) I advised her to go to urgent care immediately" . Px14.

Respondent's Exhibit 4 Video 1 was made by McGregor and showed him demonstrating use of the machine and that it would not fall by itself and when it is pushed down it goes back up on its own. Rx4. Respondent's Exhibit 4 Video 2 was made by McGregor showing another

employee demonstrating how to properly use the machine and again showing that the machine cannot fall or close by itself. Rx4.

Current Condition

Petitioner testified that she has had continuous pain in her right hand and wears the prescribed brace all the time. If surgery was approved Petitioner testified that she would undergo same.

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).

Petitioner testified in open hearing before the Arbitrator who had the opportunity to view Petitioner's demeanor under both direct and cross examination. The Arbitrator found the Petitioner's demeanor to be sincere and her testimony credible. The Arbitrator finds that Petitioner testified credibly regarding her job duties, her injury, her treatment and current condition. 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. While Petitioner described the injury to providers and to her employer as slammed, crushed, struck, and hit, the Arbitrator does not find that the different use of vocabulary to be a material enough deviation to make the rest of her testimony not credible. The Arbitrator does not find that Petitioner's different use of vocabulary to describe the accident means that the Petitioner was not injured on the day of the accident nor that she had any intent to deceive. Further, there was no other evidence presented to support an intent to deceive. Arbitrator finds that Petitioner testified to the best of her abilities.

C. WITH REGARD TO ITEM (C), DID PETITIONER'S ACCIDENT ARISE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR RENDERS THE FOLLOWING FINDING OF FACT AND CONCLUSIONS OF LAW:

The Arbitrator finds that the Petitioner's accident on June 2, 2023, arose out of and in the course and scope of Petitioner's employment with the Respondent. To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he has suffered a disabling injury arising out of and in the course of his employment. Both elements must be present at the time of the claimant's injury to justify compensation. *IL Bell Telephone Co. v. Indust. Comm'n*., 131 Ill.2d 478, 483 (1989). Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, are generally deemed to have been received "in the course" of the employment. *Caterpillar Tractor Co. v. Indust Comm'n.,* 129 Ill.2d 52, 57 (1989). The "arising out of" component refers to the

origin of case of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create connection between the employment and the accidental injury. Id. at 58.

Here, both elements have been met. The Petitioner testified and the records show that on June 2, 2023, while using and cleaning the sealing machine for the Respondent her right arm and hand struck the machine when she tried to remove plastic that was stuck in it. The Petitioner testified that she felt immediate pain and attempted to keep working. The Petitioner testified that her job duties included using and cleaning this machine and the accident occurred while the Petitioner was doing what she was supposed to do. The Petitioner testified that not being trained properly could have led to this accident occurring. Therefore, the Arbitrator finds that the accident arose out of an in the course and scope of the Petitioner's employment with the Respondent.

F. WITH REGARD TO ITEM (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY AS IT RELATES TO THE RIGHT HAND AND WRIST, THE ARBITRATOR RENDERS THE FOLLOWING FINDING OF FACT AND CONCLUSIONS OF LAW:

The Arbitrator finds that the Petitioner's current condition of ill being is causally related to her June 2, 2023, work related injury. Proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. Land and Lakes Co. v. Indust. Comm'n., 359 Ill.App.3d 582, 593 (2d Dist. 2005). The Petitioner was injured in a work-related accident on June 2, 2023, when she hit her hand and wrist on the Respondent's sealing machine while she attempted to remove plastic that was stuck in the machine. Petitioner's initial medical records from Franciscan Health and treating records from Mid America Orthopedics, along with treating records from Parkview Orthopedics document the accident in question, and the Arbitrator finds the Petitioner's testimony credible. The Petitioner testified credibly at trial that she had a consistent course of medical treatment, and that her

symptoms still occur to this day. The Petitioner testified that she never has sustained an injury to her right hand and wrist, and she was working full duty prior to her work-related accident of June 2, 2023. The Respondent offered no evidence or reports to the contrary.

The Arbitrator finds that the Petitioner current condition of ill being is causally related to the June 2, 2023, work related injury.

J. WITH REGARD TO ITEM (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary and that the Respondent has not paid all appropriate charges. The Petitioner sustained an injury to her right wrist and hand as a result of her June 2, 2023, work related injury. The Petitioner underwent immediate Emergency Medical Services, diagnostic testing, Orthopedic consultations, and Physical Therapy including being prescribed medication, and was given durable medical equipment in the form of a brace. Accordingly, the Arbitrator finds that the Petitioner's treatment has been reasonable and necessary.

The Arbitrator finds that the Respondent has not paid all appropriate charges. Further, the Petitioner produced outstanding medical bills. (PX 7-13) Having found the Petitioner's treatment to be reasonable and necessary, the Arbitrator hereby awards the Petitioner's outstanding medical bills as reflected in Petitioner's Exhibit's #7-13. The Respondent shall be given a credit for all paid charges pursuant to the fee schedule, however at the time of trial Respondent offered no evidence that they have paid anything to date. The Arbitrator concludes that the amount of unpaid medical to be $22,603.95 prior to the submission of the Illinois Fee Schedule.

K. **WITH REGARD TO ITEM (K), WHETHER PETITIONER IS ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the Petitioner is entitled to a Right-Hand Release of the Carpal Ulnar Tunnel and Distal Antebrachial Forearm Fascia Nerve Decompressions of the Entrapment Areas. The Arbitrator finds that because the Petitioner sustained an Accident on June 2, 2023, and that her Condition of Ill-Being is related to that accident, the Prospective Medical Care being recommended is appropriate, reasonable, and necessary. The Arbitrator notes that the Respondent offered no evidence to the contrary.

L. WITH REGARD TO ITEM (L), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the Petitioner is entitled to TTD benefits from June 14, 2023, to February 22, 2024. The Petitioner's medical records establish that the Petitioner has been medically unable to work or has been provided light duty work restrictions that have not been accommodated by the Respondent since her accident of June 2, 2023. (*See Generally* PX 1-6) The Petitioner testified that she was never paid any TTD benefits while she was off work or in a Restricted Duty status and treating for her condition. The Petitioner has been in an off-work or restricted duty status since her first follow up appointment following her June 2, 2023, accident. Accordingly, the Petitioner is awarded TTD benefits from June 14, 2023, to February 22, 2024, payable at a rate of $494.40 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005234
Case Name	Stephen Hillegonds v. ABF Freight
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0163
Number of Pages of Decision	13
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	Timothy O'Gorman

DATE FILED: 4/14/2025

/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

STEPHEN HILLEGONDS,

Petitioner,

vs. NO: 24 WC 5234

ABF FREIGHT SYSTEMS,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 11, 2024 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,200.00. 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.

April 14, 2025

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

CAH/tdm
O: 4/10/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005234
Case Name	Stephen Hillegonds v. ABF Freight
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	Timothy O'Gorman

DATE FILED: 7/11/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 9, 2024 5.08%

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)

Stephen Hillegonds
Employee/Petitioner

v.

ABF Freight Systems
Employer/Respondent

Case # **24** WC **005234**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **June 5, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 9, 2024**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**63,398.40**; the average weekly wage was $**1,219.20**.

On the date of accident, Petitioner was **49** 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 for the reasonable and necessary medical services, as provided in Px2, Px4, and Px6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Brian Forsythe, including a left knee arthroscopic medial meniscus debridement, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

ICArbDec19(b)

July 11, 2024

PROCEDURAL HISTORY

This matter proceeded to hearing on June 5, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act.") The issues in dispute include (1) accident, (2) causal connection, (3) unpaid medical bills, and (4) prospective medical treatment. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner began working at Respondent, a trucking company, in January 1995. Transcript of Proceedings on Arbitration ("Tr.") at 10. At the time of hearing, he was employed as a dock man and spotter at Respondent. Tr. at 10.

Petitioner testified that he did not injure his left knee or have any limitations with his left knee prior to February 9, 2024. Tr. at 29. Petitioner testified that he was working full duty prior to February 9, 2024. Tr. at 29.

Job Duties

Petitioner testified that his job duties as a dock man consist of mostly driving a forklift to pick up and move shipments from one trailer to another, as well as move loose cartons, which involves a lot of bending and twisting. Tr. at 11. Petitioner works the dock on overtime. Tr. at 33. Petitioner testified that his job duties as a spotter consist mostly of climbing in and out of semitrucks. Tr. at 11. Petitioner testified that a spotter "move[s] the trucks to the next destination, so either the driver can get them or somebody who is fueling them can get them and go fuel them." Tr. at 11. Petitioner testified that most of the time, a spotter is in the truck or hooking them together. Tr. at 11. Petitioner drives the trucks in the yard every day. Tr. at 12. The trucks are all automatic and Petitioner uses his right leg for the gas and brake pedals. Tr. at 34-35. Petitioner testified that he is in a truck eight hours a day and climbs in and out of trucks on average 40 times a day. Tr. at 12-13. Petitioner testified that he climbs up two steps to get into the cabin of a truck. Tr. at 13. Petitioner explained that the first step is for the right foot, the second step is about two feet higher than the first step and is for the left foot, and then he pulls himself up into the cab. Tr. at 13.

Accident

Petitioner was working at Respondent on February 9, 2024. Tr. at 13. Petitioner testified that on February 9, 2024, he was cranking, which involves cranking down the legs of the trucks that come in, pulling the hoses off the trucks, and releasing the trucks from the first trailer. Tr. at 13, 35-36. Petitioner testified that as a part of cranking, he has to get in the truck to pull it out from underneath the trailer, and that he has to "jump in all these trucks and move them to a spot where they go get fueled at." Tr. at 14, 36. Petitioner testified that cranking was a part of his job duties as a spotter. Tr. at 14. Petitioner testified that cranking is done quickly at the beginning of the day, when there are about 20 trucks lined up, so that the trucks can get fueled for the driver. Tr. at 15.

Petitioner testified that while cranking on February 9, 2024, at about 8:30 a.m., he felt a sharp pain in the inside of his left knee, as he climbed the second step of a truck with his left leg and pulled himself up into the cab. Tr. at 15-16, 17. Petitioner testified that he felt pain as soon as he put pressure on the knee to push up from the second step into the cab. Tr. at 17. Petitioner finished his shift. Tr. at 18. Petitioner reported the injury an hour later to Doug Ericks, the operations manager on duty, and he also filled out an accident report Tr. at 18-19. Petitioner did not seek medical treatment on February 9, 2024. Tr. at 19. Petitioner testified that he did not seek treatment until February 16, 2024 because he wanted to stay at work and did not want to be taken off work. Tr.

at 19-20. Petitioner testified that during this period, his knee hurt and he iced his knee and took ibuprofen for the pain. Tr. at 20-21. Petitioner used a brace during this period. Tr. at 21.

Petitioner testified that on February 16, 2024, Kevin Bolin, the individual that oversees workers' compensation cases at Respondent, called and asked Petitioner if he wanted to have his knee looked at. Tr. at 20. Petitioner testified that his knee still hurt, so he wanted to have it looked at. Tr. at 20. Petitioner testified that Mr. Bolin told him to go to the WorkingWell Clinic in Munster. Tr. at 20.

Medical Records Summary

On February 16, 2024, Petitioner was seen by Dr. Stephen v. Headley at WorkingWell. Petitioner's Exhibit ("Px") 1 at 3-5, 13-15. A consistent accident history is noted. Petitioner complained of medial left knee pain. Petitioner denied buckling and giving out of the knee. Dr. Headley noted that Petitioner had been wearing an over-the-counter brace with good success. On examination, tenderness to palpation of the medial collateral ligament was noted, as well as negative findings on Lachman's, McMurray, valgus stress, varus stress, anterior drawer sign, and Apley's testing. Petitioner was diagnosed with an acute left knee sprain, which was noted as "currently uncontrolled," and "condition complication." X-rays of the left knee were obtained at Franciscan Physician Network Radiology and demonstrated no radiographic evidence of a left knee fracture. Px1 at 12, Px2 at 40, 41. Petitioner was placed on restrictions, including ground level work only, no climbing, no working at heights or on ladders, seated breaks as needed, and avoid kneeling and squatting with the left knee.

Petitioner followed up at WorkingWell on February 23, 2024. Px1 at 6-7, 18-19. Petitioner reported that he had been working light duty in a sitting job, and that he was having less pain since he had been sitting. Mild pain at the medial knee distal femur to the joint line was noted on exam. Petitioner's diagnosis was unchanged, and his work restrictions were maintained. Physical therapy was recommended. Petitioner declined a referral for physical therapy, as he had an appointment with his primary care physician the following Monday.

Petitioner presented at Midwest Orthopedics at Rush on February 26, 2024 and was seen by Dr. Brian Forsythe for a chief complaint of left knee pain status post work injury on February 9, 2024. Px5 at 1-4, 7. A consistent accident history is noted. Petitioner reported that his knee pain had gradually improved while working light duty. On exam, trace effusion, pain with deep knee flexion, a 1A Lachman exam, a positive McMurray's exam, and 1+ medial joint line tenderness were noted. Dr. Forsythe diagnosed Petitioner with pain in the left knee and ordered an MRI. Petitioner's light duty work restrictions were maintained.

Petitioner underwent an MRI of the left knee without contrast on March 5, 2024, which demonstrated (1) a medial meniscus tear with large parameniscal cyst extending along the posterior medial joint line, (2) focal full-thickness chondral defect of the weightbearing medial femoral condyle and additional areas of chondromalacia, and (3) mild edema in suprapatellar fat pad, which could be seen in impingement. Px5 at 8-9.

Petitioner next saw Dr. Forsythe on March 11, 2024, at which time Petitioner was diagnosed with a left medial meniscus tear. Px5 at 10-13. Treatment options were discussed including conservative management versus surgical intervention. Dr. Forsythe noted that Petitioner's condition had been ongoing for one month with complaints of mechanical symptoms. Dr. Forsythe noted that Petitioner elected to proceed with a left knee arthroscopic medial meniscus debridement. Petitioner's light duty work restrictions were maintained, with Dr. Forsythe noting that Petitioner would be off work once he had surgery.

Petitioner testified that a caseworker, Hava Muldoon, would attend his medical appointments. Tr. at 25.

Petitioner testified that he presented for an Independent Medical Examination ("IME") on April 8, 2024 with Dr. Daniel Troy. Tr. at 25-26. Petitioner testified that at the time he saw Dr. Troy, his knee symptoms varied, and some days his knee hurt and other days it did not hurt as bad. Tr. at 26. Petitioner testified that his knee "didn't really hurt that bad" on the day he saw Dr. Troy. Tr. at 26.

IME Report by Respondent's Section 12 Examiner, Dr. Daniel Troy

Dr. Troy prepared a report of his IME on April 8, 2024, which was admitted as Respondent's Exhibit ("Rx") 1, without objection. Dr. Troy performed a physical examination of Petitioner, and reviewed Petitioner's treatment records. Dr. Troy documented a consistent accident history reported by Petitioner. Rx1 at 2.

Dr. Troy opined that Petitioner's diagnosis was subjective based left knee pain with stressful activity but not symptomatic with activities of daily living. Rx1 at 8. Dr. Troy noted that the March 5, 2024 left knee MRI demonstrated the presence of a medial meniscal oblique tear extending from the mid one third to posterior one third region, a large parameniscal cyst, and a focal full-thickness chondral defect in the weightbearing aspect of the medial femoral condyle. Rx1 at 8. Dr. Troy opined that the only relationship between the diagnosis and the work injury was Petitioner stating that he started having symptoms the first week of February 2024, specifically on February 9, 2024. Rx1 at 9. Dr. Troy noted that there was no documented injury reported. Rx1 at 9. Dr. Troy noted that Petitioner denied any type of discrete injury or trauma, as well as pain on examination. Rx1 at 9. Dr. Troy noted that Petitioner reported being an avid basketball and baseball player for over 30 years. Rx1 at 9. Dr. Troy opined that it was much more likely that Petitioner would develop a meniscal tear and secondary meniscal cyst while playing one of the sports cutting activities which are required for basketball and baseball. Rx1 at 9. Dr. Troy noted that in sports injuries, the presence of the meniscal cyst typically confirms that a meniscal tear has been present for some time allowing fluid to accumulate in the soft tissue structures in the periphery of the meniscus. Rx1 at 9. Dr. Troy opined that the diagnosis of the meniscal tear chondral injury and secondary meniscal cyst are not work related. Rx1 at 9. Dr. Troy noted that Petitioner also had a chondral injury of the medial tibiofemoral compartment demonstrating chronicity and a more significant injury. Rx1 at 9. Dr. Troy noted that Petitioner had not received any care or treatment for his left knee. Rx1 at 9. Dr. Troy noted that Petitioner's physical examination was overall benign. Rx1 at 10. He noted that objectively, Petitioner had no symptoms, and opined that Petitioner's subjective complaints of pain and discomfort during the first week of February 2024 would be secondary to longstanding degeneration of the medial tibiofemoral compartment and were not work related. Rx1 at 10. Dr. Troy opined that the proposed left knee arthroscopy was appropriate to address Petitioner's subjective complaints and discomfort. Rx1 at 10. Dr. Troy opined that Petitioner could return to work without restrictions. Rx1 at 10. He noted that based on the mechanism of injury, he did not feel that causality had been established. Rx1 at 10. Dr. Troy opined that Petitioner had significant extracurricular activities that would have led to the meniscal tear and secondary chondral changes, and that the parameniscal cyst takes time to develop and corresponds with chronicity. Rx1 at 10. Dr. Troy opined that since causality had not been established, MMI would not apply. Rx1 at 11.

Current Condition

Petitioner testified that Respondent accommodated the light duty restrictions, which consisted of sitting in the break room and doing nothing all day. Tr. at 22-23. Petitioner testified that Respondent stopped accommodating his light duty restrictions after the IME. Tr. at 27. Petitioner testified that he returned to work full duty after Respondent stopped accommodating his restrictions. Tr. at 27. Petitioner testified that he has some pain, but that he can perform his job. Tr. at 28. Petitioner testified that the pain is in the inside of his left knee. Tr. at 28-29. Petitioner testified that he is able to work his full schedule at full duty. Tr. at 28. Petitioner testified that he has taken less than five days off work and takes days off if his pain is high. Tr. at 28. Petitioner testified that he has pain in the left knee all the time and wears a brace on the left knee all the time, whereas his right knee is fine

and without pain. Tr. at 29. On cross examination, Petitioner testified that he has worked overtime since February 9, 2024, and that he has always worked one extra day a week. Tr. at 33-34.

Petitioner testified that prior to February 9, 2024, he exercised and played basketball in the fall and baseball in the summer. Tr. at 30, 37-38. Petitioner testified that he played pickup basketball. Tr. at 37. Petitioner testified that he has not been able to play basketball or baseball since February 9, 2024. Tr. at 30. Petitioner testified that he attempted to play baseball once after February 9, 2024, and that he had to run for a flyball and he could not run, and he quit the team. Tr. at 30, 37-39. Petitioner testified that he was not playing basketball or baseball on February 9, 2024. Tr. at 30.

Petitioner testified that at the time of hearing, he was experiencing the same pain in his left knee and that the pain had not changed since the injury. Tr. at 30-31. Petitioner testified that "[i]t seems like it's popping now, you know, almost like cracking a knuckle. Like, when I got in the shower last night, I felt it kind of pop." Tr. at 31. Petitioner testified that he felt the pop in the inside of the knee where the pain always is. Tr. at 31. Petitioner testified that because of the symptoms in his left knee, he is not working out, he cannot run, he is gaining weight, and that he cannot do any activities outside of work. Tr. at 32. Petitioner would like to proceed with the surgery recommended by Dr. Forsythe. Tr. at 32. Petitioner testified that he has not had any other accidents since February 9, 2024. Tr. at 32.

CONCLUSIONS OF LAW

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

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

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

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

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

Having considered all the evidence, the Arbitrator finds that Petitioner proved by a preponderance of the evidence that he sustained an accidental injury that arose out of and in the course of his employment by Respondent on February 9, 2024.

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that he suffered an injury that arose out of and in the course of his employment. *McAllister v. Ill.*

Workers' Comp. Comm'n, 2020 IL 124848, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). A compensable injury occurs "in the course of" when it is sustained while he performs reasonable activities in conjunction with his employment. *Id*. An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id*. at ¶36 citing *Sisbro*, 207 Ill. 2d at 203. 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 citing *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). A risk is distinctly associated with a claimant's employment if, at the time of occurrence, the employee was performing (1) acts he was instructed to perform by the employer, (2) acts that he had a common-law or statutory duty to perform, or (3) acts that he might reasonably be expected to perform incident to his assigned duties. *Id*. at ¶46.

Petitioner credibly testified that (1) on February 9, 2024, he was employed as a dock man and spotter at Respondent, (2) his duties as a spotter included cranking, which involves Petitioner getting into the cabin of a semitruck to pull it out from the first trailer and to also move the semitruck to get fueled, (3) getting into the cabin of a semitruck involves climbing up two steps that are two feet apart, with the first step used with the right foot and the second step used with the left foot, and then pulling himself up into the cabin; and (4) on February 9, 2024 at approximately 8:30 a.m., while cranking, he felt a sharp pain in the inside of his left knee as he put pressure on the knee to push himself up from the second step of the truck and into the cabin. Petitioner's testimony is unrebutted, and is corroborated by the medical evidence. The evidence demonstrates that Petitioner's accident arose out of and in the course of his employment by Respondent, where the accident occurred on Respondent's premises during regular work hours while Petitioner was performing an act that he might reasonably be expected to perform incident to his assigned duties as spotter. See *McAllister* at ¶46.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

Having considered all the evidence, the Arbitrator finds that Petitioner's current left knee condition of ill-being is causally related to the February 9, 2024 injury. The Arbitrator relies on the following in support of her findings: (1) the records of WorkingWell, (2) the records of Midwest Orthopedics at Rush, (3) the fact that none of the records in evidence reflect that Petitioner was actively treating for a left knee condition prior to February 9, 2024, (4) Petitioner's credible testimony that he has not had any issues with his left knee prior to February 9, 2024, (5) Petitioner's credible testimony regarding the mechanism of injury and the abrupt onset of symptoms following the injury, and (6) Petitioner's credible testimony that he did not sustain any new injuries to his left

knee after February 9, 2024. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health and able to work full duty and without restrictions immediately prior to the work accident and consistent complaints and symptoms of the left knee following the work accident. The Arbitrator further notes that there is no evidence of any reinjury or other intervening event that would sever the chain of causation.

The Arbitrator has considered the opinions of Respondent's Section 12 Examiner, Dr. Daniel Troy, and does not find them persuasive. The Arbitrator notes that both Dr. Forsythe and Dr. Troy agree that tearing is present in the post-injury MRI of the left knee. Dr. Troy, however, opines that it was much more likely that Petitioner would develop a meniscal tear and secondary meniscal cyst while playing one of the sports cutting activities required in basketball and baseball, both sports that Petitioner frequently participated in prior to the work injury. The Arbitrator notes, however, that Dr. Troy did not review any pre-accident records or diagnostic studies. There is also no evidence that Petitioner had any symptomatic left knee issues or pain complaints or had ever treated for any left knee conditions prior to the work injury. The Arbitrator notes that Petitioner credibly testified that he has not been able to play basketball or baseball since the work accident, and that while he attempted to play baseball once after the work accident, he was unable to run and has quit the team. The Arbitrator further notes that Petitioner has had ongoing left knee symptoms since the work accident which have not abated. Additionally, Dr. Troy seems to base his opinions on Petitioner's denial of a discrete injury, as well as a lack of a documented injury reported. The Arbitrator notes, however, that Dr. Troy's reliance on same is inconsistent with his own recording of the history he took from Petitioner during the IME, as well as the medical records he reviewed.

The Arbitrator notes that Respondent argues that Petitioner's condition is not causally related to the work accident because Petitioner testified that he was capable of working full duty the week after the accident and after Dr. Troy's IME. The Arbitrator notes, however, that Petitioner testified that (1) he continued to work after the accident with ongoing pain in his left knee because he did not want to be taken off work, (2) that he returned to full duty after Dr. Troy's IME because Respondent stopped accommodating his light duty restrictions, and (3) that he continues to experience pain while working in a full duty capacity. Petitioner further testified that at the time of hearing, he was experiencing the same pain in his left knee and that the pain had not changed since the injury. The Arbitrator notes that as of March 11, 2024, Dr. Forsythe has continued to maintain Petitioner on light duty restrictions, which are not being accommodated by Respondent.

Having considered all the evidence, the Arbitrator finds that Petitioner's ongoing left knee symptoms are causally related to the February 9, 2024 work accident. In resolving the issue of causation, the Arbitrator finds that Petitioner is not at MMI for his current left knee condition of ill-being.

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

At arbitration, Petitioner presented the following unpaid medical bills: (1) WorkingWell-Munster ($989.00), Px2, (2) FHC Specialty Center ($110.00), Px4, and (3) Midwest Orthopedics at Rush ($2,965.00), Px6. Ax1 at No. 7. Respondent disputes Petitioner's claim for unpaid medical bills and claims, "[n]o liability for medical bills per disputes." Ax1 at No. 7.

The bills from WorkingWell-Munster relate to Petitioner's treatment on February 16, 2024 and February 23, 2024. The bill from FHC Specialty, or Franciscan Alliance, relates to the left knee x-rays taken on February 16, 2024. The bills from Midwest Orthopedics at Rush relate to Petitioner's treatment with Dr. Forsythe on February 26, 2024 and March 11, 2024, and the left knee MRI taken on March 5, 2024.

Consistent with the Arbitrator's prior findings as to accident and causal connection, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable, necessary, and casually related to the work accident, and that Respondent has not paid all appropriate charges. Accordingly, the Arbitrator further finds that all bills, as provided in Px2, Px4, and Px6, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Forsythe.

The Arbitrator notes that on March 11, 2024, Dr. Forsythe recommended Petitioner undergo a left knee arthroscopic medial meniscus debridement. The Arbitrator notes that Respondent's Section 12 examiner, Dr. Troy, agreed that the recommended left knee arthroscopy was appropriate to address Petitioner's subjective complaints and discomfort. Accordingly, the Arbitrator finds that Petitioner is entitled to treatment as recommended by Dr. Forsythe, including a left knee arthroscopic medial meniscus debridement, all of which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

July 11, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC041158
Case Name	Carlos Panameno v. Poly One GLS Thermosplastics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0164
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Guerra
Respondent Attorney	Daniel J Levato

DATE FILED: 4/14/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MC HENRY)

☒ 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

CARLOS PANAMENO,

Petitioner,

vs. NO: 14 WC 41158

POLY ONE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and permanent partial disability (PPD) 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 June 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 receive a credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $13,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

APRIL 14, 2025

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

CAH/pm

O: 4/10/25

052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC041158
Case Name	Carlos Panameno v. Poly One GLS Thermosplastics
Consolidated Cases	10WC017843; 10WC017844;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	David Guerra
Respondent Attorney	Daniel J Levato

DATE FILED: 6/4/2024

/s/Stephen Friedman, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

☐ 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

Carlos Panameno
Employee/Petitioner

v.

Poly One
Employer/Respondent

Case # **14** WC **041158**

Consolidated cases: **See Decision**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Woodstock**, on **May 1, 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 **September 29, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**77,097.80**; the average weekly wage was $**1,482.65**.

On the date of accident, Petitioner was **35** years of age, ***married*** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $988.43/week for 2 weeks, commencing October 13, 2014 through October 27, 2014, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $735.37/week for 15 weeks, because the injuries sustained caused the 3% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

/s/ Stephen J. Friedman
Signature of Arbitrator

June 4, 2024

Statement of Facts

This matter was tried in conjunction with consolidated cases 10WC017844 (DOA 4/1/2009) and 10WC017843 (DOA 3/22/2010). A single transcript was prepared but the Arbitrator has issued separate decisions for each of the consolidated cases. The Arbitrator incorporates by reference the Statements of Facts and Conclusions of Law in consolidated cases 10WC017843 and 10WC017844 as if fully set forth herein with respect to the prior accidents, medical treatment, work status and complaints from the prior claimed injuries.

Petitioner testified to his prior back injuries and treatment. He testified he returned to work in November 2010 to his full duty job. He was promoted to warehouse supervisor in 2012. His job duties remained the same. He just had more work. He received an increase in pay. Petitioner underwent a DOT physical for his CDL license on November 13, 2013. He noted no conditions other than chronic low back pain. His examination was within normal limits and Petitioner was certified (PX 10, p 3-6).

Petitioner testified that on September 29, 2014, he was finishing loading his truck using a forklift. The overhead garage door was open. As he was walking out, a guy was closing the door and it hit him on the crown of the head. He does not know what the door weighed. He did not fall to the ground or lose consciousness. He reported the accident to Telo, his manager, but did not seek immediate medical attention. He started feeling dizzy and out of place. Two weeks later, he was feeling really dizzy. He told his boss that he did not feel good and was going to leave. He went to Sherman Hospital.

Petitioner was seen in the Emergency Department at Sherman Hospital on October 9, 2014 (PX 9). Petitioner provided a history of hitting his head on a door two weeks before. He complained of intermittent headaches, vertigo and nausea. A CT scan of the brain showed no abnormality. He was diagnosed with a concussion and post-concussion syndrome and referred to Dr. Munzir (PX 9).

Petitioner saw Dr. Munzir on October 13, 2014 (PX 11). He gave a consistent history of accident, and complained of “feeling not there.” He had a slight headache. The headaches come and go. Dr. Munzir diagnosed migraine variants which are precipitated by head injury. He also noted complaints of dizziness and paresthesia. He recommended vestibular therapy (PX 11, p 9-10). He took Petitioner off work from October 13, 2014 through October 28, 2014 (PX 11, p 19). Petitioner was also seen at Centegra on October 14, 2014 noting his symptoms developed 2 days after the accident. He was also kept off work for post-concussion syndrome (PX 10, p 9-11). Petitioner attended therapy at Sherman Hospital from October 16, 2014 through October 30, 2014 (PX 9). Petitioner returned to Dr. Munzir on October 27, 2014 noting his dizziness had resolved. He had dull headaches that did not require medication. Dr. Munzir noted he was improved. He expected Petitioner’s symptoms to improve and resolve (PX 11, p 11-12). He released Petitioner to return to unrestricted work on October 28, 2014 (PX 11, p 20, 21). Petitioner had a follow up at Centegra on November 5, 2014 releasing him to full duty work (PX 10, p 19). Petitioner followed up with Dr. Munzir on December 8, 2014 noting dull headaches and memory disturbances. Dr. Munzir encouraged Petitioner to exercise and take Elavil for sleep issues (PX 11, p 16-17).

Petitioner testified that after 2 weeks off, Dr. Munzir said he could return to work. He called his supervisor and was told to come in at 10:00 o’clock. He was dismissed or fired for lack of immediate accident reporting.

Petitioner testified that since that time he feels “out of place.” It is like a day dreaming feeling. It is constant. He has a drunk like feeling that is random. Sometimes he worries about his mental health. Sometimes he gets

really bad headaches. There is nothing that he uses to help with his problems. He is afraid he will die and leave his wife with the kids. Sometimes he has memory problems. He told the doctors in 2014 and 2015 about these feelings and was advised to see a psychiatrist. He never did.

He does not know if his bills were paid. He did not receive Worker's Comp benefits. Petitioner currently works as a semi-truck driver. He works overtime. He does not do any lifting duties. He is making a little bit more than before.

Conclusions of Law

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

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Petitioner had no prior head injuries before the September 29, 2014 injury when he was struck by the garage door. When Petitioner was seen in the Emergency Department at Sherman Hospital on October 9, 2014, he provided a history of hitting his head on a door two weeks before. He complained of intermittent headaches, vertigo and nausea. A CT scan of the brain showed no abnormality. He was diagnosed with a concussion and post-concussion syndrome and referred to Dr. Munzir. On October 13, 2014, he gave Dr. Munzir a consistent history of accident, and complained of "feeling not there." He had a slight headache. Dr. Munzir diagnosed migraine variants which are precipitated by head injury. Petitioner was also seen at Centegra on October 14, 2014 noting his symptoms developed 2 days after the accident. He was also kept off work for post-concussion syndrome.

Based on the record as a whole, including the chain of events and Dr. Munzir's opinions, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the head of post-concussion syndrome is causally connected to the accidental injury of September 29, 2014.

In support of the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:

Petitioner testified he was taken off work for 2 weeks. Dr. Munzir disabled Petitioner from October 13, 2014 through the release to return to full duty work October 28, 2014. Based upon the record as a whole, the

Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability commencing October 13, 2014 through October 27, 2014, a period of 2 weeks.

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a warehouse supervisor at the time of the accident and that he was released to return to work in his prior capacity as a result of said injury. He was terminated, but has worked thereafter as a semi-truck driver. The Arbitrator notes this job requires physical work and concentration and also required passing annual DOT physicals. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 35 years old at the time of the accident. Petitioner has worked as a truck driver for the last 10 years. He would be expected to remain in the workforce for many years. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner is earning more than at the time of the injury. Because of this, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner initially worked without seeking medical treatment for 2 weeks. When he finally went to the emergency room, he reported headaches, vertigo, and nausea. The CT scan was negative. Petitioner was released to unrestricted duty after 2 weeks. On October 27, 2014, Petitioner noted his dizziness had resolved. He had dull headaches that did not require medication. Dr. Munzir noted he was improved. By December 2014, he was reporting dull headaches and memory disturbances. Petitioner has worked without seeking any further medical treatment for almost a decade. The Arbitrator finds some of his current subjective complaints unsupported by the medical evidence. Because of this, the Arbitrator therefore gives some 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 3% loss of use of whole person pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030724
Case Name	Erika Vega v. OSI Industries
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0165
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Natalia Olejarska
Respondent Attorney	Scott McCain

DATE FILED: 4/14/2025

/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

Erika Vega,

Petitioner,

vs. NO: 22 WC 030724

OSI Industries,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, prospective medical care, penalties and fees, and whether Petitioner exceeded her choice of treating physicians, 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 September 18, 2024, is hereby affirmed and adopted.

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

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

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

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

APRIL 14, 2025
MP:yl
o 4/10/25
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	22WC030724
Case Name	Erika Vega v. OSI Industries
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	George Chepov
Respondent Attorney	Scott McCain

DATE FILED: 9/18/2024

/s/ Jeffrey Huebsch, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 17, 2024 4.41%

E. Vega v. OSI Ind., 22 WC 030724

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)

Erika Vega Case # **22** WC **030724**
Employee/Petitioner
v.
OSI Industries
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 **June 20, 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: Whether Petitioner exceeded her choice of treating physicians.**

FINDINGS

On the date of accident, **11/182022**, 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 $**53,664.52**; the average weekly wage was $**1,032.01**.

On the date of accident, Petitioner was **42** years of age, ***single,*** with **2** dependent child.

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 medical expenses of $137,146.53, pursuant to the Medical Fee Schedule, in accordance with Sections 8(a) and 8.2 o the Act, and as is set forth below.

Respondent shall pay Petitioner temporary total disability benefits of $688.01/week for 45-5/7 weeks, commencing August 5, 2023 through June 20, 2024, as provided in Section 8(b) of the Act.

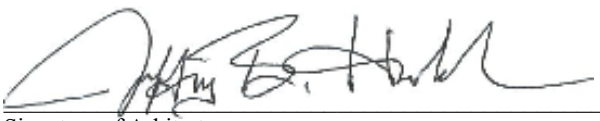
Respondent shall authorize and pay for the anterior cervical discectomy with arthroplasty at C5-C6, with a possible fusion procedure, offered by Dr. Sampat, along with all related services, in accordance with Sections 8(a) and 8.2 of the Act.

Petitioner's claim for penalties and attorney's 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

September 18, 2024

FINDINGS OF FACT

Petitioner testified via a Spanish/English interpreter.

Petitioner is 44 years old and her highest level of education was the first year of university. (T. 13). She started working for Respondent, a meat packing company, in 2014. She was a machine operator and her job was packing and pushing 20 and 30 pound meat carts. (T. 14-16). She testified that prior to the accident she worked 40 to 45 hours a week, as well as overtime. Her schedule was Monday through Friday from 4 a.m. to 2 or 3 p.m. and Saturdays. (T. 14-16).

Petitioner stated that she is currently not working for Respondent or any other employer and has remained off work since August 4, 2023, per doctor's instructions. (T. 14, 39). Petitioner stated that prior to the work injury on November 18, 2022, she did not have any workers' compensation or personal injury claims and she was in good health. Prior to the November 18, 2022 accident, she did not have any injuries to her back, neck, or head. (T. 14-15). Petitioner stated that prior to the November 18, 2022 accident she was able to perform all her job requirements and daily activities without any problems or pains. (T. 17).

Petitioner testified that she fell at work on Friday, November 18, 2022, at 6:15 am, at the entrance of the company. Petitioner stated that she slipped and fell backwards 3 steps from the employee entrance step. It was during her 15-minute break, while she was walking to a food truck parked in Respondent's parking lot. Petitioner stated that she took three steps past the step at the entrance and slipped on snow. She hit her head and her neck and back hurt a lot. The food truck was located in Respondent's parking lot, about 30 feet from the employee entrance. Petitioner did not have to leave Respondent's lot to get to the food truck. Petitioner testified that employees were allowed to go to the food truck on their breaks. Petitioner would go to the truck to get coffee. (T. 17-21).

Petitioner testified that the food truck was at Respondent's parking lot on a daily basis. (T. 20). During cross-examination, Petitioner denied that on the date of the accident the food truck was parked on a public street and stated that the food truck had always parked in the company parking lot before her accident. (T. 44-45). Petitioner testified that it was only following her accident that the food truck was moved. (T. 45). Petitioner testified that she always used the same route and entrance to walk to the food truck, as it was the shortest one. (T. 20). Petitioner stated that the door she went out of to reach the truck is an employee only door with stickers on it that state so. (T. 18-19, 22).

Petitioner identified Petitioner's Exhibit 12 as photographs showing Respondent's employee entrance door that she walked out of before she fell on November 18, 2022. (T. 21, PX 12). Petitioner stated that the address shown on the door is 4900 S. Major, which belongs to Respondent. (T. 21-22; PX 12 at 3). Petitioner testified that the photographs show stickers on the door that state it is an employee entrance only. (T. 22-23; PX 12 at 3). Petitioner indicated that the general public does not use this door. (T. 23). Petitioner marked with an "X" the exact location on Respondent's premises where she fell. The X on the photograph indicates the fall occurred a few steps (5 feet?) away from the step by the employee entrance. (PX 12 at 2; T. 23-24). Petitioner testified that these photos accurately show the area and structures where she fell, except that on the day of the accident it was snowing and there was no orange cone. (T. 24; PX 12). The photographs are a fair and accurate representation of what Respondent's employee entrance door and step area looked like on November 18, 2022. (T. 24, PX 12). Petitioner stated that there is a camera visible in the pictures, located above the entrance and that the camera was there on the day of the accident. (T. 25; PX 12 at 3).

On cross-examination, Petitioner stated that she obtained the pictures included in Petitioner's Exhibit 12 around August of 2023 to show her attorney where the accident occurred as there was a video Respondent would not provide. (T. 43). Petitioner denied having stated that the accident had occurred on a sidewalk when she initially reported it, and she denied having marked the accident location on a diagram. (T. 44). Petitioner stated that she always indicated having fallen at the company entrance. Petitioner denied having changed her accident description at any point. (T. 44).

Petitioner testified that following the accident, she was taken by ambulance to Loyola ER. (T. 26). The Bedford Park Fire Department ambulance report indicates that Petitioner was picked up at 4900 S. Major at 6:32 am. The ambulance report indicates that the call was for an injury to the low back and head from a slip and fall. The "Injury" was described on page 1 of PX 2 as "Falls – Fall on ice and snow- Industrial place- 11/18/2022". The narrative indicates that upon arrival, the patient was sitting in a wheelchair in the company of Central Stickney Engine crew. "Patient was walking at work when she slipped and fell on ice and snow. She was placed on a cot and transported to MacNeal Hospital. (PX 2).

At MacNeal Hospital, Petitioner stated that she had slipped and fallen on ice at work and hit her head and back and neck. The record notes that Petitioner complained of a headache, neck, and lower back pain. There was no loss of consciousness. (T. 30; PX 3, 7). Petitioner underwent a head CT scan and lumbar X-rays (T. 30; PX 3, 16-17). Petitioner testified that she was discharged home with pain medications. (T. 30; PX 3, 31).

Petitioner testified that she reported the accident to her supervisors in the days following the accident. Petitioner testified that she informed Carolina on November 21, 2022, that she had fallen at the door of the workplace on Friday, November 18, 2022, and that she was unable to work because of pain in her neck and back. (T. 27). Petitioner stated that on November 22, 2022, she informed Samantha of having fallen at work. "I told her that I had struck my neck and back and would you please send me to a doctor because I had fallen in the company entrance, and she told me that she could not send me to a doctor because it was outside and it was state regulation. She was unable to send me to a doctor." (T. 28). Petitioner identified Respondent's Company representative, Samantha Treadman Blaga, as the Samantha to whom she reported the accident. (T. 87). Petitioner did not fill out an accident report at any time. (T. 29).

Petitioner then sought treatment at La Clinica, "a physical therapy establishment", starting on November 22, 2022. (T. 30, PX 4). The initial examination record notes that Petitioner indicated she was involved in a work-related accident, that she had stepped out to get her lunch when she fell walking to the food truck after stepping on an icy patch, striking her back and head against frozen cement. She hit her back, head, and neck. (T. 31; PX 4 at 3). The record further notes that Petitioner was unable to get up unassisted; therefore, security guards helped her get off the ground while she waited for the ambulance. (PX 4 at 3). Daniel Johnson, DC performed a physical examination and Petitioner underwent cervical, lumbar and skull X-rays. Per La Clinica's referral, Petitioner underwent MRIs of the lumbar and cervical spine on December 20, 2022, at American MRI. (PX 7). Petitioner was diagnosed with cervical and lumbar strains and radiculopathy, along with headaches, mid back pain and muscle spasms, by Dr. Johnson. (PX 4 at 6). Petitioner stated that physical therapy helped very little, and the pains continued very strongly. (T. 32). Petitioner underwent physical therapy at La Clinica through July 20, 2023, with a few evaluations until October 23, 2023. (T. 31).

On December 28, 2022, Petitioner started treating at Illinois Orthopedic Network (ION). (T. 32, PX 5). The history taken by Dr. Shoeb Mohiuddin, MD was that Petitioner was at work, walking outside to a food truck, when she fell hitting her back and neck against frozen cement, and that she could not get up by herself. (PX 5 at 1). Petitioner underwent a C6-C7 cervical epidural steroid injection at ION on March 15, 2023, per Dr. Mohiuddin's recommendation. (T. 32; PX 5 at 7). Petitioner testified that the injection helped for a few days; however, the pain returned. (T. 32). Dr. Mohiuddin's chart note of May 3, 2023 indicates that he is referring

Petitioner to a spine surgeon. (PX 5 at 17). Dr. Mohiuddin kept Petitioner on work restrictions limiting push/pull and lifting from 10 pounds to 20 pounds during the course of her treatment with him. (PX 5). Petitioner also was prescribed several medications by Dr. Mohiuddin, dispensed by Midwest Specialty Pharmacy, with a total outstanding bill of $7,335.93. (PX 6).

Per Dr. Mohiuddin's referral, Petitioner started treating with Dr. Chintan Sampat, MD at Parkview Orthopedics on May 19, 2023. (T. 32; PX 8). Petitioner communicated with the doctor in Spanish via an interpreter. Petitioner testified that she provided Dr. Sampat with the same accident description as La Clinica; that she had fallen at work and her head, back and neck were hurting a lot. (T. 33; PX 8 at 1). The noted complaints were of neck pain that radiates into the left shoulder with numbness and tingling down the left arm and low back pain that radiates into the right buttock and posterior thigh, with pain at 9/10. Dr. Sampat performed a physical examination that revealed range of motion of the cervical spine was limited, along with significant neck pain with flexion and extension maneuvers. The range of motion of the lumbar spine was 70 degrees flexion and 20 degrees extension, bilateral rotation and bending was demonstrated to 30 degrees, with low back pain with lumbar flexion and extension maneuvers. Petitioner showed moderate tenderness over the cervical and lumbar region, with no tenderness over the thoracic spine. She had a positive Spurling's sign on the left side, negative Spurling's sign on the right side and a positive Hoffman's sign on the left side. Petitioner's motor testing indicated 5/5 strength, except for left hand grip which was at 4/5. (PX 8, 1-3).).

During the initial consultation, Dr. Sampat obtained cervical spine X-rays with AP, lateral, flexion and extension views. The X-rays revealed loss of cervical lordosis; otherwise, disc heights were well maintained. Petitioner's lumbar X-rays demonstrate normal coronal and sagittal balance, except for minimally decreased disc height at L5-S1. Dr. Sampat reviewed Petitioner's cervical spine MRI images and report and noted that the MRI showed a large disc herniation that is left-sided and paracentral in nature at C5-C6 resulting in severe canal stenosis. (T. 33; PX 8 at 3). Dr. Sampat notes that he spoke to the radiologist and concluded that there appeared to be some cord signal change with increased T2 signal, consistent with cord edema with myelomalacia versus cord edema being noted in this area. (PX 8 at 3). Dr. Sampat also reviewed the lumbar MRI, which showed some mild disc protrusions from L4 to S1 and a disc extrusion at T11-T12. (PX 8 at 3). Dr. Sampat diagnosed Petitioner with L5-S1 degenerative disc disease with low back pain, as well as C5-C6 cervical disc herniation and left arm radiculopathy and myelopathy noting the fall was a competent mechanism to result in the onset of cervical radiculopathy and injury to the spinal cord. (PX 8 at 3). Dr. Sampat recommended Petitioner proceed with an anterior cervical diskectomy with arthroplasty at C5-C6 with a possible fusion, depending on intraoperative findings due to concerns for myelopathy and stepwise loss of neurological functioning. Dr. Sampat provided Petitioner with work restrictions of no lifting, pulling or pushing objects greater than 20 lbs., no climbing ladders, and 40-hour work weeks. (T. 34; PX 8 at 3, 5). Petitioner testified that she continued seeing Dr. Sampat about every month and a half. (T. 34).

On June 21, 2023, Petitioner underwent an Independent Medical Examination by Dr. Carl Graf, MD, an orthopedic surgeon. (T. 38; RX *3*). Petitioner testified that she provided Dr. Graf with an accident description consistent with the description provided to Dr. Sampat and La Clinica; that she had fallen at work when she went outside to a food truck while on break and she had hit her back, head and neck. (T. 39; RX 3). Dr. Graf diagnosed Petitioner with a lumbar strain in addition to a cervical disc herniation at C5-C6 with left upper extremity radiculopathy. (RX 3 at 14). Dr. Graf opined that Petitioner's condition of ill-being is causally related to the accident. (RX 3 at 14). Dr. Graf did not recommend lumbar injections. He agreed that Dr. Sampat's surgery recommendation of cervical decompression and fusion at C5-C6 is reasonable and medically necessary. (RX 3 at 14). Dr. Graf thought that Petitioner suffered a lumbar strain as a result of the fall and she was at MMI for that condition.

Dr. Graf describes the records that he reviewed and notes that he reviewed an "Illinois Form 45: Employer's First Report of Injury form", dated January 5, 2023. (RX 3, 8-9). The report stated that Petitioner had been involved in an accident while at work on November 18, 2022, at approximately midnight. Dr. Graf specifies that the report's "description" (of accident?) states the following: "employee stated at the time of the incident that it happened on the city street on a city sidewalk. She was on her break on her way to the taco truck, therefore a deviation of employment. The employee was not on OSI property. Slipped on snow or ice and fell on buttock." (RX 3, 9). The accident report stated that Petitioner had not sustained physical injuries and did not indicate what, if any, medical treatment Petitioner had received. Dr. Graf stated that there were no witnesses named in the work injury report. Although Dr. Graf states that the name of the accident report's author appears on the document, he did not include it in the IME report. (RX 3, 9).

On August 4, 2023, Dr. Sampat reviewed Dr. Graf's June 21, 2023, IME report. Dr. Sampat and Dr. Graf agreed on the need for anterior cervical discectomy, with arthroplasty versus fusion, with Dr. Sampat focusing on the arthroplasty, given Petitioner's young age. Dr. Sampat disagreed with Dr. Graf's opinion regarding the need for lumbar facet injections and continued recommending the injections bilaterally at L5-S1 due to mechanical back pain and facet arthropathy, stating the need for the injections stems from aggravation of pre-existing but asymptomatic degenerative lumbar spine disc disease (*PX* 8 at 9). Dr. Sampat recommended proceeding with the cervical surgery as soon as possible, due to progressive worsening of signs and symptoms with of myelopathy and the risk of further neurological damage. (PX 8, 9-10).

Per Dr. Sampat's referral, Petitioner started treating with Dr. Xia for pain management on August 7, 2023. (T. 34; PX 9). Petitioner testified that she provided Dr. Xia with the same accident description as Dr. Sampat and La Clinica. (T. 34). The record notes that Petitioner was on a break at work when she slipped and fell backwards on snowy concrete at the entrance of the building. (PX 9, 1). Petitioner complained of pain in the back, neck, and head. Dr. Xia performed a physical examination that revealed cervical range of motion restricted with flexion limited to 20 degrees (normal is up to 60 degrees), extension limited to 10 degrees (normal is up to 75 degrees), right lateral bending limited to 10 degrees (normal is up to 45 degrees), and left lateral bending limited to 10 degrees (normal is up to 45 degrees). (*PX* 9 at 2). Dr. Xia also noted periscapular muscle spasms and tenderness is noted at C4, C5, C6, and C7. Petitioner showed subjective decreased sensation to the dorsum of left hand and in all 5 digits of the left hand and decreased grip strength in the left hand. Petitioner demonstrated limited range of motion in the thoracic spine with flexion limited to 15 degrees (normal is up to 50 degrees) and extension limited to 15 degrees. Tenderness was noted at the paracervical muscles. With respect to the lumbar spine, Petitioner's range of motion was restricted with flexion limited to 30 degrees (normal is up to 90 degrees), extension limited to 10 degrees (normal is up to 30 degrees), right lateral bending limited to 15 degrees (normal is up to 25 degrees), and left lateral bending limited to 15 degrees (normal is up to 25 degrees). Petitioner was able to walk on her heels but not on her toes and showed a positive straight leg raising test on both sides in supine position at 30 degrees. (PX 9, 2). Dr. Xia diagnosed Petitioner with spondylosis with myelopathy in the cervical region, radiculopathy in the lumbar and lumbosacral regions, post-traumatic headache, and intervertebral disc displacement in the thoracic region. (PX 9, 3). Dr. Xia recommended obtaining a thoracic spine MRI, prescribed medications and took Petitioner off work. (T. 35; PX9, 3). Petitioner testified that she continues taking the medications Dr. Xia prescribed; however, they only help very little. Petitioner testified that she continues to follow up with Dr. Xia on an approximate monthly basis. (T. 35).

Per Dr. Xia's order, Petitioner underwent the thoracic spine MRI on August 12, 2023, at American MRI. (T. 36; PX 7, 5). Dr. Xia noted that the MRI showed a T6-7 disc bulge with extrusion into the canal and a T11-12 disc bulge, measuring 5x5x14 mm, with extrusion and moderate canal stenosis. (PX 9, 8).

Per Dr. Sampat's recommendation, Petitioner underwent a left T10-T12 TFESI (transforaminal epidural steroid injection) with Dr. Xia on November 28, 2023. (T. 36; PX 9, 24). Petitioner testified that the injection helped very little. (T. 36). On January 16, 2024, Petitioner underwent a L5-S1 FJI (facet joint injection) with Dr. Xia, again with little relief. (PX 9, 41). Petitioner further testified that she underwent a left occipital nerve block by Dr. Xia on April 19, 2024, which helped only a little before the pain returned. (T. 37; PX 9, 61).

Dr. Graf authored an IME Addendum Report, dated April 8, 2024. (RX 3, 17-26 [paginated by the Arbitrator]). Dr. Graf reviewed updated records, x-rays of the cervical and lumbar spine and the thoracic MRI of 8/12/2023. He thought that the MRI showed a tiny disc bulge at T11-12 in the left paracentral region. He did not see significant nerve root compression or spinal cord compression. (RX 3, 24). Dr. Graf opined that Petitioner might have suffered a thoracic strain as a result of the fall. Petitioner has multi-level disc degeneration, with no notable spinal cord or nerve root compression. There was no aggravation or exacerbation attributed to the fall. Petitioner is at MMI regarding her thoracic spine. The thoracic injection was neither reasonable or necessary. Petitioner's lumbar strain condition was previously noted to be at MMI and lumbar injections were not indicated. (RX 3, 24-26).

On May 3, 2024, Dr. Xia reviewed Dr. Graf's IME Addendums stating that he disagrees with Dr. Graf's opinion that Petitioner suffered only a thoracic strain on the date of her injury and that her thoracic bulge at T11-T12 level is tiny, noting that the bulge measures 5x5x14 mm which is objectively large and that Petitioner's 75% pain relief for three days following the TFESI injection at T11-T12 level is evidence that this injury is more than a thoracic strain. Dr. Xia agreed with Dr. Graff that further thoracic and lumbar spine injections were not indicated, considering her pain relief was so short lived and noted that it is still possible that the patient will require a discectomy at T11-T12. (^X 9, 65-66).

Petitioner last saw Dr. Xia on June 5, 2024. (T. 38; PX 9, 68). Petitioner reported severe neck pain, rated 8/10, with radiation into the left arm and hand with weakness in grip of left hand. Petitioner also reported severe mid and low back pain rated 8/10 and 9/10, respectively. Dr. Xia continued prescribing medications and recommended Petitioner continue using the lumbar brace, which Petitioner was wearing at the time of the hearing. (T. 38; PX 9, 70). Petitioner stated that the back brace helps a little when she walks. (T. 38). Dr. Xia recommended Petitioner stay off work.

Petitioner testified that she last saw Dr. Sampat on June 7, 2024. (T. 37; PX 8, 37). At this time, Petitioner stated that her thoracolumbar pain as well as her neck pain with numbness and tingling down her left arm remained unchanged. Dr. Sampat again recommended diskectomy and arthroplasty at C5-C6 and to continue seeing Dr. Xia for pain management. (PX 8, 34-35). Dr. Sampat reviewed Dr. Graf's April 8, 2024, IME Addendum, noting that Petitioner still needs the cervical spine surgery and, with respect to the thoracolumbar spine, that Petitioner's spondylosis was aggravated by her injury at work because she did not have these symptoms before the injury at work and became symptomatic afterwards, and a simple soft tissue strain would have resolved by now. (PX 8, 34-35). As such, following failure of physical therapy to yield relief, pain management was indicated.

Petitioner testified that since the November 18, 2022, accident, she has not suffered any other accidents or injuries. (T. 39). Petitioner testified that her current symptoms include pain in the back and neck and rated the pain at approximately 8-9/10 for the neck and 7-8/10 for the back. There are days in which the neck pain may reach up to 10/10, while the back pain remains at a 7-8/10; her neck is most painful. Petitioner testified that she is currently taking four different medicines; she takes three of them three times a day, and one of them once as it is a strong pain medication, in addition to patches prescribed by Dr. Xia. Dr. Xia also recommended Petitioner to use patches in the evenings, which Petitioner stated help more or less. (T. 41; PX 9).

Petitioner testified that she wishes to undergo the proposed neck surgery because she wants to continue working to be able to provide for her two children. (T. 37). Dr. Sampat has kept Petitioner off work since July 5, 2023, and continued to keep her off work following the June 7, 2024, visit. (T. 38; PX 8).

Petitioner testified that after the November 18, 2022, accident, she continued working for Respondent with restrictions until August 4, 2023, because she needed to support her children. Petitioner stated that by August 4, 2023, she could no longer continue working, due to having a lot of pain in the neck and back. Petitioner testified that since August 4, 2023, she has not worked anywhere else. (T. 39). With respect to her work activities, Petitioner testified she is no longer able to work due to her work accident. Regarding daily activities, Petitioner testified that the work injury impedes her from doing some of her household chores, such as sweeping or dusting and bathing herself is very difficult. (T. 42).

On cross-examination, Petitioner said that she "…never marked a sidewalk. I always said that I fell at the company entrance." (T. 44). She denied changing her story from a fall on the sidewalk to a fall at a company entrance. She stated that the taco truck was not parked on a public street; it was parked in the company parking lot. Before her accident, the truck always parked in the parking lot. After the accident (at an unknown time) they moved it. (T. 45).

Petitioner had no further witnesses. (T. 46, 85).

Respondent presented the testimony of Samantha Treadman Blaga. (Blaga). (T.47). She has been employed by Respondent since August of 2022. Her current job title is Corporate Senior Manager of Health, Safety and Security. (T. 71). Blaga has a BS in Environmental Health and Safety from Illinois State University. She is certified by the Board for Certified Safety Professionals. She started working for Respondent in January of 2022 as a consultant through Chubb insurance and became an OSI employee in August of 2022. Ms. Blaga's position on the date of the accident was EHS Manager of the 4900 S. Major plant. (T. 48). Her job responsibilities consisted of implementing health and safety protocols and regulations with the primary goal of conducting risk assessments and safety training, as well as investigating employee work injury claims to avoid recurrence. (T. 49-50). If an employee reports an injury to a supervisor, Respondent has "a very vigorous process." (T. 50). The supervisor or manager to whom the accident was reported to fills out an accident report. Ms. Blaga reviews the report and then investigates the incident. On cross-examination, Ms. Treadman Blaga testified that an injury report is not complete until she reviews it and that had one been completed in the case at bar, it would have come across her desk or email inbox. (T. 75-76). Accident reports should be done within 72 hours. (T. 81).

Blaga testified that she was familiar with the property owned by Respondent and the vicinity, including property lines. on the date of the accident. (T. 51). She identified Defendant's (sic, hereinafter Respondent) Exhibit No. 1 as a Google image of Respondent's plant property. (T. 53). RX 2 was a copy of the plat of Respondent's property. (T. 54-55). The sidewalk and street next to Respondent's facility is owned by the City of Chicago. (T. 56).

Blaga was familiar with Petitioner, who was a meat packer and knew what building Petitioner worked in. (t. 52-53). The building where Petitioner worked had a breakroom with snacks, etc. Employees were not required by Respondent to leave company premises when on break. (T. 57).

Blaga was informed of Petitioner's November 18, 2022, accident via an email from the assistant plant manager, which stated that an employee fell on the sidewalk. (T. 53). Blaga investigated the accident. She spoke to Petitioner on November 22, 2022, at the nurse's office. The nurse was also present. (T. 58-59). Petitioner indicated during this encounter that she had fallen on the sidewalk and marked on the map included in

RX 1 the location of the accident. (T. 59, 80). Ms. Blaga marked the location with a yellow dot. (T. 59). The location is outside of Respondent's property line, on a City sidewalk, one to two blocks away from the building where Petitioner worked. (T. 59-60). Blaga marked with a "T" on RX 1 the location where the taco truck would park on November 18, 2022, and stated that the location does not belong to Respondent. (T. 62). She further marked with a "W" the located of Respondent's building where Petitioner worked. (T. 54-55).

Blaga apparently "took a look at" the place where Petitioner said that she fell. It was a typical city sidewalk, with cracks and a small manhole cover. (T. 60).

When asked how she could be sure the taco truck was parked on the street that day, Blaga testified: "Because some—a lot of times they would park more near towards the facility, but it became a problem because all the semis backing up. So we originally said like, hey, you got to get out of here, man. So we were hoping he would just leave completely, but then he started parking down here" (where she had marked RX 1 with a T). (T. 62-63). She testified that the general public uses the City street and sidewalk and had access to the taco truck. (T. 63).

Blaga testified that an accident report in relation to the November 18, 2022 accident was not filled out because the incident did not occur on company property and therefore, it was not considered a workplace incident. (T. 64).

Blaga stated that she had a second encounter with Petitioner, maybe a couple of weeks after the first one, at the nurse's office. (T. 65-66). This happened in the nurse's office. Blaga told Petitioner that her bills would not be put through workers' comp because the accident happened on a City sidewalk. Petitioner then told her that the fall actually occurred on the company steps. (T. 65-66), Blaga marked RX 1 with the notation "A-2" where Petitioner had then claimed where she fell. (T. 66-67). An accident report would have been created if Petitioner had reported that she fell at the location marked on PX 12, "Because we follow a rigorous process. The supervisors and managers have been trained to a T. There's also security there. It would have absolutely been created." "…(T)he only reason it wasn't created was because her initial story was that it happened on the sidewalk in the street." (T. 68). The customary accident reporting process is that the employee reports the accident to her supervisor and then the employee completes page one of the report and the supervisor completes page 2. The report is then forwarded to the distribution group, including the nurse and the EHS team. (T. 76).

On cross examination, Ms. Blaga testified that on November 22, 2022, she communicated with Petitioner via the nurse, who speaks Spanish. (T. 74). The second encounter occurred in her office when Petitioner stopped by, unscheduled. (T. 80). The nurse was there for the second encounter. (T. 77). Blaga stated that she explained to Petitioner that according to her accident investigation, there was nothing they could do because the accident had occurred on the city sidewalk; therefore, a claim could not be created. She testified that Petitioner then stated that the accident had occurred on the company steps. (T. 66). Ms. Treadman Blaga identified the second accident location as A-2 in Defendant's Exhibit No. 1. (T. 66-67).

Blaga testified that there are cameras around the building where Petitioner worked. (T. 77). She identified on Petitioner's Exhibit 12 a camera above the door where Petitioner indicated the accident occurred. (T. 79, 83; PX 12 at 3). Blaga stated that this camera would have recorded the accident at the location Petitioner claims. (T. 83-84). She testified that the video from the date of accident is not available, as they delete every 30 days. (T. 77). Blaga stated that she was aware that an ambulance had picked up Petitioner at the OSI Industries location on the date of the accident. (T. 78). She reviewed the cameras from November 18, 2022, that day and that there was no evidence of Petitioner falling. (T. 77-78, 84). Ms. Blaga stated that by the time she had the second encounter with Petitioner, when the location of the accident changed, the video from

the date of accident was still available; however, she felt no need to save it because there was nothing on it. (T.. 80-81). There are no cameras at the accident location that Petitioner initially described. (T. 78-79).

Petitioner testified on rebuttal that when she spoke to Ms. Blaga on November 22, 2022, she did not indicate at any point verbally that the accident had occurred off Respondent's premises and reiterated that she informed Blaga that she had fallen at the company entrance. (T. 87). Petitioner stated that she did not, during the November 22, 2022, meeting, or any other subsequent encounter, point out the location of her fall on the map. (T. 87-89, 91).

Petitioner denied that a second meeting with Ms. Blaga had taken place in mid-December 2022 and stated that the only time she notified Blaga of the accident was on November 22, 2022. (T. 89, 98). Petitioner stated that she did not speak to Ms. Blaga again until early 2024, when she went to the company to talk to Human Resources after receiving a letter informing her that she had been fired. (T. 89). Petitioner stated that during this second encounter, she informed Human Resources and Mrs. Blaga that she was off work because of doctor's orders; however, Blaga refused to speak with her because Petitioner was represented by an attorney. (T. 89-90). Petitioner denied telling anyone at Respondent that she fell on the sidewalk off of Respondent's premises. (T. 92).

Petitioner stated that nobody reviewed the video from the camera identified in Petitioner's Exhibit 12, with her. (T. 93). Petitioner requested a copy of the video from the date of the accident and she was told that there was no video. Petitioner stated that because of the location of the camera above the entrance, there must have been a video and that Carolina saw the video. (T. 94).

On rebuttal cross examination, Petitioner testified that she informed all o the medical providers that she fell directly outside the company entrance. (T. 95-98).

Ms. Treadman Blaga testified in surrebuttal that she is 100% sure that she had a meeting with Petitioner three weeks after November 22, 2022. She vividly recalled it and had taken notes of "our ecounters." (T. 101).

CONCLUSIONS OF LAW

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

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

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

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

Regarding Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds:

The location of the Petitioner's fall determines whether Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on November 18, 2022. If Petitioner slipped and fell on snow and ice in Respondent's parking lot while getting coffee from a taco truck that was parked in Respondent's parking lot, as she testified, the accident arose out of and in the course of Petitioner's employment by Respondent, and her injuries are compensable. If Petitioner slipped and fell on snow and ice on the City of Chicago's sidewalk, as Ms. Treadman Blaga testified that Petitioner told her, then the injury did not arise out of and in the course of her employment and the injuries are not compensable. See: Reed v. Industrial Com., 63 Ill. 2d 247 (1976).

In a disputed accident case, such as this, the Finder of Fact's decision is based upon the credibility of the testimony of the witnesses and whether that testimony is corroborated by other evidence adduced.

In the present case, Petitioner does appear to be an unsophisticated witness, with limited English skills. The limitations in her histories of exactly where she slipped on snow and ice are explainable on this basis. Petitioner did not appear to be deceptive in her testimony. Her demeanor was steady under both direct and cross examination. Her testimony is found to be credible.

The Bedford Park FD report corroborates Petitioner's testimony. The "Injury" description is "Falls-Fall on ice and snow-Industrial place". The Incident Details identify Location Type as Home/Residence, but the address is Respondent's address as shown on PX 12, 4900 S Major Ave. The history is that the patient was walking at work when she slipped and fell on ice and snow. This is consistent with Petitioner's testimony and consistent with the accident occurring on Respondent's premises, not on a City sidewalk a block away from the employee entrance.

The histories to MacNeal, La Clinica, ION, Dr. Sampat, Dr. Graf and Dr. Xia are consistent with a slip and fall on ice and snow at work. The histories are not consistent with a fall on a City sidewalk, one to two blocks away from the building where she worked.

Respondent's witness, Samantha Treadman Blaga, appears to be a sophisticated witness. She has a BS in Environmental Health and Safety and holds the highest designation for safety professionals. Blaga's testimony is that Petitioner told her and the nurse that she slipped and fell on ice and snow on a City of Chicago sidewalk, one or two blocks away from the building where she worked. This testimony is corroborated by nothing.

Although Respondent has a vigorous accident investigation process, it failed to provide any documentation that the accident did not occur on Respondent's premises. The email from the plant manager was not submitted. There is no documentation from the nurse regarding Petitioner's reporting of the accident to her on November 21, 2022. There is no documentation from Blaga regarding her meeting with Petitioner on November 22, 2022. The picture that Petitioner pointed out where she fell (and marked the spot, per Blaga) was not submitted into evidence. No evidence of an accident report filled out by Petitioner was offered. No evidence of any incident report filled out by the security guards (who helped Petitioner up and were presumably present when an ambulance arrived at Respondent's building; occurrence log? Incident report?) was submitted. The video allegedly showed no fall, but it was never shown to Petitioner and was not preserved. The Arbitrator would expect this documentation to have been obtained and preserved by Respondent and submitted into evidence if it supported its case.

Further, although witnesses were arguably available to both Parties (they both can use a subpoena to compel a witness' testimony), Respondent provided no testimony corroborating Blaga's testimony. Caroline, the nurse that interpreted Petitioner's conversations with Blaga did not testify. She could have supported Blaga's testimony and specifically confirmed the location of the accident that was identified by Petitioner. The security guards who helped Petitioner up and were likely present when the ambulance picked Petitioner up did not testify. The assistant plant manager, who advised Blaga of the accident did not testify. Neither did whoever told the assistant manager about the accident. No immediate post occurrence witnesses testified. Respondent did not provide testimony corroborating Blaga's testimony that the taco truck had been instructed not to park in Respondent's lot and that it was located on the City street on the date that Petitioner fell.

Respondent knew that this was a disputed accident case and failed to supply the Finder of Fact with evidence corroborating Balga's testimony and supporting its theory of the case.

As the Arbitrator finds Petitioner's testimony to be credible, the Arbitrator finds that Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on November 18, 2022. She slipped and fell on snow and ice on Respondent's property while walking to a taco truck, located on Respondent's property, to get a coffee while she was on break.

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

Petitioner's current condition of ill-being (to wit: C5-C6 disc herniation with left arm radiculopathy and myelopathy and thoracolumbar back pain with a (sic) aggravation of spondylosis related to injury at work, as charted by Dr. Sampat on June 7, 2024) is causally related to the work accident of November 18, 2022.

This finding is based on the Arbitrator's finding above on the issue of accident, the credible testimony of Petitioner, the medical records (particularly the records of Dr. Sampat and Dr. Xia) and the causation opinion contained in Dr. Graf's report. It is also noted that Petitioner's testimony that she had no prior back, head or neck problems was unrebutted.

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

The medical services provided to Petitioner were reasonable and necessary to cure or relieve the effects of the injuries sustained and are causally related to the work injuries sustained on November 18, 2022.

Petitioner's claimed bills were submitted via PX 1 – PX 11 and total $137.146.53.

Thus, Respondent shall pay the following reasonable and necessary medical services, pursuant to Sections 8(a) and 8.2 of the Act, in accordance with the Medical Fee Schedule: **$1,158.00** to CEP America, **$1,860.00** to Bedford Park Fire Department, **$11,353.07** to Loyola Medicine, **$29,365.00** to La Clinica, **$12,745.88** to Illinois Orthopedic Network, **$2,912.12** to Metro Anesthesia Consultants, **$7,335.93** to Midwest Specialty Pharmacy, **$6,750.00** to American MRI, **$3,719.00** to Parkview Orthopaedic Group (Dr. Sampat),

$15,218.89 to Integrated Pain Management (Dr. Xia), **$23,233.64** to EQMD, and **$21,495.00** to Fullerton Kimball Medical and Surgical Center.

Regarding Issue K, whether Petitioner is entitled to prospective medical care, the Arbitrator finds:

Based upon the Arbitrator's findings on the issues of accident and causation, above, and the records of Dr. Sampat and the opinion of Dr. Graf, Petitioner is entitled to prospective medical care (i.e.: the cervical anterior diskectomy and arthroplasty at C5-C6, with possible fusion, as recommended by Dr. Sampat).

Accordingly, Respondent shall authorize and pay for the cervical anterior diskectomy and arthroplasty at C5-C6, with possible fusion, along with all related services, pursuant to the Medical Fee Schedule and in accordance with sections 8(a) and 8.2 of the Act.

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

Petitioner is entitled to temporary total disability benefits from 8/5/2023 through 6/20/2024.

This finding is based on the Arbitrator's findings above on the issues of causation and accident, above, and the medical records.

Petitioner testified that since August 4, 2023, she has not worked anywhere else. Dr. Sampat has recommended Petitioner stay off work since July 5, 2023, and has continued to recommend so throughout his treatment of Petitioner, through the last visit on June 7, 2024. Dr. Xia likewise has recommended that Petitioner stay off work starting from his first visit on October 7, 2023, through the last date of service on June 5, 2024.

Petitioner's treating doctors have not released her to return to work.

Accordingly, Respondent shall pay Petitioner temporary total disability benefits of $688.01/week for 45-5/7 weeks, commencing August 5, 2023 through June 20, 2024, as provided in Section 8(b) of the Act.

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

Petitioner's claim for penalties and fees is denied.

This was a disputed accident case and the Arbitrator is not persuaded that Respondent's disputes were in bad faith. Thus, no Section 19(k) Penalties or Section 16 fees are awarded.

Further, no Section 19(l) Penalties are awarded. No evidence of a written demand for payment of benefits was submitted at trial.

Regarding Issue O, whether Petitioner exceeded her choice of treating physicians, the Arbitrator finds:

Petitioner did not exceed her two choices of treating physicians.

Petitioner's first choice of physicians was La Clinica. Petitioner's second choice of physicians was ION, which referred Petitioner to Dr. Sampat. Dr. Sampat referred Petitioner to Dr. Xia. She is within the chain of referrals of her second choice of physicians and Respondent remains liable for Section 8(a) benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC017843
Case Name	Carlos Panameno v. Poly One
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0166
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Guerra
Respondent Attorney	Daniel J Levato

DATE FILED: 4/14/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MC HENRY)

☐ 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

CARLOS PANAMENO,

Petitioner,

vs. NO: 10 WC 17843

POLY ONE,

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 (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's award of the reasonable and necessary medical treatment resulting from the March 22, 2010 work injury to Petitioner's lumbar spine, but further clarifies that said payments shall be made directly to Petitioner and pursuant to Sections 8(a) and 8.2 of the Act.

The Commission additionally corrects the Arbitrator's Order related to TTD benefits to state that Respondent shall pay to Petitioner TTD benefits from May 7, 2010 through October 28, 2010, or 25 weeks, as provided for in Section 8(b) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 4, 2024 is hereby modified as stated and otherwise affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $66,200.00. 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 the Circuit Court.

APRIL 14, 2025

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

CAH/pm
O: 4/10/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC017843
Case Name	Carlos Panameno v. Poly One
Consolidated Cases	10WC017844; 14WC041158;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	David Guerra
Respondent Attorney	Daniel J Levato

DATE FILED: 6/4/2024

/s/Stephen Friedman, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

☐ 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

Carlos Panameno
Employee/Petitioner

v.

Poly One
Employer/Respondent

Case # **10** WC **017843**

Consolidated cases: **See Decision**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Woodstock**, on **May 1, 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 **March 22, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**36,940.80**; the average weekly wage was $**710.40**.

On the date of accident, Petitioner was **30** years of age, ***married*** with **2** 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 any remaining outstanding balances to the providers listed in RX 13 (except Sherman Hospital), as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $473.60/week for 25 weeks, commencing May 7, 2010 through October 29, 2020, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $426.24/week for 30 weeks, because the injuries sustained caused the 6% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

/s/ Stephen J. Friedman
Signature of Arbitrator

June 4, 2024

Statement of Facts

This matter was tried in conjunction with consolidated cases 10WC017844 (DOA: 4/1/09) and 14WC041158 (DOA: 9/29/14). A single transcript was prepared but the Arbitrator has issued separate decisions for each of the consolidated cases. The Arbitrator incorporates by reference the statement of facts in case 10WC017844 as if fully set forth herein with respect to the injury alleged on April 1, 2009, Petitioner's treatment, and physical condition thereafter.

Petitioner Carlos Panameno testified that on March 22, 2010, he was still employed by Respondent in the same job title and position as he was in April 2009. He had the same physical duties. Petitioner testified he was working 50-60 hours per week at that time. He testified that a wage of $17.76 per hour sounds about right. Overtime is determined by the orders that come in. You have to stay and finish the orders. There is no set number of overtime hours. There is no schedule for overtime. He heard that overtime was mandatory. He testified that he had refused overtime. He did not get fired or reprimanded. If he had something to do, he told them he couldn't work today. Respondent offered a payroll log for Petitioner from March 29, 2009 through April 2, 2010 (RX 3).

On March 22, 2010, Petitioner was driving a propane gas forklift. The tanks weigh about 40-50 pounds. He needed to change the tank and as he was pulling it out of the cage, he twisted, and the backside of the tank slipped. He tried to catch it. When he bent, he felt a pop in his back. The pain was in the same spot in his low back as before.

Petitioner treated with Rominski Active Healthcare beginning March 25, 2010 (PX 2). He reported low back pain bilaterally with radiation into the left leg. He also complained of a dull ache in his neck. After physical examination and x-rays, Petitioner began a course of chiropractic care through April 28, 2010. The records note little improvement (PX 2). Petitioner testified that he did not get any improvement in his symptoms. Petitioner underwent a lumbar CT scan on April 17, 2010. The impression was a fairly prominent central and left paracentral disc herniation at L4-5 (PX 3). On April 21, 2010, the records note Petitioner was advised to be at reduced activity (PX 2, p 17). He received a note restricting him to 20 pound lifting (PX 2, p 21). On April 28, 2010, Petitioner stated that there was no improvement. He was continued on restrictions (PX 2, p 18-19).

Petitioner testified that Respondent sent him back to Centegra. On April 30, 2010, he provided a history of the accident. He noted the prior accident. He noted the chiropractic care has not helped. He reported 7-8/10 pain. He stated he could not have an MRI due to an old metal fragment, but instead had a CT scan. Physical examination noted mild tenderness, positive straight leg raise. Petitioner complained of pain radiating to his posterior left thigh and entire right thigh. The Assessment was prominent central and left paracentral disc herniation as reported on the CT scan. Petitioner was kept on a 20 pound lifting restriction. It was recommended he see a spine surgeon (PX 4, p 2). An undated referral slip is made to an orthopedic consultant. It notes a date of injury of 6/09 (PX 4, p 6).

Petitioner then sought treatment at Advanced Health Medical Group in May 2010 (PX 5). On May 6, 2010, he provided a history of the March 22, 2010 accident and his course of treatment to date. He reported considerable pain. He was diagnosed with lumbosacral intervertebral disc injury with radiculopathy. Dr. Dietz DC stated Petitioner was on temporary total disability and began a course of physical therapy. She stated Petitioner's signs and symptoms are consistent with the history of work-related lifting injury as described (PX 5, p 7-8). On May 13, 2010, Dr. Khan noted tenderness and myospasm. There was some loss of strength. There

was an antalgic gait. He ordered additional therapy, a brace, medication, and an EMG/NCV. He continued total disability (PX 5, p 13-15). The May 15, 2010 EMG/NCV impression was evidence of moderate acute L5-S1 radiculopathy on the left (PX 5.p 16). On June 10, 2010, Dr. Khan noted the right calf is 1 inch greater than on the left. Petitioner was referred to pain management for lumbar epidural injections (PX 5, p 20).

On June 23, 2010, Dr. Chami concurred that Petitioner would benefit from injections at L5-S1 and L4-5. He stated the symptoms are directly related to the work injury starting in 2009 and severely aggravated on March 22, 2010 (PX 5, p 23-24). Dr. Chami performed the initial injection on August 5, 2010 (PX 8. P 10-11). On August 17, 2010, Dr. Chami noted some improvement with the initial injection and recommended a repeat left sided TESI at L4-5, L5-S1 and S1 (PX 5, p 36). The second injection was performed on August 26, 2010 (PX 8, p 15-16). On September 2, 2010, Petitioner reported no benefit from the injection. Dr. Chani recommended a neurosurgical consult. He stated the likely pain generator was L4-5. He suggested a discogram. Dr. Chami notes Petitioner's reluctance for surgery (PX 8, p 17).

Petitioner continued on total disability per Dr. Khan until September 30, 2010, when he was released with a 15 pound restriction (PX 5, p 40). On October 29, 2010, Dr. Khan notes improvement after the injections. He states that Petitioner is tolerating work with limitations. He is expected to be released after an IME today. Petitioner was advised his symptoms are under good control but may return with aggravation. He was advised to resume working at moderate medium capacity and slowly will be released to full duty within the next 1-2 weeks. (PX 5, p 40-41). He was seen at Centegra on October 29, 2010 and provided a 30 pound restriction (PX 4, p 7). Petitioner was released to return to full duty by Dr. Khan on November 16, 2010. Dr. Khan notes Petitioner has resumed work at modified duty over the last 2 weeks. He describes no recurrence of pain symptoms. Physical examination is within normal limits (PX 5, p 44-45). Petitioner was seen at Centegra twice in January 2011. On January 25, 2011, Petitioner was released to work at full capacity (PX 4, p 13). Petitioner testified that he has not treated for his back since then.

Petitioner testified that he was taken off work until around September 2010. He was released to restricted work in September 2010. He was ready to return to work. He sent a letter to Shawn Dolan at Respondent on October 15, 2020 advising he was released to restricted work and outlining the steps he was requested to do. He advised he was ready to return to work and included his restrictions (PX 14). He was not allowed to return to work. Continued treatment and was released to return to regular work on November 16, 2010. Petitioner testified he returned to work with Respondent full duty. He worked for Respondent up to his 2014 accident (which is the subject of consolidated case 14WC041158). His title changed to warehouse supervisor in 2012 with a pay raise. His physical duties did not change.

Petitioner underwent a DOT physical for his CDL license on November 13, 2013. He noted no conditions other than chronic low back pain. His examination was within normal limits and Petitioner was certified (PX 10, p 3-6).

Petitioner testified that when he tried to run fast, he felt sharp pain in his low back. He has pain if he drives a long time, sitting or standing for a long time. If he kneels down, it is hard to get up. His pain level depends on what he does during the day.

Petitioner testified he has not had any other injuries to his low back. His bills are not paid. He did not receive any benefits for the 2010 accident. He testified he asked HR and was told it was up to corporate.
RX 1 notes medical paid by Respondent in this matter.

Conclusions of Law

At the conclusion of the testimony in this matter, Respondent's attorney requested a bifurcated hearing to address any possible credit for 8(j) lost time benefits paid, stating he did not have any such evidence at the time of the hearing and was seeking additional time to explore its existence. Given the age of these cases, the Arbitrator denied the request and closed proofs but offered Respondent the opportunity to file a motion to reopen proofs should such evidence be obtained before proposed decisions were due in 3 weeks time. No such motion was filed, and no evidence of credit was submitted. The Arbitrator therefore does not address the issue of credit and declines to award any credit in this matter.

In support of the Arbitrator's decision with respect to (G) Average Weekly Wage, the Arbitrator finds as follows:

Respondent offered RX 3, Petitioner's earnings for the year preceding the accident. The dispute is whether the overtime hours should be included in the calculation of the average weekly wage.

Petitioner testified that he worked 50 to 60 hours per week. The wage records contradict his testimony. He admitted that whether overtime was necessary would be determined by the orders from the day before and that there was no set number of overtime hours. The Arbitrator notes that overtime was not consistently worked, with submitted wages showing overtime hours ranging from 0.5 to 24.97 hours for any two-week period. Petitioner testified that he would embrace the opportunity to work overtime as he was paid more. Petitioner testified that he did at times refuse overtime work but was not fired or reprimanded in any way when he refused to work overtime, and he was not ever given a hard time for refusing overtime hours.

Overtime is excluded from the calculation of a claimant's average weekly wage unless the claimant is required to work overtime as a condition of her employment, or the overtime hours are part of the claimant's consistent weekly schedule. *Airborne Express, Inc. v. Illinois Workers' Compensation*, 372 III. App. 3d 549; 865 N.E. 2d 979; 2007 III. App. LEXIS 244; 310 III. Dec 259. Petitioner has failed to establish that the overtime was either regular or mandatory. These hours are therefore excluded from the calculation of the average weekly wage.

RX 3 confirms that Petitioner's regular work week was 40 hours per week. Petitioner's wage for the entire year was $17.76 per hour. Petitioner's average weekly wage would be calculated as $710.40 pre week.

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

Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. The Arbitrator has reviewed the medical treatment rendered for Petitioner's low back from March 22, 2010 through January 2011, and find the treatment reasonable, necessary and causally related to the March 22, 2010 work injury.

Petitioner has provided a listing of bills for this medical care in PX 13. The bills themselves are included in the medical exhibits, PX 2, PX 5, PX 7, PX 8, and PX 12. The Arbitrator notes that the bills submitted are many years old, are not reduced by fee schedule or negotiated rate, and that the amounts claimed on PX 13 do not

reflect payments or adjustments made. Respondent's medical payment log (RX 1) reflects payments and adjustments made by Respondent on these bills. The Arbitrator notes that many of the payments reflected on RX 1 were made after the date on which the bills submitted were produced by Petitioner in the medical records. No current statements for the providers were submitted to determine if there are any current balances owed.

The Arbitrator also notes that PX 13 includes the Sherman Hospital bill for services in 2014 which are not related to this case but rather consolidated case 14WC041158. The Arbitrator also notes that this bill has been paid in full.

Based upon the evidence submitted, the Arbitrator is unable to determine if any of the reasonable and necessary charges for the treatment rendered remain outstanding. Given this uncertainty and the age of the bills, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of any remaining outstanding balances to the providers listed in RX 13 (except Sherman Hospital), as provided in Sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit.

Petitioner was first taken off work by Dr. Dietz on May 7, 2010. Thereafter, Petitioner was kept completely off work until September 30, 2010, when Dr. Khan released Petitioner to work with a 15 pound restriction. Petitioner sent a letter on October 15, 2010, which confirmed his efforts to return to work and his willingness to work if Respondent would honor his restrictions. Dr. Khan notes on October 29, 2010, that Petitioner is tolerating work with limitations, implying that such work was provided. On November 16, 2010, when releasing Petitioner to unrestricted work, Dr. Khan notes he has resumed work at modified duty over the last 2 weeks. Given Petitioner's unclear memory of his return to work, and whether he worked light duty or full duty, the Arbitrator finds Dr. Khan's records the most credible evidence of Petitioner's return to work date.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he was entitled to temporary total disability commencing May 7, 2010 to October 28, 2010, a period of 25 weeks.

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

Petitioner's date of accident is prior to September 1, 2011 and therefore the provisions of Section 8.1b of the Act are not applicable to the assessment of partial permanent disability in this matter but the Arbitrator will note the relevant factors in considering partial permanent disability.

The Arbitrator notes that the record reveals that Petitioner was 30 years old, and was employed as a warehouse associate/driver at the time of the accident. Petitioner sought treatment at Rominski Active Healthcare beginning March 25, 2010 for low back pain bilaterally with radiation into the left leg. The April 17,

2010 lumbar CT scan impression was a fairly prominent central and left paracentral disc herniation at L4-5. Petitioner was advised to be at reduced activity and received a note restricting him to 20 pound lifting. He continued chiropractic care through April 28, 2010 with no improvement. Centegra Assessment was prominent central and left paracentral disc herniation as reported on the CT scan. Petitioner was kept on a 20 pound lifting restriction. It was recommended he see a spine surgeon.

The May 15, 2010 EMG/NCV impression was evidence of moderate acute L5-S1 radiculopathy on the left. Dr. Chami performed injections on August 5, 2010 and August 26, 2010. On September 2, 2010, Dr. Chani recommended a neurosurgical consult. He stated the likely pain generator was L4-5. He suggested a discogram. Dr. Chami notes Petitioner's reluctance for surgery.

Petitioner continued on total disability per Dr. Khan until September 30, 2010, when he was released with a 15 pound restriction. On October 29, 2010, Dr. Khan notes improvement after the injections. He states that Petitioner is tolerating work with limitations. Petitioner was advised to resume working at moderate medium capacity and slowly will be released to full duty within the next 1-2 weeks. He was seen at Centegra on October 29, 2010 and provided a 30 pound restriction. Petitioner was released to return to full duty by Dr. Khan on November 16, 2010. Dr. Khan notes Petitioner has resumed work at modified duty over the last 2 weeks. He describes no recurrence of pain symptoms. Physical examination is within normal. twice in January 2011. On January 25, 2011, Petitioner was released to work at full capacity by Centegra.

Petitioner testified that he has not treated for his back since then. He returned to work in his prior capacity as a after said injury. Petitioner's had no loss of future earnings capacity as a result of the March 22, 2010 low back injury. Petitioner underwent a DOT physical for his CDL license on November 13, 2013. He noted no conditions other than chronic low back pain. His examination was within normal limits and Petitioner was certified. Petitioner testified that when he tried to run fast, he felt sharp pain in his low back. He has pain if he drives a long time, sitting or standing for a long time. If he kneels down, it is hard to get up. His pain level depends on what he does during the day.

Based upon the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 6% loss of use of whole person pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015125
Case Name	Dan Chavera v. The H.T. Hackney Co.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0167
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Edward Czapla
Respondent Attorney	Monica Dembny

DATE FILED: 4/14/2025

/s/Maria Portela, Commissioner

Signature

25IWCC0167

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANNY CHAVERA,

Petitioner,

vs. NO: 22WC015125

THE HT HACKNEY CO. and
TRAVELERS INDEMNITY
CO. OF CT.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent and being advised of the facts and law, 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 analysis regarding two of the permanency factors in §8.1b(b) of the Act. For factor (iv), we add that this carries some weight "in the reduction of" the permanency determination. Petitioner has failed to introduce any evidence that his permanent restrictions preclude him from performing any job that he would have been able to perform before his injury. Any potential impact that Petitioner's restrictions might have on his future earning capacity is highly speculative. Regarding factor (v), we modify the weight from "most significant" to "significant."

Based on our analysis of the five factors in §8.1b(b) of the Act, we reduce the permanent partial disability award from 20% of the person as a whole to 17.5% of the person as a whole under §8(d)2 of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $734.47 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 17.5% of the person as a whole.

25IWCC0167

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner medical expenses contained in Petitioner's Exhibits 1 through 6 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 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.

APRIL 14, 2025 /s/ *Maria E. Portela*

SE/ /s/ *Amylee H. Simonovich*
O: 3/25/25
49 /s/*Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015125
Case Name	Dan Chavera v. The H.T. Hackney Co.
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Edward Czapla
Respondent Attorney	Monica Dembny

DATE FILED: 10/2/2024

/s/ Paul Cellini, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 1 2024 4.215%

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

DANNY CHAVERA Case # **22** WC **15125**
Employee/Petitioner
v.
THE HT HACKNEY CO. and TRAVELERS INDEMNITY CO. OF CT.
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 **Wheaton**, on **July 10, 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 **April 6, 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 $**63,654.34**; the average weekly wage was $**1,224.12**.

On the date of accident, Petitioner was **43** 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 $**9,326.63** for TTD, $**5,667.90** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**14,994.53**.

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

ORDER

The Arbitrator finds that the Petitioner right shoulder condition of ill-being is causally related to the stipulated April 6, 2022 work accident.

Respondent shall pay reasonable and necessary medical **expenses contained in Petitioner's Exhibits 1 through 6**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a **credit for any and all awarded medical expenses that have been paid** by Respondent prior to the hearing, via workers compensation carrier or a Section 8(j) group health carrier, 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 **$734.47 per week** for **100 weeks**, because the injuries sustained caused the loss of use of **20% of the person as a whole**, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **April 6, 2022** through **July 10, 2024**, and shall pay the remainder of the award, if any, in weekly payments.

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

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment;

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

OCTOBER 2 2024

STATEMENT OF FACTS

Petitioner has worked for Respondent as a delivery driver for 11 years. He used a stick shift semi-truck vehicle to deliver boxes of products and frozen foods to convenience and liquor stores. He generally has a regular route. He unloaded by hand, loading a dolly and using the truck ramp he had to pull out. He normally does not have to load product. He works 44 to 48 hours per week. Prior to 4/6/22 this was Tuesday through Friday, and now it is Monday to Friday. On 4/6/22, Petitioner testified he was running up the truck ramp when his foot caught the floor inside the trailer, he lost his balance and fell. He believed he put out his right arm out to break his fall and testified that all his weight went onto his right shoulder when he rolled onto it. He had instant pain in the right shoulder and arm. He testified he had been pulling the dolly behind him using his left arm while going up the ramp. He is right hand dominant.

This incident occurred during his third stop at a gas station in Elgin around 8:30 to 9:00 a.m. He finished the job, which was about 8 more boxes with pain, but after 10 or 15 minutes he was unable to move his shoulder. He initially called his boss, Craig, and reported what happened, but that he was going to try to finish his route using his left arm. Craig advised him that if he needed medical treatment, they would send him an Uber ride. He went to his next stop in Elgin but was unable to pull the ramp out. He advised Craig, who wanted him to leave the truck where he was. As it wasn't a safe area, he drove the truck back to their Elmhurst terminal and then drove himself in his car to a Concentra in Franklin Park Craig had referred him to.

The 4/6/22 Concentra report notes Petitioner reported tripped on the edge of his trailer going from the ramp into the truck and fell on his right shoulder, and that he was having difficulty moving his right arm. X-rays showed no acute fractures or dislocation. Diagnosis was right shoulder contusion and strain, and right elbow abrasion. Physical therapy and medication were prescribed, and Petitioner was restricted from truck driving, reaching above the shoulder, and lift/push/pulling with the right upper extremity. On 5/6/22 a right shoulder MRI was ordered and completed on 5/27/22, which was interpreted to show: 1) mild right rotator cuff tendinitis with ongoing healing of subacute minimally displaced cortical avulsion stress fracture at the insertion of the supraspinatus and ill-defined approximately 1.6cm moderate high-grade partial thickness articular sides tear at the insertion of the superior to mid subscapularis - no full thickness cuff tear identified, 2) early medial intratendinous subluxation of right proximal long head biceps tendon without tear or tenosynovitis, 3) mild right acromioclavicular arthrosis, occurring on a background of low-grade subacute on chronic separation, and 4) mild right glenohumeral arthrosis with trace effusion and at least partial thickness fraying/tearing near the free edge of the posterior superior glenoid labrum. On 6/3/22, the MRI was reviewed, and Petitioner was referred to orthopedics. Light duty restrictions were continued. (Px1). Petitioner participated in physical therapy at Concentra from 4/8/22 through 6/10/22 (Px1), but he testified this did not provide much relief of his right shoulder symptoms.

Petitioner was examined by orthopedic surgeon Dr. Lopez on 6/22/22. He provided a consistent history of the work accident and that he fell on his right arm. He complained of pain that was constant, sharp, stabbing, and throbbing with stiffness, tingling, weakness, swelling, instability, and limited range of motion. He testified he reported limited strength as well. The report does state that Petitioner reported he went to reach out with his left arm to brace his fall and was holding a dolly with the right arm. X-ray reflected type 2-3 acromion and AC joint degenerative joint disease. Dr. Lopez reviewed the MRI, examined Petitioner, and diagnosed a traumatic partial thickness rotator cuff tear, bicep tendinosis and impingement. A steroid injection was performed, physical therapy was prescribed, and he was restricted from repetitive work, pushing, pulling, and truck driving. (Px2).

Petitioner returned to Dr. Lopez on 7/20/22 reporting minimal relief of the right shoulder pain with injection (Px2), which is consistent with his testimony. He was working with restrictions. On 8/17/22, Petitioner noted improved strength with therapy but ongoing shoulder and bicep pain, and that his strength would decrease during work. Dr. Lopez recommended arthroscopic right shoulder surgery at this point involving subacromial decompression, distal clavicle resection, possible rotator cuff repair and biceps tenodesis. Work restrictions were continued on 9/12/22. Petitioner underwent surgery with Dr. Lopez on 9/23/22. The operative report indicates Dr. Lopez performed arthroscopic surgery right shoulder: rotator cuff repair, biceps tenotomy and tenodesis, distal clavicle resection, debridement, and subacromial decompression. The report indicates an anterior-superior labral tear with a partial splitting of the biceps tendon. The tear was debrided and a biceps tenotomy was performed. CA ligament was removed and resected back to its origin on the coracoid. The type 2 acromion was converted to a type 1. Post-operative diagnoses were right shoulder rotator cuff tear, proximal biceps tear, anterior-superior labral tear, and osteolytic deterioration of the distal clavicle. (Px3; Px6).

Postoperatively, Petitioner was restricted from all work activity and started a course of physical therapy at the Midwest Sports Therapy on 10/31/22. He participated in approximately 67 physical therapy sessions through his discharge on 8/15/23. (Px4).

Petitioner continued to follow up with Dr. Lopez, who held Petitioner off work through 11/21/22, at which point he released Petitioner to restricted duty with no repetitive work, no pushing, pulling, no overhead lift, and no lifting over 5-10 pounds. Therapy was continued. (Px2). Respondent accommodated these restrictions.

On 2/22/23, Petitioner was noted to be making slow and steady progress but started to develop compensatory left shoulder impingement syndrome while doing his job. There was no indication that any treatment was specifically recommended for the left shoulder. (Px2).

Petitioner was examined by Dr. Sagerman at Respondent's request on 3/27/23. Per his 3/30/23 report, the doctor opined that Petitioner sustained a right shoulder contusion on 4/6/22 with rotator cuff, biceps, and labral tears. He believed the surgery was appropriate and that further post-surgical therapy was indicated, followed by work conditioning. Restrictions were currently indicated pending the outcome of the further treatment. (Rx4).

At visits with Dr. Lopez on 3/22/23, 4/19/23, 6/19/23, and 8/14/23, light duty restrictions were continued. (Px2).

Petitioner was reevaluated by Dr. Sagerman on 8/30/23. He opined treatment to date had been reasonable and that Petitioner needed to complete post-op rehabilitation, including work conditioning. He also opined Petitioner remained restricted from regular work duties (restrictions were no lifting over 20 pounds with the right arm), but he anticipated a full duty release when rehabilitation was completed in a month. (Rx5).

Following the completion of physical therapy. on 9/21/23, Petitioner was examined by Dr. Lopez's physician's assistant, PA Tayani, who opined that Petitioner had reached maximum medical improvement (MMI) and sustained permanent disability that would require permanent work restrictions. He advised Petitioner to see Dr. Lopez to have a functional capacity evaluation (FCE) ordered. Light duty was continued pending same. On 10/11/23, Dr. Lopez indicated Petitioner had normal sensation and motor function, pain with overhead flexion, horizontal adduction, and internal rotation. He recommended a physician-guided home exercise program to build strength, increase range of motion, and decrease pain. He agreed that Petitioner had reached MMI and ordered the FCE and light duty was continued. He continued to recommend the FCE and work restrictions through 12/4/23. (Px2).

This was completed at ATI Physical Therapy on 1/3/24. The evaluator indicated it was a valid study and demonstrated Petitioner's ability to work at the "heavy" physical demand level with the following restrictions: lifting above the shoulder at 62.8 pounds, lifting desk to chair and/or chair to floor at 107.8 pounds, and carrying at 103.8 pounds. Petitioner had the most difficulty with overhead work. It was also noted that Petitioner's job was at the "medium" demand duty level based on the Dictionary of Occupational Titles. A specific job description was not received, but Petitioner reported having to do semi-trailer coupling/uncoupling, lifting, and closing the truck gate, moving items down the ramp using pallets and hand carts, and maximum floor to waist lifting of 100 pounds. (Px2; Px5).

On 1/15/24, Petitioner reported his shoulder was still painful at times. Dr. Lopez examined Petitioner and noted full range of motion, but pain with overhead flexion, horizontal adduction, and internal rotation. A physician-guided home exercise program was recommended to continue improvement in strength, motion, and pain. Dr. Lopez discharged Petitioner from care with a permanent heavy work level restriction as outlined in the FCE. A note specifies returning to a medium work category, with lifting up to 62 pounds above the shoulder, 107 pounds chair to floor, 103 pounds carrying, and 106 pounds push/pulling. (Px2). Petitioner testified he returned back to full duty work with Respondent and was working full time for Respondent at the time of the hearing.

On 1/23/24, Respondent had Petitioner evaluated by Dr. Sagerman for the last time. Petitioner reported intermittent shoulder pain in the biceps region with arm use, as well as some weakness and lack of endurance, but he had returned to regular work duty and was able to perform the physical demands of his job. Dr. Sagerman noted the FCE allowed for lifting over 100 pounds for all activities except overhead, which was over 60 pounds, and stated: "The patient was apparently given restrictions based on his demonstrated performance in a(n) (FCE). I did not receive the full FCE report. These parameters reflect the patient's ability to perform manual activities such as lifting and carrying. No specific permanent restrictions are medically necessary." Allowance for some lifting technique modifications would be a reasonable accommodation. Dr. Sagerman opined Petitioner had reached MMI as to the 4/6/22 work injury. (Rx6).

The Petitioner testified that, despite these FCE limit specifications, he is unable to lift the noted weights throughout the day and starts to get pain with over the shoulder work after three to five such lifts. He testified that he only had to perform each lifting activity twice during the FCE. While he has returned to full duty employment with Respondent, he testified he used to drive his route alone, but since he has returned to work, he has a co-worker who helps unload. While the helper had only been provided since he returned to work post-injury, he agreed on cross examination that all Respondent drivers now have helpers, and that this was significantly based on drivers being robbed in the past. At to the FCE indicating he can carry up to 103 pounds and push/pull up to 106 pounds, he again testified he is not able to perform such activities all day long, guessing he would be able to do it for maybe a quarter of a shift.

As noted above, when he did return to work it was at full duty but now with an assistant. He initially wasn't doing the driving until about two months after going back to work. He testified he also now drives an automatic

transmission truck at work. Petitioner testified that everything he does with the right arm has completely changed. This includes work activities such as getting in and out of the truck, moving the product retaining bars, and driving. His left arm now is stronger than his right arm. He has difficulty reaching up to get boxes in the truck, it feels like his arm stops short. He moves less boxes/cases of heavier products at a time than he used to, so it takes him longer. He often feels cracking in the shoulder. He sometimes gets a sharp pain if he moves the right arm too fast. Petitioner denied any prior right shoulder problems, treatment, or the cracking he continues to have.

Petitioner testified that the semi-trucks now have automatic trailer doors, though they don't always work, and when this happens he uses his left arm to lift the door. He agreed that he has complained to Dr. Lopez of left shoulder pain because "I was overworking it" and developing pain. He then tried to use the right arm more to balance it out. Petitioner also testified to a number of difficulties he has at home due to ongoing right shoulder pain and weakness, and he now does more things with left arm. He has difficulty reaching at or below shoulder level as well. He acknowledged he does car repairs but has to use the left arm more. His medical expenses were all submitted through workers' compensation.

On cross-examination, Petitioner acknowledged that all Respondent drivers now work as a team with two per truck, and that one of the main reasons for this change was safety as drivers were being robbed. The change wasn't made just for him but rather was for everyone. He has been working his regular job since January 2024. Following his post-surgical release to light duty on 11/21/22, he returned to light duty work with Respondent on 11/29/22 and has been working either light or regular duty since. Dr. Lopez released him to medium duty in January 2024 per the FCE. He's had no treatment since his September 2023 visit with Dr. Lopez except for the FCE. He acknowledged what the FCE indicated he could lift, push and pull. Lopez advised him to continue to strengthen the shoulder with a home exercise program, which he testified he continues to do via band stretching on weekends and days off work. He testified that while this helps, his right shoulder strength and motion are nowhere near what they used to be. Petitioner testified that Dr. Lopez is aware of the cracking in his shoulder, noting it depends as to whether he has pain with this cracking. He testified that when he gets sharp pain with activity it can be at the 6/10 to 7/10 level, but he does not take medications. Petitioner agreed with Dr. Lopez's assessment of his motion, strength, on further cross disagreed if Dr. Lopez's last report of 1/15/24 indicated full shoulder motion.

Respondent called their Transportation Supervisor, Ty Chittenden, to testify. He indicated Respondent is a wholesale distributor to gas station and convenience stores. He is one of 3 supervisors in charge of logistics. Chittenden schedules drivers to routes at various Respondent locations and handles any complaints or issues throughout the day. Their hub in Elmhurst, Illinois has two trucks, and Petitioner is one of the first shift delivery drivers that reports to him at that location. He uses a truck and trailer on a designated route to deliver products to the customers – this includes tobacco products, candy, grocery, dairy, and frozen items. They use 28' trucks, which can be manual or automatic. The trailers are loaded floor to ceiling, and the driver loads up a hand cart and takes it down the ramp and into the customer's location. The heaviest product involved would be rock salt, which is about 50 pounds per bag, which are handloaded onto the cart one at a time. Drivers can make as many of these trips as needed to complete their deliveries.

Mr. Chittenden testified that Petitioner is a reliable employee. Petitioner has not complained to him about his workload or the effort needed to do his job. He testified that he and Petitioner are in communication weekly, and he has not had any issues with Petitioner in terms of his job performance or how long it takes him to make his deliveries. For over a year now, CDL drivers have been scheduled to work in two-man teams for each truck in order to focus on safety, security, and customer service. The expectation is that the drivers split the delivery workload. They also have a driver helper that follows a route to help as needed, and who has a dash cam in the van that is pointed at the trailer for additional security and to have a "presence" for the security of the drivers.

Petitioner does not have a second driver for any reason related to his injury. On average, Illinois drivers make 16 to 18 stops on their routes but can get into the 20's depending on the route. Illinois routes also mainly involve tobacco, candy, and grocery products, with limited frozen and dairy products. He estimated that a tobacco product box weighs about 15 pounds but acknowledged that product weights vary. Mr. Chittenden testified that Petitioner is safety focused, good with customers, and always gets his job done. He never any issues with his job performance. Nothing in Petitioner's job involves working in excess of his stated work restrictions.

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:

Petitioner credibly testified that he injured his right shoulder at work when he tripped and fell on his trailer ramp onto his right shoulder. The histories contained in the medical records from Concentra and Midwest Sports Medicine both document a consistent history of injury and complaints. Petitioner testified that he had no prior right shoulder problems or treatment before 4/6/22. Respondent's examining physician, Dr. Sagerman, opined on 3/30/23 that there was a causal relationship between the right shoulder condition and the 4/6/22 work injury. Based on this evidence, and the preponderance of the evidence presented, the Arbitrator finds a causal relationship between the 4/6/22 work injury and Petitioner's right shoulder condition of ill-being.

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

The Arbitrator notes for reference the above finding that the Petitioner's right shoulder condition is causally related to the 4/6/22 accident. The Arbitrator finds that Respondent is liable for the following medical bills found in Petitioner's Exhibits 1-6: Concentra, Midwest Sports Medicine Dr. Lopez and physical therapy, Hoffman Estates Surgical Center, ATI Physical Therapy and Midwest Anesthesia. These expenses are related to treatment of the right shoulder contained in the associated medical records. These bills are awarded pursuant to Sections 8(a) and 8.2 (Medical Fee Schedule) of the Act.

Respondent is entitled to credit towards any and all awarded expenses which were paid by Respondent prior to the hearing via workers compensation or any group health benefits covered via Section 8(j) of the Act. For such credited expenses, the Respondent shall hold the Petitioner harmless. The Arbitrator notes that the Respondent submitted evidence of its payment to date as Rx2. The Arbitrator also notes that at least some of the balances listed as unpaid in Petitioner's Exhibits appear to have been paid per Rx2. The parties stipulated that any Section 8(j) credit Respondent may be entitled to was to be determined (see Arbx1).

The Arbitrator finds the medical treatment provided to be reasonable and necessary. Therefore, the Arbitrator finds that the Respondent shall pay the medical expenses contained in Px1, Px2, Px3, Px4, Px5 and Px6 pursuant to Sections 8(a) and 8.2 of the Act and the Illinois Medical Fee Schedule.

The Arbitrator notes that the parties discussed at the end of the hearing the admission of Respondent's planned exhibits 7 through 11, which are utilization review reports non-certifying various durable medical equipment (DME) charges from the providers. Petitioner indicated that he did not believe any of the challenged bills are part of the record, and so Respondent's Exhibits 7 through 11 were withdrawn. The Arbitrator is not an expert

in medical billing, but there did not appear to be any outstanding DME charges in the records reviewed in Petitioner's exhibits.

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

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

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's (AMA) "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 neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

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 delivery driver at the time of the accident and has returned to his regular job with Respondent. While Dr. Lopez gave Petitioner permanent restrictions pursuant to FCE, the Petitioner's job appears to be within the job restrictions. For example, Petitioner was restricted from carrying over 100 pounds, well above the job requirements. Mr. Chittenden testified that the heaviest item Petitioner would need to lift would be 50 pounds. Dr. Sagerman opined that permanent restrictions were not medically necessary. The Petitioner's job duties clearly involve physical demands on the right arm. Petitioner testified that when he returned to work for Respondent he had a helper, but both Petitioner and Chittenden indicated all Respondent drivers now work in teams. He testified that he has difficulty performing his job as fast as he used to due to his ongoing right shoulder symptoms. This factor carries some weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident. Neither party has presented evidence which tends to show how the Petitioner's age impacts any permanent disability resulting from this accident. The Arbitrator does acknowledge Petitioner is at a fairly young typical work age. This factor carries minimal weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner testified that he continues to work his regular full time job for Respondent, though he now works 5 days a week instead of 4. No evidence was presented indicating Petitioner is currently limited in his earnings capacity. While Dr. Lopez indicates he has permanent work restrictions of "may lift 62.8 lbs. above shoulder, may lift 107.8 lbs. chair to floor, may carry 103.8 lbs. and may push/pull 106.3 lbs.," the restrictions are well above his current job requirements. The Arbitrator acknowledges that if the Petitioner were to have to look for new employment, he could be limited to some degree given the FCE restrictions, however it remains speculative whether the restrictions would impact Petitioner's future earnings capacity. This factor carries some weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner was diagnosed with labral and bicep tears for which he underwent surgery, which also included decompression. Following physical therapy, Dr. Lopez referred Petitioner for an FCE. The FCE indicated Petitioner was capable of the heavy physical work demand level, including the noted specific lifting limitations. Petitioner testified that he has been working his regular job with Respondent since his January 2024 release. He now works with a second driver, and they split the unloading duties. This was done for safety purposes, not Petitioner's injury, and it applies to all of Respondent drivers. Petitioner testified he has continued pain, weakness, and loss of motion and the ability to reach above shoulder level. He also testified that his post-release condition impacts much of his personal life as well. He uses his left upper extremity to compensate for his difficulties with his right upper extremity.

Petitioner sustained tearing of the labrum and the bicep. Neither were indicated to be a complete tear. The Arbitrator notes that the Petitioner appears to be able to do his full duty job with Respondent. He does have some permanent restrictions from Dr. Lopez based on the FCE, however he also tested out at the heavy level with the ability to perform fairly heavy lifting. The injury is to his dominant arm. He does appear to have his most significant deficit with over shoulder level work, and he testified it takes him longer to do or has to modify how he does some of his physical activities. Mr. Chittenden testified the Petitioner always was able to complete his deliveries and continues to be a reliable employee. This factor carries the most significant weight in the permanency determination.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries and similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 20% of the person as a whole pursuant to §8(d)2 of the Act.

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

The parties have agreed that the TTD and TPD credits to Respondent agreed to by Petitioner represent payment of agreed upon periods of TTD and TPD (see Arbx1) with no overpayment or underpayment. As such, and as TTD and TPD are not at issue in this hearing, this credit is not applicable towards any of the awards made in this case.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002352
Case Name	Tayde Enriquez v. Eat'n Park Hospitality Group
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0168
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Daniel DeBias
Respondent Attorney	Peter Puchalski

DATE FILED: 4/14/2025

/s/Maria Portela, 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

Tayde Enriquez,

Petitioner,

vs. NO: 24 WC 002352

Eat'N Park Hospitality Group,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary total disability, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 July 30, 2024 is hereby affirmed and adopted.

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

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

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

The 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.

APRIL 14, 2025

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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	24WC002352
Case Name	Tayde Enriquez v. Eat'n Park Hospitality Group
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Daniel DeBias
Respondent Attorney	Peter Puchalski

DATE FILED: 7/30/2024

/s/ Jessica Hegarty, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 30, 2024 4.93%

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)

TAYDE ENRIQUEZ Case # **24** WC **002352**
Employee/Petitioner
v.
EAT'N PARK HOSPITALITY 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 **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Geneva**, on **April 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the alleged date of accident, October 13, 2023, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of her employment.

Timely notice of her 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 $37,222.93; the average weekly wage was $786.04

On the date of her alleged accident, Petitioner was 47 years of age, *married* with 1 dependent children.

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

Respondent shall be given a credit of $2,249.61 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $2,249.61.

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

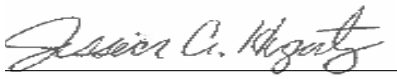
ORDER

Because Petitioner failed to establish that she sustained an accident that arose out of and in the course of her employment with Respondent on October 13, 2023, 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.



Arbitrator Jessica A. Hegarty on July 30, 2024

July 30, 2024

25IWCC0168

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

BEFORE THE STATE OF ILLINOIS WORKERS' COMPENSATION COMMISSION

TAYDE ENRIQUEZ,
Petitioner,

v. Case #: 24 WC 002352

EAT'N PARK HOSPITALITY GROUP,
Respondent.

ADDENDUM TO THE DECISION OF THE ARBITRATOR

Petitioner's Testimony

On October 13, 2024, Petitioner was employed by Respondent, Eat'n Park Hospitality Group (Transcript "T" at 9). Respondent is a cafeteria company who services office buildings, including the building at 300 Windsor Drive in Oakbrook Illinois, where Petitioner worked for six years leading up to her alleged work-related accident (Id., at 9-12).

Petitioner's job duties were divided between five categories: barista, cashiering, catering, kitchen duty, and inventory (Id., pp. 16 – 26). Regarding her inventory duties, Petitioner testified she used a rolling cart filled with various items including cups, sugars, coffee filters and boxes of tea (Id., pp. 22). She would push the cart to pantry locations on each floor of the 4-story office building. She then took inventory of each pantry, noting which items were in short supply, which she then restocked, before moving on to the next pantry location (Id., pp. 22-24; 104). Petitioner testified the inventory and restocking process took about 1 ½ hours to complete (Id., pp. 25).

Regarding her alleged work-related accident, Petitioner started work at 6:30 am on Friday, October 13, 2024. She began the inventory/restocking process at 7:30 am (Id., at 34-35). The rolling cart and various restocking supplies weighed approximately 30-35 lbs. (Id., at 37).

While pushing the rolling cart on the first floor, towards Training Room 1, Petitioner turned left when she stumbled and "stepped wrong". Her right foot rolled outwards, and she twisted her right ankle and knee (Id., pp. 38). She did not fall to the ground (Id., at 39-41). Petitioner felt pain in her right ankle and sharp right knee pain following her accident (Id., at 42). She completed the inventory process that day, although she was limping (Id., at 42).

Petitioner reported her injury to Mr. DeZutti, whom she referred to as "Chef Greg", within 30 minutes following the incident. She left work that day at approximately 10:00 am due to her right knee and ankle pain (Id., at 42; 63).

She testified that Mr. DeZutti has never accompanied her during the inventory process (Id., at 105).

Petitioner filled out a handwritten incident report, within a week following her injury, at the request of her manager, Ruth (Id., at 57-58; PX 14). Petitioner completed the handwritten incident report without any assistance and read the instructions before completing each section (Id., at 64-66; PX 14). Her description of the accident was, in part as follows:

> *I was working doing my inventory like every Friday and when I was walking towards the pantry on the first floor by the training room 1, I was turning and somehow stepped wrong and twisted my ankle. I felt like I pulled a muscle. I felt a sharp pain from my ankle to my knee and my butt. I bent down to start my inventory and had hard time getting up. I was limping during the time I was doing inventory. I went to the cafeteria and told Chef Gregg what had happened…. (PX14: T. at 59).*

Petitioner testified at length regarding her medical treatment, including her initial visit to the emergency room ("ER") and her treatment with Dr. Giannoulias who diagnosed, amongst other things, a lateral meniscal tear. She underwent conservative treatment that failed to alleviate her symptoms and Dr. Giannoulias recommended that she undergo arthroscopic right knee surgery (Id., 48-50). Petitioner testified that she wants to undergo the recommended surgery (Id., at 53).

After she received a denial letter from Respondent's carrier, Petitioner retained an attorney in January 2024 (Id., at 73).

Petitioner conceded that prior to retaining an attorney, she never reported to her medical providers that she was pushing a cart when she was injured, as she did not think it was important. After she hired an attorney, she understood the importance of the cart (Id., at 73, 85).

Regarding her current condition, Petitioner testified that her sharp right knee pain with locking and cracking persists (Id., at 50).

Petitioner has not returned to work since her accident (Id., at 53). Respondent terminated her employment on January 11, 2024 (Id., at 55).

Petitioner traveled to Mexico in December 2023 (Id., at 74-75). She was using crutches at the time (Id., at 75). Petitioner later testified that she was not using crutches when she traveled to Mexico in December 2023 (Id., at 76).

Testimony of Gregg Dezutti

Gregg DeZutti, who is employed by Respondent as an executive sous chef, was called to testify by Respondent (Id., at 90). Mr. DeZutti' s job duties include menu writing and managing food and labor costs. In addition, Mr. DeZutti and Ruth Liberio, Director of Operations, were responsible for supervising four employees, including Petitioner (Id., at 91). Mr. DeZutti has known Petitioner for 1 ½ years (Id.).

According to Mr. DeZutti, on October 13, 2023, Petitioner told him that she injured herself at work earlier that morning when her ankle folded under her while walking (Id., at 92-93). She did not mention that she was pushing a cart at the time of her injury to Mr. DeZutti (Id., at 93).

Mr. DeZutti further testified that he is familiar with the inventory process, and it does not involve the use of a rolling cart (id., at 94). The inventory process requires a binder and pen to keep track of product (Id., 94). Inventory and restocking are separate processes, which are not completed at the same time (Id., at 94). He has not seen any staff member using a rolling cart to complete inventory duties (Id., at 95).

Medical Records

On October 14, 2023, Petitioner presented to the Elmhurst Hospital ER when the following history was noted, "She states that yesterday she fell at work twisted her ankle and felt pain in her ankle and knee" (PX 3). Right ankle x-rays noted a possible nondisplaced fracture of the medial malleolus. Right knee x-rays demonstrated mild medial tibial femoral and patellofemoral joint arthritis (Id., p. , 8). Petitioner was diagnosed with an acute right knee strain, an acute severe right ankle sprain, and concern over a possible avulsion fracture was noted (Id., at 10). Petitioner was given an air cast for her right ankle and crutches. She was instructed to remain non-weightbearing and follow-up with at Elmhurst Hospital Occupational Health (Id., at. 10).

Regarding the above-noted history, Petitioner testified that she did not actually "fall" to the floor, but she stumbled and was holding onto the cart (T., at 45). She did not mention the cart specifically at the ER because they wanted to know what happened to her leg and she told them she twisted her ankle and felt pain in her leg up to her butt (Id., at 45-46). She didn't think they needed to know about the cart (Id., at 46).

On October 19, 2023, Petitioner presented at Elmhurst Occupational Health where the following history of injury was noted, "Patient states that on 10/13/2023 she was at work and was walking on level ground when she twisted her ankle also causing her knee to twist" (PX4). On exam, right knee swelling and diffuse pain with grind and stress testing was noted along with tenderness along the joint line and infrapatellar region (Id., at 2). Relative to the right ankle, lateral malleolar tenderness to palpation and mild swelling was noted along with mild tenderness medially over the malleolus and inframalleolar region. Her right ankle X-rays were reviewed, and the doctor noted soft tissue swelling and evidence of cortical irregularity over the medial malleolus which may be consistent with an avulsion fracture (Id.).
The doctor noted that she was tender in this area on exam, and because of the possible fracture, she was referred to orthopedics for her right ankle and right knee injury (Id.). She was diagnosed with a right knee sprain and right ankle sprain with possible avulsion fracture and light duty restrictions were noted (Id., at 3).

On October 24, 2023, Petitioner presented for initial orthopedic evaluation with Dr. Christos Giannoulias who noted a history of a "twisting injury to her right leg" (PX5). The doctor reviewed the recent x-rays noting a small chip fracture of the distal fibula (Id., at 4). On exam of the right knee, tenderness over the anterolateral joint and pain with circumduction and flexion, along with a positive McMurray's test, were noted. Exam of the right ankle noted swelling and tenderness over the distal fibula (Id.). Dr. Giannoulias diagnosed a right distal fibula fracture and right knee pain (Id., at 4). He ordered a right knee MRI to evaluate the meniscus and advised Petitioner that her right ankle fracture could take 4-6 weeks to heal (Id.). Petitioner was restricted to light duty work (Id., at 5).

Petitioner testified that the MRI was not authorized by Respondent's carrier following this visit (T., p. 48).

On January 9, 2024, Dr. Giannoulias noted Petitioner's report of improved right ankle pain although her knee symptoms persisted (PX5, p. 7). On exam, locking in Petitioner's right knee with flexion past 90 degrees, and a positive Spurling's test were noted (Id.). The doctor diagnosed a right distal fibula fracture and right knee pain. He further noted the right knee MRI had not been authorized (Id., at 7). Petitioner's light duty restrictions were continued (Id., at 8).

On January 31, 2024, Petitioner presented to her primary care physician Dr. Mais Trabolsi, who noted a history of right ankle and knee pain from an injury on October 13, 2023, when Petitioner was "walking and stepped wrong, twisting her ankle" (PX7 at 35). Petitioner reported persistent right ankle pain and that her right knee "gets stuck" (PX7 at 35). Dr. Trabolsi ordered an MRI of the right knee, after which, Petitioner was to follow-up with her orthopedic doctor (Id., at 39).

On February 3, 2024, Petitioner underwent MRI of her right knee at Elmhurst Hospital (PX11).

On February 13, 2024, Dr. Giannoulias reviewed the MRI films noting a tear in the lateral meniscus and some chondromalacia in the patellofemoral joint and lateral compartment (PX5 at 12). The doctor diagnosed a right ankle sprain and a right knee lateral meniscus tear with a cyst (Id.). Physical therapy was prescribed, and the doctor noted if Petitioner's right knee failed to improve, surgery would be considered (Id.). Petitioner was taken off work (Id., at 13).

On February 29, 2024, Petitioner presented for initial consult at ReLive Physical Therapy where the following history was noted, "Was working in the morning doing inventory and was walking with the cart and walking towards the pantry and going to turn and stepped wrong and twisted ankle and knee turned too and felt a sharp pain to knee and butt/bottom but did not fall" (PX6).

On March 12, 2024, Petitioner followed up with Dr. Giannoulias who noted the following history, "This is all stemming from an injury on 10/13/2023 when she was pushing a cart weighing about 25 pounds and twisted her right knee and ankle." The doctor noted, from a causation standpoint, that the described mechanism of injury was consistent with Petitioner's right ankle and right knee conditions (PX5 at 15). Petitioner's off work restrictions were continued (Id., at 16).

Petitioner last saw Dr. Giannoulias on March 26, 2024, at which time she complained of persistent right knee pain with locking and popping. On exam, tenderness to palpation of the lateral joint line, pain with circumduction and pain with the McMurray's maneuver were noted (Id., at 18). The doctor recommended arthroscopic right knee surgery noting that conservative treatment had failed to relieve Petitioners symptoms. Petitioner's prior restrictions were modified to light duty (Id., at 19).

CONCLUSIONS OF LAW

WHETHER AN ACCIDENT OCCURRED THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT

The Arbitrator finds that Petitioner has failed to sustain her burden of proof on this issue.

The Arbitrator finds that Petitioner's reported histories related to her right knee/ankle pain given to medical providers closest to the onset of pain, is more credible over later inconsistent histories. Shell Oil Co. v. Industrial Commission, 2 Ill.2d 590, 602, 119 N.E. 2d 224, 231(1954). The Illinois Supreme Court stated that contemporaneous medical records are more reliable than later testimony because "it is presumed that a person will not falsify such statements to a physician from whom he expects and hopes to receive medical aid" (Id.). In this case, less than 24 hours following her injury, Petitioner reported to ER staff that yesterday she "fell at work twisted her ankle and felt pain in her ankle and knee" (PX 3). If the injury occurred in the manner testified to by Petitioner, she should have related the same history to her initial providers at the Elmhurst Hospital ER.

Furthermore, six days following her injury, Petitioner's occupational provider noted a history of "walking on level ground" when Petitioner "twisted" her ankle and knee. When Petitioner presented to Dr. Giannoulias, 11 days following her injury, a history of a "twisting injury to the right leg" was noted (PX 4; PX 5). Neither of these records, which document statements made by Petitioner less than 2 weeks following her injury, mention a rolling cart.

Additionally, Petitioner's primary care doctor, 3 ½ months following her injury, noted a history of "walking stepped wrong twisted her ankle" on October 13, 2023, without reference to a cart (PX7).

The Arbitrator further notes that less than a week following her injury, Petitioner completed a handwritten incident report that instructed her to "be specific" and "include machines, tools, objects or other materials" involved in the incident. Despite this directive, Petitioner did not mention pushing a rolling cart when she injured herself. Instead, Petitioner wrote that she was "walking" and "turning" when she "somehow stepped wrong" and twisted her ankle *(PX 14).* If the injury occurred in the manner testified to by Petitioner, she should have related the same history on her handwritten incident report particularly given the instructions noted above.

The Arbitrator further relies upon the credible testimony of the executive sous chef Gregg DeZutti, regarding his conversation with Petitioner shortly after the subject occurrence when Petitioner stated she "folded" her ankle while walking, without reference to a rolling cart. DeZutti further testified that a rolling cart is not used during the inventory process and that restocking of the pantries is not performed simultaneously with inventory duties.

After considering all of the evidence contained in the record, the Arbitrator does not find Petitioner's trial testimony credible regarding her alleged work accident.

Because Petitioner failed to establish that she sustained an accident that arose out of and in the course of her employment, all benefits are denied. Accordingly, all remaining issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023434
Case Name	Andre Smith v. Kingdom Chevrolet Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0169
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jill Wagner
Respondent Attorney	W. Britt Isaly

DATE FILED: 4/16/2025

/s/Raychel Wesley,Commissioner
Signature

DISSENT: /s/Raychel Wesley,Commissioner
Signature

25IWCC0169

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

ANDRE SMITH,

Petitioner,

vs. NO: 23 WC 23434

KINGDOM CHEVROLET, 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 accident, causal connection, medical expenses, prospective medical care, and temporary disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 10, 2024, is hereby affirmed and adopted.

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

The bond requirement in §19(f)(2) of the Act is applicable only when "the Commission shall have rendered an award for the payment of money." 820 ILCS 305/19(f)(2). Based upon the denial of compensation herein, no bond for the removal of this cause to the Circuit Court is required. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 16, 2025

/s/ *Stephen J. Mathis*

RAW/wde

O: 2/19/25

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/s/ *Deborah L. Simpson*

DISSENT

I respectfully dissent from the Decision of the Majority and would reverse the Decision of the Arbitrator on the issue of accident. After considering the evidence, I believe Petitioner met his burden of proving by a preponderance of evidence that he sustained accidental injuries arising out of and in the course of his employment.

The Illinois Supreme Court has consistently held that injuries suffered by employees resulting from assaults are not compensable if there is evidence to sustain a finding by the Commission that the motive was personal to the victim, rather than work-related, or if the claimant could not demonstrate a reason for the assault. *Schultheis v. Industrial Commission*, 96 Ill. 2d 340, 346-47 (1983). If the reason for the attack is not personal but is related to the work, injuries are compensable if the claimant was not the initial aggressor. Injuries compensable are those arising out of the conditions under which the employee is required to work and may properly include injuries arising out of a fight in which the injured employee was not the aggressor, when the fight was about the employer's work in which the employees were then engaged. *Triangle Auto Painting & Trimming Co. v. Industrial Commission*, 346 Ill. 609, 618 (1931).

The basis of my dissent is my belief that Petitioner's testimony was more credible than that of Mr. Bogan and Respondent's general manager Mr. Benavides. Petitioner testified to a history of bad blood between he and Mr. Bogan prior to the accident in question, which Petitioner routinely reported to Mr. Benavides. Petitioner testified that he requested and had his desk moved away from Mr. Bogan. Petitioner also testified he reported the threat Mr. Bogan made to him in the lunchroom just prior to the accident in question to Mr. Benavides. Mr. Benavides testified that upon reporting this threat, Petitioner did not appear to be disheveled, did not have any shirt markings or rips in his clothing, and was not excited when he reported the alleged incident to him. Despite Mr. Benavides' perceptions, I believe the preponderance of evidence supports Petitioner's claim.

The testimony of both Mr. Bogan and Mr. Benavides is unpersuasive in my opinion. Mr. Bogan testified that he and Petitioner "hit it off" when they first met, and were "more than business colleagues." He stated they talked outside of work and kept in touch with each other when everyone was at home during COVID-19. This testimony suggests that Petitioner and Mr. Bogan had a positive and "more than co-workers" relationship, yet on the date in question Petitioner—

unprovoked— randomly approached Mr. Bogan aggressively, claiming that Mr. Bogan was not in his circle and did not know who Petitioner knew. I find this to be farfetched.

To the contrary, Petitioner testified of a history of ill will harbored by Mr. Bogan towards him, with examples suggesting Mr. Bogan took issue with Petitioner's community standing. After reporting the lunchroom threat to Mr. Benavides, Petitioner testified the incident in question took place a short time later in the restroom, with a physical altercation occurring immediately after Mr. Bogan questioned "Why you snitch on me?" Petitioner's recitation of events is much more plausible, and supports the belief that there was a negative history between he and Mr. Bogan.

Further, Mr. Bogan detailed a disagreement in the lunchroom that became aggressive and angry, ending in Mr. Bogan intimating that Petitioner (who he supposedly had a positive relationship with) was a fake politician and reverend. Yet Mr. Bogan went on to state that a short while later, he passed Petitioner in the restroom and simply addressed him jovially with a "Hey, old school" greeting. Again, these circumstances defy logic.

Lastly, I find the testimony of Mr. Benavides regarding Petitioner's appearance and demeanor after the incident, as well as the condition of the bathroom, to be of little persuasiveness. Petitioner alleged Mr. Bogan grabbed his arm and pushed him into the restroom drywall, causing shoulder pain. While such an event could certainly cause injury, I do not believe that one should expect the restroom to show any signs of destruction after such an event. Petitioner did not allege that an all-out brawl occurred in the restroom. Further, I find it believable that such an event could occur without noticeable damage to the drywall, nor should it be expected that Petitioner would have a rip or markings on his clothing.

Next, I also disagree with placing any weight on the fact that Petitioner continued to work after the accident and did not seek medical care until three days later on August 27, 2023. The Arbitrator notes that Petitioner reported 10 out of 10 shoulder pain to Dr. Markarian in November of 2023—and questions why Petitioner gave no reason as to why he waited 2 and-a-half days before seeking medical care. However, contemporaneous medical records on August 27, 2023—just three days after the incident—indicate Petitioner reported pain between 3 and 6 out of 10. General evidentiary concepts afford greater weight to contemporaneous medical records and histories instead of later ones. Thus, it is not as implausible to believe Petitioner was able to work through this level of pain temporarily. Further, Petitioner's choice to attempt to continue working should be of no consequence to his claim. An employee who continues to work on a regular basis despite his own progressive ill-being should not be punished merely for trying to perform his duties without complaint. *Durand v. Industrial Commission*, 224 Ill. 2d 53, 70 (2006) (quoting *Three "D" Discount Store v. Industrial Commission*, 198 Ill. App. 3d 43, 49 (1989)).

Also of no consequence to Petitioner's claim is his alleged denial of Mr. Benavides' offer to relocate to another dealership, and why Petitioner did not look for light duty work elsewhere. Since the totality of evidence largely contradicts Mr. Benavides' testimony, I also find less than persuasive his testimony that Petitioner was not terminated, but was offered to relocate to another work location. Further, permanency is not yet at issue, thus it is premature to discuss whether or not Petitioner sought light duty work elsewhere.

Petitioner alleged a definite time, place and cause of his injury, and being that he alleged an assault, he also specifically alleged that it was not personal to him, but work-related. Testimony reveals the assault occurred because Mr. Bogan was upset that Petitioner "snitched" on him by

reporting their recent encounter to Respondent's general manager. No other motive was offered at trial. In the moment, Mr. Bogan indicated his current issue with Petitioner was the fact that Petitioner did harm to him in the sense of potentially receiving repercussions for an act he committed at work. Although the ill will Mr. Bogan held towards Petitioner may have been born out of personal issue, the totality of evidence at trial supports a finding that the impetus for Mr. Bogan's assault on Petitioner on the specific date in question was work-related. Further, Both Petitioner and Mr. Bogan agreed that Petitioner was not the aggressor in any fashion in the restroom.

Initial medical records also corroborate Petitioner's accident claim. Just three days after the accident, Petitioner sought medical care for his shoulder pain, and was diagnosed with a shoulder strain. A diagnostic x-ray revealed evidence of remote trauma to the rotator cuff, and not tendinopathy. *PX 2, p.137*. The mechanism of injury provided in the medical records, as well as in the criminal investigation documents also corroborate Petitioner's testimony.

For the foregoing reasons, I respectfully dissent from the Majority opinion, and find that Petitioner has met his burden of proving by a preponderance of evidence that he sustained a work-related injury on the date in question which arose out of and in the course of his employment with Respondent.

/s/ *Raychel A. Wesley*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023434
Case Name	Andre Smith v. Kingdom Chevrolet Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Jill Wagner
Respondent Attorney	W. Britt Isaly

DATE FILED: 6/10/2024

/s/ Jeffrey Huebsch, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

A Smith v. Kingdom Chevrolet, 23 WC023434

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)

Andre Smith
Employee/Petitioner
v.
Kingdom Chevrolet, Inc.
Employer/Respondent

Case # **23** WC **023434**

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 **4/17/2024**. 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 _____

A Smith v. Kingdom Chevrolet, 23 WC023434

FINDINGS

On the date of accident, **8/24/2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**78,000.00**; the average weekly wage was $**1,500.00**.

On the date of accident, Petitioner was **55** 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 $**0.00** 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

Claim for compensation denied. Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment by Respondent on August 24, 2023.

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

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

Signature of Arbitrator

June 10, 2024

FINDINGS OF FACT

On August 24, 2023, Petitioner was employed by Respondent as a car salesman. He began his current employment with Respondent in June of 2023. Petitioner had been employed by Respondent previously as a finance manager and had worked at other car dealerships owned by Respondent's owner, Richie Ruscitti, in the past. Ruscitti owns two other car dealerships (all of the dealerships are on South Western Avenue in Chicago). Petitioner worked at Ruscitti's Nissan dealership in the past and was a top salesman (54 cars sold in a month) and then was the finance manager at Nissan.

At the Nissan dealership, Petitioner became acquainted with John Bogan, a salesman at Nissan and the finance manager at Respondent when Petitioner started back there in 2023. According to Petitioner, he had no relationship issues with Bogan while working at Nissan, but Bogan did know about Petitioner's Nissan sales numbers.

When Petitioner left Respondent's employ the first time, he was running for Cook County Commissioner and his mother had just passed away. He also felt that he was not being paid as much as other finance managers at Ruscitti dealerships. After he lost the election, Petitioner contacted "Browner", who allegedly worked for the Ruscitti dealerships, and was able to come back to work at Respondent as a salesman (Brogan was then finance manager at Respondent). Petitioner testified that Browner, who was "over every finance manager" told him that Brogan was not doing that well as Respondent's finance manager. (T. 26). (T. 9-28).

While working at Respondent, Petitioner had a professional relationship with Bogan. They had no interaction outside of work. Petitioner testified that he would try to be extremely nice or cautious with Bogan, so that he wouldn't feel intimidated or threatened by Petitioner's relationship with Respondent's owner and Browner. Petitioner testified that Bogan said negative things about him to other salespeople and customers. Petitioner said that every time this occurred, he reported it to Respondent's GM, Brian. (T. 27-30). Petitioner reported these events to Brian at least 5 times and, at one point Petitioner requested that he be able to move his desk away from Bogan's office. Petitioner testified that Brian said "yes to this request. (T. 29-32). Petitioner testified that he told Brian that he thought that Bogan acted this way because Bogan thought that if he messes up Petitioner would ease in to his job because of his relationship with Richie and Browner. (T. 33).

In addition to being a car salesman, Petitioner is a beat facilitator for Beat 311, working with the Chicago Police Department, the district, and the community to decrease violence and regarding other issues. He also advises political candidates and elected officials and is the CEO of Chicago Against Violence (being on (sic) the media, TV, newspapers, fighting crime), he is a preacher and an activist (providing assistance when someone gets shot, things of that nature). (T. 9-10, 15-16).

Petitioner testified that he was at work on August 24, 2023. He was in a conference room, talking to a newspaper at 3:00. He walked out of the conference room and heard someone mention his name in the adjacent lunchroom. John Bogan, David Greathouse (who Petitioner had previously identified as the assistant manager) and another employee were in the lunchroom. Petitioner said that he walked in the lunchroom and said "what?". Bogan said "yeah, you fake ass wannabe politician ass nigger." Petitioner said that he turned around and was going to report this to Mr. Brian. "But when I stopped by the desk, Mr. Bogan walked around to me in my face and said I got something for your old ass, I'm going to fuck you up. " (T. 34-35). Petitioner interpreted this as a threat. Petitioner told Brian about this and Brian said that he would talk to Bogan about the incident. (T. 35). Petitioner said that he then went back to his desk.

Neither Party submitted the testimony of Greathouse or the other employee that was in the lunchroom when Petitioner and Bogan had this conversation.

Petitioner testified that he then went to the washroom and was drying his hands with the blow dryer and Bogan walked in. Petitioner testified that Bogan grabbed his shoulder and "why you snitch on me?". Bogan then said I told you I was going to get your ass and slammed Petitioner into the concrete wall. (T. 35-36). Bogan was the aggressor. Petitioner would not be the aggressor, due to his running for public office/political activities and community/activist activities. (T. 37). Petitioner felt immediate pain in his right shoulder at the time. Petitioner could not think of anything besides work that would have caused Bogan to attack him. (T. 39). This event will be referred to as the washroom incident, hereafter.

Petitioner testified that after he was pushed into the wall, he reported what happened to Brian. Petitioner filed a police report regarding the incident on August 26, 2023. (T. 40, PX 8). Petitioner also obtained an Order of Protection (Petition For Stalking No Contact Order) against Bogan. (T.44-45, PX 10). Petitioner testified that he was told that if he pursued a police report, his employment with Respondent would be terminated. (T. 45).

Petitioner first sought medical treatment at Cook County Health/Provident Hospital on August 27, 2023. (T. 46). PX 2 was the records from Provident Hospital, 8/24/2023 to 9/11/2023. Petitioner was seen in the Emergency Department on August 27, 2023 at 2:45 am. He was seen for right shoulder pain. The history was that on Thursday, a guy grabbed him and pushed him into the wall on hs right side and now he is having right shoulder pain. (PX 2, 103). A nursing progress note states the the patient presented to the ED with right shoulder pain with movement. Claims he was slammed into the wall 4 days ago. The patient was evaluated by a physician and sent to x-ray.(PX2, 111). The MD notes indicate that the patient was pushed into the wall. His right shoulder hit the wall. It happened 4 days ago and it has been sore ever since. He has taken Tylenol and ibuprofen and has gotten temporary relief but the pain always comes back, so he came in to be evaluated. Pain is dull and achy, on the top of the shoulder. Worse with activity, better with rest. No other associated symptoms. No neck pain. Right shoulder exam reveals no clavicle tenderness, tenderness on the trapezius, slight tenderness on the axila, no tenderness over the deltoid, mild tenderness in the superior scapula. Full range of motion was noted. There is no mention of any impingement or bruising. The diagnosis was shoulder strain and Petitioner was instructed to follow-up with his PCP within a week. There is no mention of off work status. (PX 2, 119-120). The right shoulder x-ray was negative for recent dislocation or fracture. A well-corticated ossific fragment along the lateral aspect of the humeral head, measuring 4mm was thought to relate to old trauma versus calcific tendinopathy of the rotator cuff. (PX 2, 137).

Petitioner testified that he next received treatment at Integrity Medical Group on September 6, 2023, where he was diagnosed with cervical sprain and a right shoulder sprain. He testified that he was taken off work, MRIs were ordered and a referral to an orthopedic was made. (T. 46). The records of Integrity show that Petitioner was first seen by Byron Schultz, DC on September 6, 2023, where a history of being accosted at work on August 24, 2023 and having the right side of his body slammed into the wall. Petitioner had complaints of 8/10 right shoulder pain and 8/10 cervical spine pain. It was noted that Petitioner was right-handed. The physical exam regarding the right shoulder and neck noted some deficits. The diagnosis was c-spine sprain and c-spine facet syndrome, along with right shoulder sprain/strain of the rotator cuff. X-rays of the c-spine were ordered, along with a right shoulder MRI. Petitioner was taken off work for 4 weeks. (PX 3, 53-54). Petitioner was seen by Dr. Christos Giannoulias, MD, on September 19, 2023 regarding his right shoulder. Dr. Giannoulias noted positive Neer and Hawkins signs, with elevation to 150 degrees, and crepitus noted. Strength was 4/5. An MRI was ordered to rule out rotator cuff pathology. Petitioner was instructed to ice and rest. He was released

to light duty work. (PX 3, 35). Petitioner was seen for a pain management consult by Dr. Narayan Tata, MD, on October 5, 2023. Petitioner presented with the history of the August 24, 2023 incident, with increasing right shoulder pain. The right shoulder MRI was said to show right rotator cuff tears. Dr. Giannoulias recommended a steroid injection to the shoulder. The injection was done by Dr. Tata (PX 5, 5-6). Petitioner was instructed to follow-up with Dr. Gregory Markarian regarding his shoulder. Interestingly, Dr. Tata noted that Petitioner had brought a July 6, 2023 cervical spine MRI, which left sided disc pathology at C6-C7 and C5-C6. (PX 3, 32-34). Petitioner was seen on October 12, 2023 by Dr. Markarian. The history of the August 24, 2023 incident was given, with an onset of 10/10 right shoulder pain. Baseline pain was 0/10 and Petitioner stated that he never had right shoulder pain before this incident, had never seen an orthopedic surgeon for his right shoulder before the altercation and "nor did he even have an MRI of his right shoulder before this altercation." (PX 3, 47). (Why would someone have an MRI of their shoulder if they had no problems with it?). The injection and therapy have not helped. Petitioner was having difficulty sleeping and weakness that affected his ADLs and his ability to work (Petitioner was claiming TTD for this time (ArbX 1) and one wonders how the shoulder pathology that Petitioner was exhibiting disabled him from being a car salesman). Dr. Markarian thought that the MRI showed a high-grade rotator cuff tear that the patient sustained at work when he was assaulted. There was a concern that Petitioner was developing adhesive capsulitis. Surgery was recommended and Petitioner was to continue with therapy and light duty work restrictions. (PX 3, 47-51). Dr. Markarian saw Petitioner on November 9, 2023 and continued to recommend surgery. There was a concern that the adhesive capsulitis would advance if surgery did not take place. (PX 3, 42-44). Petitioner had therapy at Integrity from September 6, 2023 to January 13, 2024. The last visit at Integrity was January 22, 2024. Petition was seen by Bryan Schultz, DC and was released from care for his c-spine at MMI. Authorization for surgery on the shoulder was pending. (PX 3, 74-75).

PX 4 was records from American Diagnostic MRI. The c-spine x-ray of September 19, 2023 showed degenerative findings at C3, C4-C5 and C6- C7, and a straightening of the cervical lordosis. (PX 4, 5). The right shoulder MRI of September 26, 2023 showed mild osteoarthritis of the glenohumeral joint, a suspected chronic appearing Hill-Sachs lesion, with a possible subtle posteroinferior labral tear, moderate to high-grade partial tear of the supraspinatus tendon with insertional contusion pattern, severe infraspinatus tendinosis with moderate to high-grade articular surface partial tear, moderate grade partial tear of the subscapularis tendon and evidence of subacromial impingement by a moderately osteoarthritic AC joint. (PX 4, 6-7).

The Arbitrator notes that a Hill-Sachs Lesion is defined by Steadman's Medical Dictionary as: "an irregularity seen in the head of the humerus following dislocation of the shoulder; caused by impaction of the head of the humerus against the edge of the glenoid." Steadman's was cited by the Workers' Compensation Division of the Appellate Court in Will County Forest Preserve District a/k/a Forest Preserve District of Will County v. Illinois Workers' Compensation Commission, et al., 2012 IL App (3d) 11077 WC, so it must be considered authoritative. None of Petitioner's physicians commented on the Hill-Sachs Lesion.

Petitioner denied right shoulder pain prior to August 24, 2023. He has not ever had right shoulder treatment prior to August 24, 2023. (T. 50).

Petitioner did not receive any lost time benefits from Respondent. His medical bills have not been paid. (T. 49-50).

Petitioner testified that he had neck pain around his shoulder. (T. 49). He has difficulty lifting his right arm over his head or carrying something heavy. He describes his shoulder pain at 6 or 7, continuous. If the recommended surgery is awarded, he would get it immediately. (T. 50-51).

A criminal complaint for battery is pending against Bogan. Petitioner has filed an Order of Protection against Bogan. Bogan has filed an Order of Protection against Petitioner. Petitioner has filed a Motion to Vacate Bogan's Order of Protection. (T. 86, PX 7, PX 8, RX 1, RX 2, RX 3).

Petitioner agreed on cross examination that he was never told that he was fired by Respondent's GM, Brian. (T. 75). He did not resign from Respondent. (T. 90). He is currently on light duty, per his doctor. (T. 90).

John Bogan testified at the request of Respondent. He was employed by Respondent as finance manager on August 24, 2023. He was hired in 2021. (T. 92-93). Bogan was not present in the hearing room for Petitioner's testimony.

Bogan testified, that on August 24, 2023, he was approached by Petitioner "with a little bit of aggression, just stating you're not in my circle, you don't know the people I know." (T. 93). Bogan said that he told Petitioner that he didn't want to be in his circle, that his wife and kids were his circle. Petitioner then said that he knew the governor; he knew the mayor. Bogan said that he responded "why you here on Western selling cars?". More words were exchanged and Bogan told Petitioner "hey, I don't want to be a fake politician or reverend." (T. 94). Bogan said he then went back to his office. He was then in his office for 30 to 40 minutes. Bogan said that he then went to the washroom. He saw Petitioner in the washroom, drying his hands. Bogan said that he went to the urinal, washed his hands and walked out. Bogan said that he said "hey old school" to Petitioner. Petitioner did not respond. Bogan went back to his office and later Petitioner and Brian came into his office. Brian said that Petitioner was saying that Bogan had assaulted him. (T.95-96). Brian asked what happened and Bogan said that he was going into the washroom and Petitioner was going out, "never—never touched him". (T. 97). Bogan testified that he never touched Andre. (T. 96-97). Bogan testified that Petitioner was saying that Bogan assaulted him. Bogan testified that he never touched him, never assaulted him. He didn't ever touch or assault Petitioner. (T. 97). Nothing else happened on that day. It was like a regular work day. (T.98).

On Saturday, August 26, 2023, the police came to do an investigation because Petitioner filed a complaint that Bogan had assaulted him. The police asked Bogan questions. A sergeant came to the dealership later and the police later left. (T. 100). Bogan was arrested in January of 2024 for battery. He was booked and released. He has had to hire a lawyer to represent him. Bogan had been in court in the criminal case five days before the trial in the present case. There was talk of a resolution of the case via Bogan paying restitution and taking anger management. The criminal case was continued to May 14, 2024. (T. 101-103). Bogan identified RX 3 as the Order of Protection document that he had filled out and signed. (T. 103-104).

Bogan said that he never had any problems with Petitioner before August 24, 2023. He has known Petitioner since before 2020, when they worked at Western Nissan. Bogan described his relationship with Petitioner as being "more than business colleagues". (T. 105-106).

On cross examination, Bogan did not agree that Petitioner was a top salesman. He was in the top 5. Bogan did not agree that Petitioner moved his desk. (T. 110-111). His testimony was that just words were exchanged. (T. 111). Bogan has worked at Respondent for 3 years. He would like to keep his job. He agrees that he would be fired if he assaulted a co-worker. He has no other pending battery charges He never has been charged with battery. (T. 113).

Respondent presented the testimony of Brian Benavides, Respondent's General Manager. Benavides was present in the hearing room for the testimony of Petitioner and Bogan. He was GM on August 24, 2023 and had been in that position since October of 2020. Mike Browner is the administrator for the warranty company that

Respondent uses. Browner is not an employee of Respondent and Browner is not an owner of Respondent. (T. 117-121).

Benavides testified that he was unaware of any arguments or physical altercations between Petitioner and Mr. Bogan prior to August 24, 2023. Benavides was told by Petitioner that "there was an interaction in the restroom and that Mr. John Bogan had put his hand on him. (T. 122). Petitioner appeared normal at that time. He did not appear like he had been in a fight or had been pushed up against the wall. Benavides described Petitioner as not appearing disheveled, wasn't angry, wasn't loud, no ripped shirt, no marks. (T. 123). He was not holding either arm. Benavides testified that he "grabbed" Petitioner and they went to Bogan's office.

Benavides described the conversation: " And I said what happened John. John said what are you talking about. I said he's saying you put his hands on him. John said I didn't. I said what exactly did you say. He says, I just said hey, what's up old school, that's it. I said you never touched him, you never did nothing. I looked at Andre and Andre said that's not true, he put his hands on me. So I said … all right, you two cut the shit, this is a professional atmosphere and we've got to get along, let's stop this nonsense right away." (T. 124-125).

Benavides testified that was the end of his conversation. He went to his desk, Petitioner went to his desk and Bogan stayed in his office. Benavides testified that he did not know if there was a verbal argument between Petitioner and Bogan. Benavides did not believe that there was a physical altercation/assault by Bogan against Petitioner. (T. 125-126). Petitioner did not appear like he had been thrown into a wall and his demeanor/tone was not agitated. (T. 126).

Benavides testified that the restroom wall was drywall, not concrete, and there was no damage to the wall. (T. 126-127).

Benavides testified that August 24, 2023 was a Thursday. He thought that Petitioner worked on Friday. On Saturday morning Petitioner said that he wanted to talk to Benavides. Petitioner said that maybe it's best that he leave and he said that he was thinking about filing a police report, "for the assault." (T. 127-128). Petitioner said that he wanted Riche to know what he was going to do. Benavides said that he would talk to Richie. Benavides talked with Richie and advised Petitioner that per Richie, if he wants to file a police report, that's his prerogative and if he feels comfortable down here, he can go work at the Nissan store. Benavides told Petitioner that they would call the Nissan manager and he could start there right now. (T. 128-129). Petitioner said that it was best that he leave, and he left shortly thereafter. (T. 129). He has not seen Petitioner since. (T. 130).

The police came to the dealer at about 3:00 in the afternoon. They interviewed Benavides and he told them what happened, consistent with his testimony. (T. 130-131).

Benavides testified that Petitioner never requested that his desk be moved. Petitioner's desk was not ever moved. (T. 132). No one else has complained about Bogan. Benavides testified that he did not tell Petitioner that "you're done" if he called the police. (T. 133).

Benavides testified that Petitioner resigned on August 26, 2023, before the police arrived. RX 4 was a document that he prepared, documenting Petitioner's separation from Respondent. The document states: "Andre Smith, he voluntarily resigned stating he feels that it's best if he moves on, feels finance manager John Bogan has something against him, alleges John Bogan assaulted him in the washroom, review was unfounded, reported to Chicago Police by himself, and the police also found it to be not credible. (RX 4, T. 134-135).

Benavides testified that Petitioner's sales numbers at Respondent were "average." (T. 136). In his investigation of the incident, Petitioner did not tell Benavides that his work or employment had been criticized. Petitioner did not tell Benavides that Bogan was criticizing his work or employment. (T. 136).

Benavides confirmed that Respondent brought Petitioner back to work after he had previously been separated because of poor performance. (T. 138). Bogan's performance as finance manager was average. (T. 139).

Benavides testified that Petitioner never reported any instances of a bad interaction with Bogan. (T. 141). During the conversation about the incident in Bogan's office, Bogan did not say that he playfully touched Petitioner. Bogan did not apologize for anything. Petitioner did not ever say "I quit". (T. 143).

RX 4 was an internal document and was not sent to Petitioner.

Petitioner did not testify in rebuttal to the testimony of Bogan and Benavides.

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)

WITH RESPECT TO ISSUE C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EPLOYMENT BY RESPONDENT?. THE ARBITRATOR FINDS:

Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment by Respondent on August 24, 2023.

Petitioner has the burden of proof on the issue of accident and the Arbitrator finds that the preponderance of the evidence does not support a finding that an accident occurred that arose out of and in the course of Petitioner's employment by Respondent. In a disputed accident case, such as this, the Finder of Fact's decision is based upon the credibility of the testimony of the witnesses and whether that testimony is corroborated by other evidence adduced.

Petitioner's testimony is found to be not credible. He chose not to offer rebuttal testimony to that of Bogan and Benavides. The testimony of Bogan and Benavides is found to be credible and, to the extent that the testimony of Bogan and Benavides differs from that of Petitioner, the Arbitrator finds the testimony of Bogan and Benavides to be the correct version of the events. Petitioner's version of the events just does not add up. His

responses to questions on cross examination were vague and deflective, in spite of the Arbitrator's advising that he should listen carefully to the questions that are put to him and answer only that question.

Petitioner testified that there were several times that Bogan said negative things about him to customers and other salespeople. He said that each time that this occurred, he reported it to Benavides. Petitioner said that he reported these events at least 5 times to Benavides. Benavides testified that Petitioner did not tell him that his work or employment had been criticized. Benavides testified that Petitioner did not tell him that Bogan was criticizing his work or employment. Benavides said that he was not aware of any arguments or physical altercations between Petitioner and Bogan prior to August 24, 2023.

Petitioner testified that he requested that his desk be moved away from Bogan's office and that Benavides said yes to this request. Benavides testified that Petitioner never requested that his desk be moved. Benavides also testified that Petitioner's desk was not moved. Bogan testified that Petitioner did not move his desk.

Petitioner testified that he reported the threat that Bogan allegedly made to him after the conversation in the lunchroom and before the washroom incident to Benavides. Benavides did not corroborate this testimony. Of course, if Petitioner did not report the threat to Benavides prior to the restroom incident, why would Bogan accuse him of "snitching" ? No report of the threat = no snitching = no reason to shove Petitioner into the wall.

As to the events subsequent to the washroom incident, Benavides testified that Petitioner was not in an agitated state, did not appear disheveled or in pain when Petitioner reported that Bogan had laid hands on him. Petitioner testified that Bogan agreed that he put his hands on Petitioner "but I was joking", and apologized for threatening Petitioner at the post-washroom incident discussion prompted by Benavides in Bogan's office. Neither Bogan, nor Benavides corroborated this testimony.

Supposedly, Petitioner sustained a severe and painful injury as a result of the washroom incident, which occurred at about 3:00 pm on August 24, 2023. He continued to work that day. He worked all day the next day and appeared for work on Saturday, August 26, 2023. He did not seek medical attention until 2:45 am on August 27, 2023, when he presented to the Provident Hospital ED. It is noted that Petitioner told Dr. Markarian that he had 10/10 pain after the washroom incident. This is certainly not consistent with Benavides' observations of Petitioner at that time and with a patient's 2.5 day delay in seeking medical care. No reason was given for this delay in treatment. Delay in treatment = no accident/injury occurred.

The Arbitrator notes that Petitioner was not taken off-work at the Provident ED visit. The first off work note (For 4 weeks for a car salesman, due to a rotator cuff tear!) was given September 6, 2023 by Integrity. The Arbitrator notes that Petitioner had cervical spine complaints and treatment at the 9/62023 Integrity visit, along with the right shoulder complaints and treatment documented in PX 2. Petitioner had no neck pain and there were no comments regarding the neck at the ED visit. Petitioner was offered a job at Western Nissan at the time that he left Respondent on August 26, 2023. Petitioner chose not to go there and apparently didn't follow-up at Western after he received light duty work restrictions in September of 2023. Petitioner claimed TTD through the date of trial, per ArbX 1. This weighs negatively on his credibility (Why couldn't he work as a car salesman? Why couldn't he work light duty as a car salesman? Why didn't he take the job at Western when he was not even seeking medical care and had not been restricted from work? Why hasn't he looked for work within the light duty restrictions?).

Petitioner denied right shoulder pain prior to August 24, 2023. He said that he had not ever had right shoulder treatment prior to August 24, 2023. This testimony is refuted by the 8/27/2023 x-ray from Provident (consistent with prior trauma or a calcified tendinopathy of the rotator cuff) and the 9/26/2023 MRI, which shows a Hill-

Sachs lesion consistent with a prior shoulder dislocation. If you have a shoulder dislocation, you know it and you have pain. The Arbitrator does not believe Petitioner's testimony that he had no prior right shoulder pain.

Petitioner testified that the wall in the washroom was a concrete wall. Benavides said that the wall was drywall and it did not appear damaged when Benavides looked at it after the washroom incident was reported.

For the above stated reasons, the Arbitrator finds that Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment by Respondent on August 24, 2023.

The claim for compensation, therefore, is denied.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, 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, ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, AND ISSUE (L), IS PETITIONER ENTITLED TO TTD BENEFITS, THE ARBITRATOR FINDS:

The Arbitrator needs not decide these issues based upon the Arbitrator's finding above on the issue of accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC007647
Case Name	Michael Raynolds v. City of Springfield Police Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0170
Number of Pages of Decision	7
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Francis Lynch
Respondent Attorney	L. Robert Mueller

DATE FILED: 4/16/2025

/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

MICHAEL RAYNOLDS,

Petitioner,

vs. NO: 24 WC 07647

CITY OF SPRINGFIELD POLICE DEPARTMENT,

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 issue of the nature and extent of Petitioner's 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 22, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,024.87 per week for a period of 25.05 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 15% 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.

April 16, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 4/9/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC007647
Case Name	Michael Raynolds v. City of Springfield Police Department
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	4
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Francis Lynch
Respondent Attorney	L. Robert Mueller

DATE FILED: 11/22/2024

/s/Adam Hinrichs, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 19 2024 4.31%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

MICHAEL RAYNOLDS
Employee/Petitioner

v.

CITY OF SPRINGFIELD POLICE DEPARTMENT
Employer/Respondent

Case # **24** WC **007647**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on **October 30, 2024**. By stipulation, the parties agree:

On the date of accident, **2/27/24**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**108,880.72**, and the average weekly wage was $**2093.86**.

At the time of injury, Petitioner was **33** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**3190.56** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**3190.56**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

The parties stipulated that the Petitioner's medical bills have been, or will be, paid, and that Respondent is entitled to any and all 8(j) credits if it is determined that the Petitioner's group health insurer paid for any related care and treatment, all of for which Petitioner will be held harmless. It was further stipulated that Petitioner was entitled to receive, and has been paid, 2 2/7 weeks of temporary total disability benefits, for which Respondent receives a credit.

Michael Raynolds is employed as a Sergeant with the Springfield Police Department (hereinafter, "SPD" or "Respondent"), and has been an employee there for approximately 12.5 years. (T. 9). He currently serves on

SPD's Street Crimes (Gang) Unit and is a team leader on the SPD SWAT team. (T. 9). Petitioner does not have a desk job; his team performs traffic stops, executes search warrants, and hunts for illegally possessed firearms, which regularly results in him engaging in foot chases. (T. 9-10).

On February 27, 2024, Petitioner was performing a SWAT team training exercise requiring him to throw a sandbag over a four foot wall and then climb over the wall and then throw the sandbag back over the wall and climb back over the wall, repeating as many repetitions as possible in one minute. (T. 11). A few reps in, Petitioner landed on a sandbag on the outside of his right foot; he felt a "pop" and fell to the ground from the pain. (T. 11). He did not have any prior right foot injuries. (T. 11). He required assistance to get up, and his foot/ankle started swelling and was painful. (T. 12).

He drove to the next part of the training, which was at the Academy, but driving was very painful, so he called his wife requesting that she pick him up and drive him to the Springfield Memorial Health Emergency Department ("ER"). (T. 13). Petitioner underwent X-Rays and was advised that his foot was broken. (T. 13). He was diagnosed with a right calcaneus avulsion fracture and several sprained ligaments in his right foot. (T. 14). Petitioner was put in an air boot and given pain medication and instructions to not bear weight and to follow up at the Orthopedic Center of Illinois ("OCI"). (T. 13-14).

On March 7, 2024, Petitioner met with Dr. Barry Mulshine, at OCI, and was again advised that he had a right avulsion break and that he'd need to take off work, as it would take six to eight weeks to heal (T. 15; PX 2, p. 25). Dr. Mulshine also diagnosed a right midfoot sprain. (PX 2, p. 25). X-Rays done at OCI confirmed Petitioner had avulsion fracture fragments at the right calcaneocuboid joint. (PX 2, p. 25). He was kept in an air boot, and advised to elevate and ice his foot frequently. (T. 16; PX 2, p.25). Petitioner testified that he was on crutches for approximately four to six weeks, and then walked with difficulty in his air boot. (T. 16).

Petitioner returned to work light duty doing administrative desk duty for about three to four weeks after his injury; he was unable to drive, so Respondent transported him. (T. 16-17). During this time, his foot was still very painful and required frequent icing and elevation. (T. 18).

Starting on April 19, 2024, Petitioner began physical therapy at PhysioTherapy ("PT"). (T. 18; PX 3, p. 5-7). After a couple of months at PT, his therapist moved out of state, so Petitioner stopped going to PT and instead did home exercises. (T. 18). After he returned to work full duty and started engaging in foot chases again, he was in a lot of pain, so returned to PT. (T. 18). Petitioner testified that his therapy at PT improved his symptoms. (T. 19). He was discharged from PT on August 20, 2024. (PX 3, p. 37-39).

Given his time in the air boot, Petitioner experienced misalignment of his posture and an awkward gait, causing hip pain, which he reported to his physical therapist. (PX 3, p. 5). He was referred by his PCP for chiropractic treatment at Advanced Center for Pain and Rehab for his hip pain and ankle pain. (T. 19; PX 1, p. 12). Petitioner testified that the chiropractic treatment improved his symptoms from his work injury. (T. 19).

Petitioner was released by Dr. Mulshine to return to work full duty on April 25, 2024, and at MMI on July 15, 2024. (T. 19; PX 2, p. 16, 18). Petitioner testified that Dr. Mulshine indicated to him that his foot will likely never be 100% again; he might get to 80% improvement after a year or so. (T. 26-27). At his final office visit, Dr. Mulshine noted Petitioner's ongoing pain complaints, especially with activity, as well as the popping in Petitioner's foot that was not present prior to this injury. (PX 2, p. 16).

Petitioner testified that his right foot is different now, he has pain when he wakes up and when he walks or stands for long periods of time. (T. 20, 21). His balance and flexibility are compromised. (T. 20, 22). He is also quite hesitant when using his right foot; for example, when he jumps over a fence, he is cautious so he does not land on it, as landing on it is painful, and he is concerned about reinjury. (T. 20-21). He also has audible cracking and popping in his foot with walking, which was demonstrated for the Arbitrator, and was comparable

to the sound of a dog training clicker. (T. 23-24). He also testified that he frequently self-limits his activities to avoid causing pain and discomfort. For example, he used to be a recreational runner, running an average of 25-30 miles per week, but now he can only run a few miles a week due to the discomfort from longer distances. (T. 21-22). He reported that his gait is also flat and awkward after his foot injury. (T. 20).

Considering the record and its application to the five factors, the Arbitrator makes the following determinations in accordance with Section 8.1b(b):

i. There was no AMA impairment report included in the record. The Arbitrator lends this factor no weight.

ii. The Petitioner is a Sergeant with the Respondent serving on the Street Crimes Task Force and SWAT team. Petitioner returned to work full duty and can perform all essential functions of his job. The Arbitrator lends this factor some weight.

iii. The Petitioner was 33 years old at the time of the injury, and has many years remaining in the work force. The Arbitrator lends this factor greater weight.

iv. No evidence was introduced that Petitioner's future earning capacity was affected by his injury. The Arbitrator lends this factor some weight.

v. The Petitioner testified, and his medical records corroborate, that he continues to have achiness and pain from his foot injury, especially with activity. He also experiences, and demonstrated, regular cracking and popping of his foot which was not present before the work injury. The Arbitrator lends this factor significant weight.

Considering the above factors, the Arbitrator finds that the Petitioner sustained a 15% loss of use of his right foot as a consequence of this work injury.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $1024.87/week for 25.05 weeks, because the injuries sustained caused a 15% loss of use to the Petitioner's right foot, as provided in Section 8(e) of the Act.

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

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

NOVEMBER 22 2024

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC026623
Case Name	Antonio Moyet v. JC Decaux NA
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0171
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Jeff Goldberg

DATE FILED: 4/16/2025

/s/Raychel Wesley,Commissioner

Signature

25IWCC0171

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

ANTONIO MOYET,

Petitioner,

vs. NO: 23 WC 26623

JC DECAUX NA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's condition is causally related to the October 2, 2023 work injury, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, corrects the Decision as set forth below and 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).

Corrections

1. The Commission corrects the scrivener's error in the first paragraph on Page 7 of the Decision to reflect Petitioner's date of accident is October 2, 2023.

2. The Commission corrects the scrivener's error in the Order to reflect Petitioner is entitled to 36 4/7 weeks of Temporary Total Disability benefits, representing October 3, 2023 through June 14, 2014.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 28, 2024, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $702.29 per week for a period of 36 4/7 weeks, representing October 3, 2023 through June 14, 2014, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Per the parties' stipulation, Respondent shall have a credit of $16,353.32 for TTD benefits already paid, and a further credit for wages paid to Petitioner for March 19, 2024.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses detailed in Arbitrator's Exhibit 1, Exhibit A001, 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 treatment as recommended by Dr. Sergey Neckrysh, 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 $46,800.00. 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.

April 16, 2025

RAW/mck

O: 4/9/25

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/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC026623
Case Name	Antonio Moyet v. JC Decaux NA
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Jeff Goldberg

DATE FILED: 8/28/2024

/s/Francis Brady, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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
19(b) ARBITRATION DECISION

Antonio Moyet
Employee/Petitioner

v.

JC Decaux
Employer/Respondent

Case # **23** WC **026623**

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 Francis Brady, Arbitrator of the Commission, in the city of **Chicago**, on June 14, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. 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? And is Petitioner entitled to any prospective medical care?
K. X☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance X☐ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **10/2/23**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**54,778.88** the average weekly wage was $1,053.44

On the date of accident, Petitioner was **62** years of age, married with 5 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 $**16,353.32** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**16,353.32, plus the total awarded for TTD (below) of $9,330.42 shall be reduced in an amount equal to the full day's pay Moyet received for March 19, 2024 as stipulated**.

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

ORDER

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his conditions in the neck and cervical spine are causally related to the October 2, 2023 work accident.

The Arbitrator finds the Petitioner's treatment to be reasonable and necessary, pursuant to the medical fee schedule and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth below for causally related Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act.

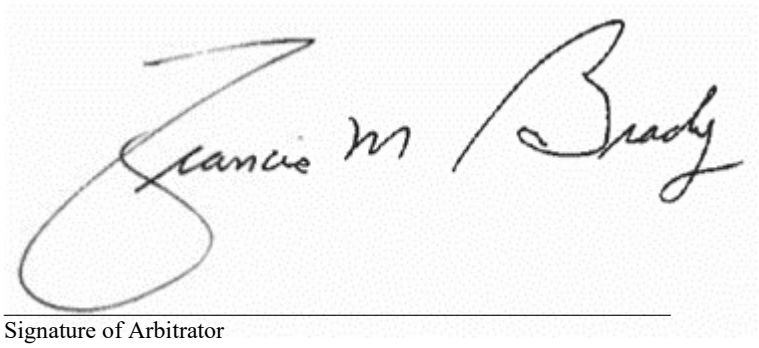
The Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Neckrysh. Respondent shall authorize and pay reasonable and necessary medical services associated with said treatment.

The Arbitrator finds Respondent liable for 36 4/7 weeks of Temporary Total Disability (TTD) benefits from October 2, 2023 to June 14, 2024. Respondent has paid TTD from October 2, 2023 to March 13, 2024. The Arbitrator finds Respondent shall pay TTD benefits for 13 2/7 weeks of Temporary Total Disability (TTD) benefits (March 14, 2024 to June 14, 2024) at a weekly rate of $702.29, which corresponds to $9,330.42.

In no instance shall this award be a bar to subsequent hearing and determination of a 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 28, 2024

STATEMENT OF FACTS:

Petitioner, Antonio Moyet, "Moyet", was on blood sugar medications as early as May 18, 2021, and he continued them through May 18, 2022 (PX 2. 002, 003, 033 - 035) For that same year he was prescribed an antibiotic; an antacid, a muscle relaxer (cyclobenzaprine /Flexeril) an opioid pain reliever, anti-emetic, and a laxative (PX 2 004 – 026).

But just the same he had been working without any problem for Respondent JC Decaux, "Decaux, 20 years as a technician travelling around the city, raising his arms overhead and lifting weights of about 100 pounds on average, maintaining bus shelters. (Tr. 17, 18, 19, 20).

On October 2, 2023, he reported to work at 4 am, feeling great, experiencing no neck problems (Tr. 20, 21) Neither was he bothered by a shoulder for which he had previously undergone surgery (Tr 21). Attempting to install a glass door of about 100 pounds, later in his shift that day, however, lead to a mishap resulting in "strain and . . . excruciating pain . . . to the right side of his neck" (Tr. 22,23, 25, 37)

On October 3, 2023, upon the request of Decaux, Moyet presented via "telemed" for care to Dr Shoeb Mohiuddin, "Shoeb" (Tr. 26; PX. 1., p 003) who charted that the day before, while lifting a door working for Decaux, Moyet, who was left hand dominant, experienced "sharp pain in his right shoulder and neck" (PX 1., p 003). Currently he reported pain in his neck shoulder and arm, all on the right and headaches. He acknowledged previous surgical repairs of both his right and left rotator cuffs (id). The shoulder and neck pain, which was "significant" motivated Shoeb to refer Moyet for orthopedic evaluation regarding rotator cuff tear; CT scan, and physical therapy, "PT". (TR, 26; PX 1, 004) He couldn't prescribe MRI or NSAIDS due to sequalae of Moyet's' prior gunshot wound (id and TR 27). Shoeb did however prescribe "topical

analgesics" and removed Moyet from all work. (id) Midwest Specialty Pharmacy, "Midwest" dispensed lidocaine topical ointment to Moyet (PX2., 027, 029, 031, 032)

Moyet presented to Shoeb again on October 18, 2023, by which time "his right shoulder pain (had) drastically improved . . ." though his neck pain rated "a 10/10 . . . to the right trapezius muscle (d)escribed as an aching sensation aggravated with most movements especially cervical rotation. (TR. 26; PX 1 007, 009). Clinical exam of the right shoulder was "unremarkable" but "significant tenderness" was disclosed along the right side of the neck resulting in diagnosis of neck strain and pain (id) Moyet had been to PT that day and he was to continue that modality three times a week for the next four weeks when the CT scan would be revisited if he hadn't improved. (TR 26; PX 1 007, 009) Midwest dispensed cyclobenzaprine. (PX 2, 028, 030) He was continued off work entirely in the meantime (PX. 1., 007, 009).

Though he performed no physical examination when Moyet next presented on November 15, 2023, Shoeb did record his ongoing complaints of neck pain rating 9 on a scale of 10, travelling to his right shoulder blade though without numbness or tingling (TR. 27; PX 1, 013) Diagnosis remained neck sprain and pain so the CT was ordered and in the meantime Moyet was to pursue PT for another four weeks, (three times per week) for "increased range of motion strengthening and stabilization" and remain off of all work. (id). An itemized statement reflects Midwest charged 177.65 for cyclobenzaprine and 1,172,79 for Lidocaine ointment of which 177,.65 and 919.23 was paid respectively (PX2 036)

The neck CT was performed on November 24, 2023, revealing, per the radiologist "Cervical spondylosis with multilevel degenerative disc and joint disease" (TR 27; PX 1 017, 018).

Midwest charged $1,172.79 for Lidocaine Ointment on December 12, 2023 as prescribed by "Cody Zimmerman" of which 919.23 was paid leaving a balance due of 253.56

On December 13, 2023, Shoeb noted the cervical CT demonstrated "2 mm disk herniation from C2 to C7." (PX 1 019). His examination that day was positive for "cervical facet loading bilaterally" and for tenderness "to palpation right neck . . ." and upper back consistent with Moyet's "ongoing neck pain and right trapezius myofascial pain after a work-related injury." (PX 1, 019) Shoeb administered trigger point injections (TPI) to "a total of 8 locations" and continued Moyet in PT and off work (Tr 28; PX 1, 019). Charting did include Moyet's particular "MEDICATIONS" consisting of a diuretic, blood sugar control, and a calcium channel blocker (PX., 1, 019)

On December 21, 2023, Shoeb was notified by Decaux that the tpi's were not medically necessary as the chronicity of Moyet's myofascial pain had not been sufficiently demonstrated (PX 1, 025). Shoeb and/or Moyet were invited to appeal the determination if he felt it erroneous. (id)

Moyet returned to Shoeb on January 3, 2024, reporting no relief from the tpi's, and complaining of "ongoing neck pain with radiation to right shoulder . . . 9/10, worse with any movement" (PX 1 027) PT had been unavailing, and he wanted ". . . further treatment . . ." as his ". . . pain is still pretty bad" (id) Shoeb's physical exam remained consistent with prior evaluations: "positive facet loading" and tenderness to palpation in the upper trapezius (PX 1. 027) He observed "all ODG guidelines" pertaining to right C4 to C6 medial branch block were met and he proposed to perform that procedure depending upon Moyet's decision after a week's consideration (PX 1 027-028) In the meantime Moyet was to remain off work. (id), No mention was made of either future PT (though he was directed to "(c)ontinue home exercise program") or prescriptions other than those specified in the November 24, 2023, note (though Shoeb recorded that ". . . 3 months of medications" hadn't alleviated Moyers' "right- sided neck pain. . ." and also there is a claim form reflecting that Cody Zimmerman again supplied Lidocaine ointment to on January 4, 2024) (id and PX 2., 049)

On January 4, 2024, Decaux expanded on its position that the tpi's administered by Shoeb on December 13, 2023, were unnecessary writing to him that there was no evidence of palpable trigger points producing a twitch response and referred pain. Neither had Moyet been symptomatic for more than three months. Finally, he had not tried medications to reduce the pain. (Px1, 030 - 033). Decaux again addressed its responsibility for the December 13, 2023, injections in a January 25, 2024, narrative to Shoeb which noted that Moyet, at 62 year's old, had neck pain radiating to his right shoulder with findings on exam positive for cervical facet loading and tenderness of the cervical paravertebral muscles around the right C4 to C 6 facets. But he displayed no evidence of trigger points with palpable twitch response nor of positive subjective radicular findings. (PX 1 034 035). Once again, the injections were designated medically unnecessary (id)

Shoeb responded on February 1, 2024, that the tpi's were "medically necessary" as by December 13, 2023, medications, (cyclobenzaprine and lidocaine) and PT had proven unequal to the task of relieving Moyet's pain. (PX 1 036)

Meanwhile Moyet decided to seek an opinion of his own regarding the medial branch block prescribed by Shoeb so he chose to see Sergy Neckrysh a neurosurgeon, "Neckrysh" who, at the first visit of February 8, 2024, charted that on October 2, 2023, while installing a door, right sided neck and shoulder pain developed. This was new as "prior to the work-related injury, (Moyet) had no complaints." (PX 3 008) Moyet related his prior care including the current prescription for "some selective nerve root block" (sic) but he "did not want to proceed before (his) full diagnosis was established" (PC 3 008) Neckrysch recorded "Waddell maneuvers are negative bilaterally" (PX 3., 010). He ordered a CT myelogram of the cervical spine and held Moyet off work (PX 3, 010)

On February 15, 2024, Decaux answered Shoeb's rebuttal of February 1, 2024, writing to him that he still proffered no evidence of trigger points with palpable twitch response. (PX 1 038).

Moyet underwent cervical CT on February 20, 2024 revealing ". . . advanced facet arthropathy on the right" at C3-C4 which "in combination with uncovertebral hypertrophy, result(s in) moderate right neural foraminal narrowing at C3-C4." (PX 3 032, 033)

Moyet returned to Neckrysh on February 29, 2024 by which time he'd undergone the CT myelogram which revealed ". . . posterior disc osteophytes complex at C3-4 level, partially effacing the anterior CSF space but only minimally narrowing the spinal canal. There (was) facet arthropathy which is advanced on the right side, and uncovertebral and facet hypertrophy causing moderate right and left foramina narrowing. At C4-5 level, the patient had a posterior disc osteophyte complex minimally effacing the anterior CSF space but causes no overall spinal canal stenosis and both neural foramina are patent." (PX3 012)

Neckrysh' s summarized that Moyet presented "with moderate stenosis of C3-4 foramen of the right side, causing C4 cervical radiculopathy, which precisely matches (his) symptoms of pain in the lateral aspect of his neck and proximal deltoid on the right. (PX 3. 012). Moyet should undergo one or two sets of selective nerve root block at C3-4 on the right and, if he got no long-term relief, he was a "good candidate for a C3-C4 anterior cervical discectomy and fusion." (id). Neckrysh fails to address the etiology of any of these conditions he diagnosis (PX 3 012, 013)

Adrienne Mejia, MD, MD "Mejia, treated Moyet initially on March 11, 2024, charting he was pain free until, on October 2, 2023, while installing a door on the job, he developed right sided neck pain which despite care over the last few months currently rated 10 on a scale of 10. (PX 4., 003) Mejia diagnosed "Cervicalgia" concluding Moyet suffered "Right-sided neck pain, causally related to to the injury sustained at work on 10/2/23." (sic) (PX 4, 005) She started him on pain medication, prohibited him from work, and

validated Dr Neckrysh' s recommendation that he undergo a C3-4 selective nerve block on the right side. (PX 4., 006)

The "cervical selective nerve root block injection at the right C3-4 was administered by Mejia, on March 21, 2024, on account of Moyet's neck pain secondary to disc protrusion at C3-4. (PX 3 029) Mejia does not chart why the disc protrudes. (id)

Also on March 21, 2024, Moyet presented to Harel Deutsch, Md, "Deutsch" who noted Moyet's report of having "10/10 neck pain" but then recorded he was in no distress. (RX, 1, 3). Light palpation of the front of the neck produced "some pain" and four out of five positive Waddell's signs. (RX 1, 3) Deutsch diagnosed Moyet with "at most" a cervical strain from the 10/2/23 work injury interpreting the CT myelogram imaging he reviewed as unremarkable other then diffuse degenerative changes." (RX.1, 4,5). His subjective complaints were exaggerated based on the positive Waddell signs and he didn't need the cervical injections as they offered "no chance" of any" significant improvement. (RX 1 5) Neither would he benefit "from any further physical therapy, Deutsch management, injections, diagnostic testing, or spine surgery." (RX, 1, 5). Deutsch stated Moyet was capable of working full duty and in need of no restrictions (id)

Mejia saw Moyet again on April 8, 2024, verifying he's undergone "a cervical selective nerve block on the right side at C3-4" which had failed totally to ameliorate his 10/10 right sided neck pain. (Tr. 31., PX 4., 008). Mejia reiterates Moyet suffers "Right-sided neck pain, causally related to the injury at work on 10/2/23." (PX 4 010). She tweaked his medication and turned all decisions regarding his further care, including his capacity for work, back over to Neckrysh whom she notes Moyet is seeing on 4/11/24 (id)

On April 11, 2024, Neckrysh noted Moyet's age, 62, and his "symptoms of C4 radiculopathy on the right side due to the foraminal stenosis at the C3-4 level on the right confirmed by CT myelogram." (Tr. 31, PX 3, 014) Since Moyet reported "really no relief provided by the selective nerve block" Neckrysh advised him "he is a straightforward surgical candidate for C3-4 anterior discectomy and fusion." (Tr., 31, 32; PX 3., 014) His formal diagnosis is "Cervical radiculopathy", and he is "OFF DUTY" (PX 3., 015)

Currently, his neck is "just so painful and uncomfortable. . . wearing (him) down . . ." and he's unable to drive and wishes to undergo the surgery Neckrysch prescribed (Tr., 31, 32, 33, 34, 44)

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

Moyet testified to prior good health of his neck. There is no evidence to the contrary. His testimony is credible and consistent with the medical records.

Shoeb, to whom Moyet was sent by Decaux, interpreted the November 24, 2023 CT as revealing herniations at multiple cervical levels. Deutsch discounted that interpretation because this "was only a CT" (RX 1, 2) No evidence is provided explicating the import of this statement. Moyet introduced evidence of herniations in his cervical spine upon imaging. Granted, Decaux introduces evidence there's no such pathology in other imaging. But it fails to provide a basis for adopting what seems to be its argument that the image with the herniations is less reliable than the image without them.

And at the end of the day there's no evidence Moyet had disabling pain in his neck, let along needed care, before the uncontroverted work accident. The record is replete with facts that he was so afflicted after it, and they are uncontested. Respecting causation, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Granite City Steel Co. v. Indus. Comm'n*, 97 Ill.2d 402 (1983).

Based upon the records as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the neck is causally related to the October 3, 2022 work accident.

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

Petitioner's medical bills were submitted into evidence and are listed on exhibit A001 to the Request for Hearing form. The bills include those from Midwest Specialty Pharmacy, LLC, University Spine Surgeons, The Pain Center of Illinois, Illinois Back and Neck Institute and Illinois Orthopedic Network. While Decaux disputed the reasonableness of the injections it misapprehended the facts regarding the medications Moyet had previously tried and its rejection was therefore foundationless. The parties stipulated that should the Arbitrator find causal connection between Petitioner's current condition of ill-being and the accident on October 2, 2023. Respondent shall pay the medical bills directly to the provider as due and owing pursuant to the fee schedule. TR 6-11. Respondent shall receive a credit for all amounts paid for the reasonable, necessary, and causally related bills that it has in fact paid. TR 7.

The Arbitrator finds that all medical bills are reasonable, necessary, and causally related to the work accident Petitioner sustained on October 2, 2023. The Arbitrator notes that the Petitioner's pain begun on October 2, 2023. The Arbitrator also notes that the treatment corresponding to these bills is for Petitioner's neck, which Petitioner did not suffer from prior to his work accident.

Thus, because this treatment is for injuries the Arbitrator has found to reasonable, necessary, and causally related to the accident, Respondent shall pay the outstanding balance of those bills pursuant to the medical fee schedule directly to the provider per stipulation of the parties.

Decaux shall also pay for the cost of the surgery recommended by Neckrysh as well as all reasonable and necessary care appurtenant thereto as the neck conditions necessitating such procedures were caused and or aggravated by the work accident of October 2, 2023.

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:

From October 2, 2023 through March 1, 2024, Decaux had no light duty for Moyet (Tr. 40) But on the latter date, Deutsch found him capable of working full duty and on March 19, 2024, Moyet returned to a job provided by Decaux assembling light ballasts (RX 1., 5; Tr. 41, 42). He performed that job for less than a day as, drowsy and dizzy from his prescribed pain medication, he was unable to focus to connect and disconnect pieces or even to remain physically in position. (Tr. 45, 46) Thereafter he "dozed off" and Decaux sent him home with pay that day and he never returned. (Tr. 47, 48)

Decaux paid Moyet workers compensation benefits beginning October 3rd, 2023 until March 13th, 2024 (Tr. 32)

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 Hotels v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 207).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

According to the medical records of Shoeb and Neckrysh, Moyet was unable to return to work since the accident on October 2, 2023. Moyet has been without TTD since March 14, 2024. His testimony and the records from the treating physicians are undisputed. To date, Moyet has remained off work.

Deutsch examined Moyet on March 1, 2024. He concluded he did not have herniation, though Shoeb, chosen by Decaux, concluded he did. Deutsch failed to testify to any basis for disregarding the notin the first CT disclosed herniations and his overall consideration of Moyet's presentation is thus lacking.

Based on the above, the Arbitrator finds Decaux liable for 36 4/7 weeks of Temporary Total Disability (TTD) benefits from October 3, 2023 to June 14, 2024. The record shows and the parties stipulated Respondent has paid 23 2/7 weeks of TTD benefits from October 3, 2023 to March 13, 2024. The Arbitrator finds Decaux shall pay TTD benefits for 13 2/7 weeks of Temporary Total Disability (TTD) benefits (March 15, 2024, to June 14, 2024) at a weekly rate of $702.29, which corresponds to $9,330.42. But one day of TTD shall be deducted from this total for the full day of pay Moyet received on March 19, 2024, as stipulated. (Arb Ex 1., para. 8; Tr 50 and 51)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014757
Case Name	Betty Elia v. Advantage Sales & Marketing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0172
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Mark Maritote
Respondent Attorney	Justin Nestor

DATE FILED: 4/17/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0172

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

Betty Elia,

Petitioner,

vs. NO: 19 WC 014757

Advantage Sales & Marketing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of causation, average weekly wage, 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.

The Commission modifies the third sentence on page 9 of the Arbitration Decision, striking "MMI" from the sentence. Following that sentence, the Commission adds:

> This is supported by Dr. Giannoulias' continued treatment of Petitioner, which culminated in a recommendation for a total knee replacement, well after the February 22, 2021 date Dr. Cole had placed Petitioner at MMI. On April 29, 2021, Dr. Giannoulias noted Petitioner continued to have ongoing complaints of pain in her knee. PX5, p.4. She had difficulty with going up and down stairs and complained of pain with activities of daily living. Her physical exam continued to reveal tenderness, crepitation and pain. Dr. Giannoulias recommended she see a joint replacement specialist and referred her to Dr. Van Stamos for evaluation and treatment. He noted she had failed conservative therapies. Petitioner was to remain off work. PX5, p.18.
>
> Petitioner underwent the evaluation by Dr. Van Stamos at Illinois Bone & Joint on July 1, 2022. PX3, p.10-12. He noted she had undergone two arthroscopic procedures, steroid injections, gel injections and physical therapy, but her pain persisted. He found deficits in her physical examination and reviewed imaging

studies which showed structural changes to her knee. He found she was a potential candidate for a left total knee arthroplasty.

While the Commission agrees the Petitioner is entitled to temporary total disability, we disagree with the period awarded by the Arbitrator, finding the Petitioner only proved her entitlement to temporary total disability benefits up until her last office visit with Dr. Van Stamos on July 11, 2022. Petitioner was last taken off work by Dr. Giannoulias on April 29, 2021. PX5, p.18. At the time she was evaluated by Dr. Stamos, he did not provide any restrictions on Petitioner's ability to work. PX3, p.74. Further, there were no additional medical records submitted into evidence reflecting a work restriction after that date. As such, the Commission modifies the award of TTD to award benefits from January 28, 2019 through July 11, 2022.

The Commission modifies the first paragraph of the section regarding Issue L, on page 10 of the Decision, striking the word "temporary".

Finally, the Commission strikes the §8.1b(b), factor (v) analysis from pages 12 through the first paragraph on page 14 of the Decision and replaces it with the following:

> With regard to subsection (v) of §8.1b(b), evidence of disability is corroborated by the treatment records. It is noted that Petitioner underwent a left knee arthroscopy in December 2019. She underwent a second surgery on November 20, 2020. Dr. Cole agreed that these procedures were related to the accident. Following the surgeries, Petitioner underwent extensive conservative treatment, including physical therapy, cortisone injections, and viscosupplementation injections, without lasting improvement. Although Drs. Giannoulias and Cole initially released Petitioner to return to work full duty in February 2021, she returned to Dr. Giannoulias on April 29, 2021, with continued complaints. PX5, p.4. She was taken off work and referred to Dr. Von Stamos for consideration of a total knee replacement. Dr. Van Stamos noted Petitioner's continued pain complaints, as well as physical deficits on examination, including a slight limp and limited range of motion. PX3, p.10-12. He reviewed x-rays of the Petitioner's left knee and hip, noting moderate valgus type osteoarthritis in the left knee with narrowing of the lateral compartment joint space, slight subchondral sclerosis, and changes to the patellofemoral joint. He noted her pain had persisted through physical therapy and that steroid and viscosupplementation injections had become less effective. Based upon her continued pain complaints and his findings on examination and imaging, he determined Petitioner was a potential candidate for a total knee replacement.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 1, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $220.00/week for 180 1/7 weeks, commencing on January 28, 2019 and continuing through July 11, 2022 as provided in Section 8(b) of the Act. Respondent shall be given credit for TTD benefits paid in the amount of $23,760.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $220.00/week for a further period of 129 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused 60% loss of use of the left leg.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $44,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2025

o: 2/18/2025

AHS/kjj
051

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

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014757
Case Name	Betty Elia v. Advantage Sales & Marketing
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Mark Maritote
Respondent Attorney	Kristin Lechowicz

DATE FILED: 2/1/2024

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 1, 2024 4.98%

/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 (§(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Betty Elia
Employee/Petitioner

Case # 19 WC 014757

v.

Advantage Sales & Marketing
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 11/13/2023. 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

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

In the year preceding the injury, Petitioner earned $7,290.48; the average weekly wage was $220.92.

Respondent shall be given a credit of $23,760.00 for TTD, $ 0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $23,760.00.

ORDER

The Arbitrator finds that the Petitioner has met her burden of proving that her current condition of ill-being regarding her left knee and leg are causally related to her work injury.

Petitioner is entitled to TTD benefits from January 28, 2019 through February 19, 2021, a period of 107 5/7 weeks at the TTD rate of $220.00 ($23,602.86) and,

Respondent shall be given credit for TTD benefits paid in the amount of $23,760. The parties stipulated that Respondent paid $23,760.00 in TTD benefits, resulting in a TTD overpayment of $157.14.

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.

The Arbitrator finds that Petitioner suffered a left tibia fracture and temporary aggravation of pre-existing osteoarthritis as a result of her January 27, 2019, work accident for which she underwent two arthroscopies. As such, the Arbitrator awards Petitioner 60% loss of use of the left leg for her work injuries.

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* **FEBRUARY 1, 2024**

Signature of Arbitrator

ICArbDec p. 2

FINDINGS OF FACTS:

Testimony of Petitioner

Betty Elia (Petitioner) testified that at the time of her work accident she was employed with Advantage Sales and Marketing (Respondent) as a Brand Ambassador. (T.11. Petitioner testified that her job duties included setting up demonstrations and stocking her station at different Jewel Osco's throughout Chicago and the surrounding suburbs. (T. 12). This included taking the product from the respective area of the store and setting it up on her demonstration table. (T. 12-14). On January 27, 2019, right before 10:00 a.m., Petitioner testified that she tripped over a bunker and "flew in the air," landing on her left leg. (T. 17-18). She felt shock and some pain, but she continued working on her leg until 3:00 p.m. when she could no longer stand. (T. 17). She advised her boss of the accident and drove herself to the ER of Northwest Community Hospital where she was told "everything looked good." (T. 19). She was then referred to Illinois Bone & Joint Institute (IBJI) where an MRI revealed a tibial fracture and torn meniscus. (T. 19).

Petitioner treated with Dr. Goldstein at IBJI who added the diagnosis of meniscus tear. (T.19). IBJI didn't really do much for her, so she went to an orthopedic surgeon she had seen in the past, Dr. Paul Petsche at Fox Valley Orthopedics. (T. 20, 48). Dr. Petsche "couldn't really do much" for her tibia, so she wore a brace for ten months, was kept off work, and underwent a left knee arthroscopy in December 2019. (T. 21). The surgery did not relieve her left knee pain, locking, and giving way. (T. 22). Dr. Petsche believed that there was nothing more to offer Petitioner for her left knee, so she sought a third opinion from Dr. Giannoulias on April 30, 2020, at G&T Orthopedics. (T. 49). He determined that Petitioner could benefit from a second arthroscopy, which Petitioner underwent in late 2020. (T. 24). She underwent a course of physical therapy. (T. 25). Petitioner underwent Cortisone injections and gel shots. (T. 26). She stopped seeing Dr. Giannoulias and began seeing Dr. Van Stamos at IBJI (T. 26). Dr. Stamos told her she might need a knee replacement. (T. 27).

Petitioner's current complaints included pain, inability to straighten the knee, difficulty bending the knee, and swelling at the end of the day. (T. 27-28). She had difficulty with housework, carrying grocery bags, walking long distances, stairs, cooking large meals, sleeping, and driving. (T. 28-30). She denied taking any medications for her left knee. (T. 30). She testified that the Diclofenac was for her arthritis, but that it did not help her knee. (T. 31).

On cross-examination, Petitioner claimed her left knee issues began on January 27, 2019. (T. 32). She could not recall any treatment, pain, or arthritis affecting her left knee prior to January 27, 2019. (T. 34-37). She testified she did not remember any treatment prior to 2019. (T. 36). She denied ever having pain in her knees prior

to January 27, 2019, and claimed that the medical records showing these complaints were wrong. (T. 39). Petitioner denied that anything has helped her knee since her work accident, including Diclofenac. (T. 45-46). She told Dr. Giannoulias on February 18, 2021, that she felt this is the best that her knee was going to be. (T. 55). She couldn't remember Dr. Giannoulias releasing her from care with a full duty work release on February 18, 2021. (T. 56).

Medical Records

Prior to Accident

On May 22, 2014, September 22, 2014, and November 3, 2014, Petitioner completed questionnaires from Dr. Weckerle indicating that she felt moderate pain in both knees. (RX 5 pg 495, 481, 469). At each of these visits, crepitus was noted on physical examination of both knees (RX 5 pg. 490, 475, 461). On October 27, 2015, Petitioner was diagnosed with osteoarthritis and osteoporosis associated with severe pain in the hips and knees. (RX 5 pg 392).

After Accident

After the work accident, Petitioner sought immediate treatment at Northwest Community Hospital. (PX 1). She reported to the ER physicians that she had left knee pain after a fall at 10 a.m. that day after she "slipped on a wet floor, landing on left knee." (PX 1 pg 165). She was treated with a knee immobilizer, crutches, and prescribed Tramadol. (PX 1 pg. 167).

She then sought treatment with Dr. Goldstein at IBJI on January 31, 2019. (PX 2 pg 7). She denied significant problems with her left knee in the past and stated her pain was moderate every day. (Id.) Petitioner completed a medical intake form denying any problems with this area in the past and listing the date of onset as January 27, 2019. (PX 8 pg 74). Dr. Goldstein ordered a diagnostic MRI and kept her off work until the next visit. (PX 2 pg 8).

Petitioner returned to IBJI on February 8, 2019, for evaluation with Dr. Charles Lieder. (PX 2 pg 5). Dr. Leider reviewed the MRI of the left knee from February 6, 2019, to show incomplete fracture to the anterior and medial aspect of the tibia and intercondylar eminence with inferior surface lateral meniscus tear of the horns. (Id.) Dr. Lieder opined the meniscus horn tears were most likely incidental findings. (Id. and PX 8 pg 79). He recommended physical therapy, told Petitioner to stop smoking, to follow up in six weeks, with return to work in six months, MMI in one year. (PX 2 pg 6). He kept her off work until the next visit. (Id.).

Petitioner was unhappy with her treatment at IBJI and sought a second opinion on February 14, 2019, with an orthopedic surgeon with whom she had treated in the past, Dr. Paul Petsche at Fox Valley Orthopedics. (PX

5). The MRI from February 6, 2019, showed fracture of the tibial plateau, articular surface tearing of the lateral meniscal anterior and posterior horns, surface tearing of the inner medial meniscal posterior horn, mild tricompartmental DJD. (PX 5 pg 123). The plan was to wait for the tibia fracture to heal to determine need for surgery. (Id).

During the course of his treatment, Dr. Petsche explained the importance of quitting nicotine and emphasized that Nicotine interferes with the healing response. (PX 5 pg 134). On July 9, 2019, Dr. Petsche's treatment plan included continued use of the bone stimulator to promote fracture healing and continue working to quit smoking (PX 5 pg 137).

As of September 10, 2019, Petitioner still had some aching pain in her left knee, and she was taking Diclofenac as needed with some relief. (PX 5 pg 138, 156). By October 3, 2019, the left tibia fracture had healed. (PX 5 pg 140). She underwent an MRI of the left knee on November 19, 2019, which showed an incomplete proximal tibia fracture and mild tricompartmental osteoarthritis with lateral and medial meniscal pathology, without significant change from prior study. (PX 5 pg 120). Dr. Petsche performed a left knee arthroscopy on December 27, 2019, comprised of a partial medial and lateral meniscectomy and chondroplasty. (PX 5 pg 145).

After surgery, another left knee MRI on February 29, 2020, showed postoperative changes, degenerative joint disease, and no new fracture. (PX 5 pg 115). Petitioner was unsatisfied with Dr. Petsche's opinion that "there is really nothing going on" with her left knee and sought a third opinion with Dr. Giannoulias with G&T Orthopedics on April 30, 2020. (PX 5 pg 16). She underwent Kenalog and Hyalgan injections to the left knee. (PX 5 pg 11-15). On September 29, 2020, Petitioner underwent another left knee MRI at AMITA Health, which showed degenerative changes in the lateral compartment with tearing of the lateral meniscus, and possible small tear of the posterior horn of the medial meniscus.

Petitioner underwent a second arthroscopy on November 20, 2020, performed by Dr. Giannoulias. (PX 5 pg 40). After surgery, Petitioner began physical therapy at ATI on January 11, 2021. (PX 5 pg 36). Dr. Giannoulias released Petitioner to light duty work on February 4, 2021, of no bending, squatting, climbing, and standing 1-3 hours per day. (PX 5 pg 25). He released her to full duty work without restrictions on February 18, 2021, effective February 20, 2021, as it related to her right knee meniscus tear and degenerative joint disease. (PX 5 pg 21). As of February 18, 2021, her physical examination revealed some tenderness over the medial and lateral joint lines, minimal crepitation, no effusion, and lack of 10 degrees of flexion. (PX 5 pg 5). Dr. Giannoulias opined Petitioner had "reached the end of healing." She was released from care to return as needed. (Id.). She returned to Dr. Giannoulias once more to obtain a referral to Dr. Stamos. (PX 5 pg 4), and at that time additionally received another off-work status from Dr. Giannoulias which has not changed.

Petitioner's consultation with Dr. Stamos on July 1, 2022, primarily involved her left hip. (PX 8). She told Dr. Stamos that her left knee issues began on January 27, 2019. (PX 8 pg 41). X-rays of the left knee taken on July 1, 2022, showed moderate valgus type osteoarthritis of the left knee. (PX 8 pg 27). Her knee diagnoses at that time were pain and significant osteoarthritis. (PX 8 pg 29, 33).

After the work accident, Petitioner continued to see her primary care physician, Dr. Weckerle, for her ongoing osteoarthritis. (RX 7). She reported on February 2, 2021, that she continued to have pain in her left knee and that Diclofenac helped quite a bit. (RX 7 pg. 25). She denied joint swelling. (Id.). She continued to have crepitus in both knees, but her osteoarthritis was stable, and she was doing well on Diclofenac. (Id pg. 29).

IMEs

Petitioner underwent an IME with Dr. Brian Cole on June 15, 2020. (RX 1). She reported ongoing pain after her December 27, 2019 arthroscopy rated at 5/10 on average. Injections and physical therapy "did not work." (RX 1 pf 2). Her goal was, "I want to be the way I was before." (Id.).

Dr. Cole's review of medical records consisted only of post-accident treatment. (RX 1 pg 3). Petitioner denied any significant medical history. (RX 1 pg 2). After reviewing the x-rays and MRI, Dr. Cole opined that Petitioner's diagnosis was aggravation of pre-existing left knee mild osteoarthritis from the work accident and healed tibial eminence fracture. (RX 1 pg 5). He believed hyaluronic acid injections were warranted with trial of full duty work. (Id.).

Petitioner underwent a second IME with Dr. Cole on August 27, 2020 (RX 2). She had undergone four Hyalgan injections with Dr. Giannoulias, but her pain came back. (RX 2 pg 1). She believed something was being missed. (Id.). She was taking Diclofenac daily. (Id.) Dr. Cole recommended adding a nonnarcotic analgesic like Tramadol to her Diclofenac regimen and another MRI. (RX 2 pg 5). He believed the aggravation of the osteoarthritis was resolving, and she could return to work light duty for the next four weeks, with full duty and MMI at that time. (Id.).

Petitioner underwent a third and final IME with Dr. Cole on February 22, 2021 (RX 3). She reported improvement overall with her left knee pain with her November 20, 2020 arthroscopy, performed by Dr. Giannoulias. (RX 3 pg 3). She rated the improvement at 50% with generalized pain in the front of the left knee. (Id.). She again rated her pain at 5/10 "pretty close to constant." Dr. Cole believed Petitioner reached MMI for her work injury involving aggravation of patellofemoral osteoarthritis. (Id.). He believed she could safely work full duty without restrictions from an orthopedic standpoint and provided a permanent impairment rating of 4% for the left leg. (Id and RX 3 pg 8).

CONCLUSIONS OF LAW

In support of the Arbitrator's conclusions with respect to (F) Causal Connection, the Arbitrator makes the following conclusions of law:

A chain of events that demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability is sufficient evidence to prove a causal nexus between the accident and the employee's injury; 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; 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; a claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. Schroeder v. Ill. Workers' Comp. Comm'n, 2017 IL App (4th) 160192WC, Pars. 25-28.

Based on Petitioner's unrebutted, credible, and corroborated testimony and the medical records, Petitioner's current condition of ill-being relating to her left knee and tibia is causally connected to the accidental injuries of January 27, 2019. By a preponderance of the evidence the Petitioner has proved this based upon a chain of events, the mechanism of the injury, her consistent and continuous complaints, and her medical treatment.

Prior to January 27, 2019, Petitioner had no complaints regarding her left knee and tibia for which she was under any active medical treatment and was working in her full-duty job. After the fall of January 27, 2019, Petitioner has been under continuous and consistent medical treatment for her left knee and tibia. Petitioner has continuously and consistently attributed the condition of her left knee and tibia to the accidental injuries of January 27, 2019. Petitioner's treating medical providers have continuously and consistently recorded a history of work-related injury, which included an aggravation of a pre-existing condition, as the medical records support that Petitioner's left knee issues predated the work accident; however, she worked without disability up to the time of the accident.

It is undisputed that Petitioner fell on her left knee on January 27, 2019. After her fall, she continued to work until 3:00 p.m., and her left knee swelled up. On February 8, 2019, Dr. Leider at IBJI reviewed the left knee MRI from February 6, 2019. He diagnosed incomplete fracture to the anterior and medial aspect of the tibia and intercondylar eminence with inferior surface lateral meniscus tear of the horns.

Petitioner sought a second opinion with Dr. Petsche on February 14, 2019 who agreed with the MRI findings.

After her December 27, 2019 left knee arthroscopy, Petitioner sought a third opinion with Dr. Christos Giannoulias on April 30, 2020. Petitioner credibly testified without rebuttal testimony offered by Respondent, that she believed she was referred to Dr. Giannoulias by Respondent's nurse case manager. Dr. Giannoulias diagnosed medial and lateral meniscus tears after reviewing the February 29, 2020 left knee MRI. After her November 20, 2020 surgery, Dr. Giannoulias released Petitioner to full duties without restrictions on February 18, 2021, effective February 20, 2021. Petitioner reported that she believed this is the best her left knee was going to get. Dr. Giannoulias also opined Petitioner reached the end of healing and released her from care to return as needed. Along with that, however, he referred the Petitioner to Dr. Stamos who opined that Petitioner was a candidate for a knee replacement.

On June 15, 2020, Respondent's examiner, Dr. Brian Cole took and read post operative knee x-rays showing mild osteoarthritis and aggravation of pre-existing condition which he opined was work related. "I believe her residual symptoms are still related to the persistent aggravation of preexisting osteoarthritis." He offered that Petitioner had not reached MMI. He also opined that Petitioner could work and stand full duty without orthopedic risk; although the doctor noted that the Petitioner would suffer pain working. Nine weeks later Dr. Cole examined Petitioner again. He repeated that in his opinion "Yes, I do find that the alleged accident of January 29, 2019, incited symptoms related to her preexisting condition." Respondent's examining physician found Petitioner could work, but this time with restrictions " I would suggest a job with no lifting, pushing, pulling greater than 15-20 lbs. over the next four weeks then MMI and full duty in four weeks.

Dr. Cole placed Petitioner at MMI for her temporary aggravation of pre-existing osteoarthritis on February 22, 2021. Dr. Cole opined that the injury caused a temporary aggravation of pre-existing left knee mild osteoarthritis. The Arbitrator finds the MMI opinions of Dr. Giannoulias, coupled with his course of treatment of Petitioner to be credible, and places more credibility on Dr. Giannoulias' course of treatment and opinions as weighed against those of Respondent's IME doctor, Dr. Cole.

Based on the totality of the evidence and testimony, the Arbitrator finds that the Petitioner proved that her current condition of ill-being regarding the left knee is causally related to her work accident of January 27, 2019.

In support of the Arbitrator's conclusions with respect to (G) Petitioner's Earnings, the Arbitrator makes the following conclusions of law:

The wage statement provided by Respondent reflecting Petitioner's pre-accident earnings reflect that Petitioner's earnings, according to her wage statement, from the available earnings prior to her work accident, amount to $7,290.48. The wage statement shows she was paid biweekly. Divided by the 33 weeks in which Petitioner worked, this results in an AWW of $220.92. This AWW corresponds with the minimum TTD and PPD rates of $220.00. The Arbitratot5r notes that Petitioner's alleged AWW of $262.00 also results in the minimum statutory TTD and PPD rates of $220.00.

In support of the Arbitrator's conclusions with respect to (K) TTD Benefits, the Arbitrator makes the following conclusions of law:

Petitioner's treating orthopedic surgeon Dr. Giannoulias, provided a full duty work release effective February 20, 2021, with respect to Petitioner's left knee condition. Petitioner never denied that Dr. Giannoulias released her to full duty work at this time; she simply did not remember him doing so. However, on April 29, 2021 Dr. Giannoulias removed her from work again. His removal has never been changed or amended and Respondent has not sent Petitioner for another IME. Instead, Petitioner saw Dr. Van Stamos whose examination and evaluation clearly demonstrates the condition of Petitioner's left knee has worsened since she last saw Dr. Giannoulias.

As such, the Arbitrator finds that Petitioner is entitled to TTD benefits from January 28, 2019, through February 19, 2021, a period of 107 5/7 weeks at the TTD rate of $220.00 ($23,602.86). The parties stipulated that Respondent paid $23,760.00 in TTD benefits, resulting in a TTD overpayment of $157.14.

In support of the Arbitrator's conclusions with respect to (L) the Nature and Extent of the Injury, the Arbitrator makes the following conclusions of law:

The Arbitrator finds that Petitioner suffered a left tibia fracture and temporary aggravation of pre-existing left knee osteoarthritis as a result of her January 27, 2019, work accident for which she underwent two arthroscopies.

With respect to the claim for permanent disability, as this matter involves an accident occurring after September 1, 2011, Section 8.1(b) of the Act requires any claim for permanent partial disability be established based on five factors. The Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to the most current edition of the AMA's "Guides to the Evaluation of Permanent Impairment;" (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; (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.

Reported Level of Impairment Pursuant to the AMA Guides

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that Petitioner underwent a Permanent Impairment Rating pursuant to the AMA Guides, 6th Edition with Dr. Brian Cole on February 22, 2021. He provided a rating of 4% impairment for the left leg. Dr Cole does not consider the evaluations of Petitioner's treating doctors who expressed need for either knee replacement surgery, pain control and total disability. Additionally, Dr. Cole's opinion fails to take into consideration the progression of Petitioner's injury. The doctor's opinion, now nearly three years old cannot be considered current in light of Dr. Van Stamos' evaluation from 2022 which revealed Petitioner could neither extend nor flex her injured left leg and who opined that a relationship exists between Petitioner's left leg injury to her complaints about her left hip and which also appears to confirm Petitioner's candidacy for knee replacement surgery.

Because the Arbitrator has placed minimal weight on the opinions of Dr. Cole as they compare with the course of treatment and opinions of Dr. Giannoulias, and the opinion of Dr. Stamos, the Arbitrator places minimal weight on Dr. Cole's impairment rating.

Occupation of the Injured Employee

With regard to subsection (ii) of §8.1b(b), Petitioner was employed as a Brand Ambassador with the Respondent. She testified as to the physical demands required of her job. On February 20, 2021 although Dr. Giannoulias released Petitioner to return to her regular work duties without restrictions, he also referred her to Dr. Stampos, who recommended a knee replacement. Dr. Cole found Petitioner reached MMI as of his February 22, 2021 IME. Petitioner never returned to work.

The Arbitrator finds these factors to be relevant to the disability determination and attaches great weight to these factors. The evidence produced demonstrates Petitioner has sustained a severe physical disability on account of the injury as her latest medical findings point to disability and the need for a knee replacement. Petitioner, worked as an in-store presenter of products. Her job required her to lift and carry items into the store to set up a table and umbrella along with crock pot(s) in order to serve food samples to customers. When Petitioner was given a light duty release her employer could not accommodate her restrictions. It appears from her testimony that Petitioner's current condition is no better at this time and Petitioner can no longer perform the duties her employer required. The Arbitrator gives great weight to this factor.

Age of the Employee at the Time of the Injury

Petitioner was 64 years old at the time of the injury and in otherwise good health. The Arbitrator notes that older workers have more difficulty finding work and a disabling and painful injury decreases the number of jobs available to an older worker further. For this reason, the Arbitrator assigns great weight to this factor.

Employee's future earning capacity.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator notes that Petitioner was released to return to work in her regular duty capacity as a Brand Ambassador on February 20, 2021, without restrictions, but subsequent to that release, became a candidate for a knee replacement. She has not returned to work. The Arbitrator gives great weight to this factor.

Petitioner testified she worked in the restaurant business the majority of her adult life. Her testimony and her treating doctor's opinions strongly suggest she cannot return to work requiring her to stand continuously. In addition, her age combined with her injury make it more difficult to find and keep employment.

Evidence of Disability Corroborated by the Treating Medical Records

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's testimony that she still experiences pain in her left knee. Petitioner testified she feels limited in the daily activities that she can perform.

The medical records show that Petitioner had pre-existing moderate to severe left knee pain associated with crepitus on physical examination.

Petitioner reported to Dr. Weckerle on February 2, 2021, that she had continued pain in her left knee and that Diclofenac helped quite a bit. She continued to have crepitus in both knees, but her osteoarthritis was stable, and she was doing well on Diclofenac. This physical examination supports that Petitioner's left knee condition was stable and had reached baseline compared to her pre-accident findings.

Dr. Giannoulias released Petitioner at MMI on February 18, 2021, to return to regular duty work on February 20, 2021. These findings were generally consistent with Dr. Cole's IME on February 22, 2021, wherein he estimated Petitioner had reached MMI for her work injuries and could work full, unrestricted duties. Based on the objective physical examinations from multiple providers, the Arbitrator finds that Petitioner reached MMI on or about February 18, 2021.

At the visit with Dr. Giannoulias on February 18, 2021, the physical examination showed some tenderness over the medial and lateral joint line, minimal crepitation, no effusion, 10 degrees of limited flexion, and intact sensation. The objective findings at MMI demonstrate Petitioner had 10 degrees of limited flexion. The medical records support that the crepitus findings predated the work accident. Subjective findings include tenderness over the medial and lateral joint line.

Petitioner has not worked since the accident. When released to return to restricted duty (April 10, 2019), Petitioner testified without contradiction that Respondent failed to provide work within her restrictions. Records reflect that Petitioner was removed from work again on May 22, 2019, returned to very restricted duty on February 4, 2020 with actual or anticipated return to full duty undetermined. Respondent did not offer work within her restrictions and at any rate, after the February 29, 2020, MRI for the first time revealed Degenerative Joint Disease she was again removed from work again March 10, 2020.

On July 11, 2020, Dr. Giannoulias released Petitioner to modified duty obviously beyond her job requirements including 50% sitting, no bending, squatting, or climbing, standing/walking 1-3 hrs a day, limited driving and overhead work and pushing or pulling 5-8 pounds. On August 13, 2020, she was again removed from work until September 10, 2020, until she was returned to office work only, sitting work only with limitations on driving.

After persistent pain complaints Petitioner underwent her second surgery November 20, 2020. At the first post-surgical visit she taken off work until January 7, 2021, and then returned to "sitting work" by Dr Giannoulias. On February 20, 2021, Petitioner was returned to work full duty. On February 22, 2021 Dr. Cole concurred with the full duty release.

On April 29, 2021 Dr. Giannoulias removed her from work again. His removal has never been changed or amended and Respondent has not sent Petitioner for another IME. Instead, Petitioner saw Dr. Van Stamos whose examination and evaluation clearly demonstrates the condition of Petitioner's left knee has worsened since she last saw Dr. Giannoulias. For instance, as of July 1, 2022 x-rays revealed moderate valgus type osteoarthritis

of the left knee with narrowing of the lateral compartment joint space as well as slight subchondral sclerosis and changes to the patellofemoral joint as well. The doctor assessed significant arthritis of the left knee. The doctor discussed the patient's potential for left total knee arthroscopy.

Based on the original diagnosis and x-ray findings, the progression of arthritic changes since that time, the sporadic and increasingly infrequent and short attempts to return Petitioner to work, her two surgeries, her current objective condition of ill-being to her injured knee including three recommendations for total knee replacement, Petitioner's age at the time of accident and today and her job skills in restaurant employment and as a brand ambassador/salesperson the Arbitrator finds that Petitioner has sustained a permanent partial disability of 60 percent loss of use of her left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC026511
Case Name	Carol White v. Villas of South Park
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0173
Number of Pages of Decision	25
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Noah Hamann

DATE FILED: 4/22/2025

/s/Amylee Simonovich,Commissioner
Signature

DISSENT: /s/Kathryn Doerries,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

CAROL WHITE,

Petitioner,

vs. NO: 23 WC 26511

VILLAS OF SOUTH PARK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, prospective medical, medical expenses, 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 July 22, 2024, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,100.00. 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.

April 22, 2025
O030425
AHS/ldm
051

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

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

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. The evidence addressing the issue of accident, comprised of Petitioner's testimony and recorded interview, medical histories, and the testimony of a co-worker, furnished different accounts of her fall at work, which included tripping, slipping, reaching, syncope, and nausea. There is no dispute that Petitioner was in the course of her employment; however, I would find Petitioner's fall did not arise out of the employment regardless of which version of the accident is adopted.

On April 20, 2023, Petitioner was employed by Respondent as a dietary aide at one of its assisted living facilities. Petitioner testified she was serving breakfast for the residents when she noticed there were no straws available, prompting her to walk to the kitchen storage room to obtain more straws. Upon entering the storage room, Petitioner fell and injured her right shoulder. That same day, Petitioner sought treatment for her shoulder injury at Express Care. (PX3) Per the initial nursing triage note, Petitioner "went into store room *and ended up falling*." (Emphasis added.) (PX3 at 5) The attending physician then took Petitioner's history and noted Petitioner "slipped and fell." *Id*. There was nothing documented regarding reaching or turning her body for straws and nothing documented regarding the cause of the fall. Petitioner returned to Express Care for follow-up on April 24, 2023, and reported she "tripped and fell." (PX3 at 33). There was nothing documented to explain how she tripped.

On May 15, 2023, Petitioner participated in a recorded interview with Jim Schmitt at Strategic Comp. (RX2) This was 26 days after the accident. When asked to describe what happened, Petitioner stated the following:

> Well, I was going out to the store room; and *I kind of felt a little nauseated*. *I don't know if I just tripped over my own feet or what*. I just went down. (Emphasis added.) (RX2 at 4)

During a follow-up question regarding her nausea, Petitioner explained, "I take medicine every morning. I have to take it on an empty stomach. Sometimes I (*sic*) makes me a little nauseous." (RX2 at 6)

On June 5, 2023, Petitioner presented to Dr. Sexton at Central Counties Health Centers complaining of persistent shoulder pain and difficulty lifting her arm. Petitioner reported she fell at work and landed on her shoulder in April. (PX5 at 6) The documented history did not describe the cause of the fall. Petitioner also reported a recent episode of "near syncope" while going to lunch with her sister. (PX5 at 6) Petitioner further reported that "she has been having episodes like this intermittently since her teens." *Id*. Dr. Sexton also documented the following:

> [I]n the last couple of years she has only fully lost consciousness once or twice but she has had the feeling like she is going to pass out multiple times. *This happens about once a month*. She cannot identify any pattern. (Emphasis added.) (PX5 at 6)

After Petitioner underwent an MRI, she presented for an orthopedic evaluation with Dr. Bitar at SIU Orthopedics on October 2, 2023. Petitioner reported falling at work five months earlier and complained of pain and difficulties with activities of daily living. Dr. Bitar's documented history offered no explanation regarding the cause of the fall. (PX6 at 1) Dr. Bitar recommended surgery. On October 13, 2023, Petitioner presented for an orthopedic evaluation with Dr. Ma at Springfield Clinic. (PX7) Petitioner reported tripping and falling at work and again no explanation regarding the cause of the fall was documented. (PX7 at 1) Petitioner elected to undergo surgery with Dr. Ma and underwent reverse arthroplasty on February 12, 2024. (PX7 at 32)

At trial, Petitioner described the storage room as small. Petitioner explained she could stretch out her arms and touch the shelves on both sides if standing in the middle of the room. (T. 19) As Petitioner demonstrated with her arms, the Arbitrator noted for the record that the width of the space between the shelves was about four feet. (T. 19-20) Petitioner was asked on direct examination if she knew what caused her to fall. Petitioner replied, "No. I just tripped and fell." (T. 21) Petitioner testified she was reaching to her *right* side to get the straws and tripped and fell onto her right shoulder. (T. 18-19) Petitioner subsequently changed her testimony and testified she reached to *her left side* for the straws and continued demonstrating her movement. The Arbitrator clarified, "[f]or the record as she demonstrated this, while she said she was reaching to her left, she was using her right arm across her body to reach to the left side of her body area." (T. 21) The attorneys agreed with the Arbitrator's clarification. Petitioner then testified she landed on her right shoulder. It is unclear from the transcript how Petitioner fell to her right side while reaching to her left side. In any event, Petitioner never testified to losing her balance and no explanation was offered to connect her fall with the act of reaching across with her right arm.

Petitioner testified a co-worker came to the storage room and asked if she was okay. Petitioner testified she indicated she was not okay. Petitioner testified she told the co-worker she had fallen but did not tell her how she fell. (T. 24) The co-worker called their supervisor, Matt Ulinski, and reported the accident. Mr. Ulinski then called Petitioner and asked how she was doing. Petitioner testified she did not discuss the circumstances of her fall with Mr. Ulinski. (T. 25)

Petitioner further testified she took prescribed medications on a daily basis. (T. 26) Petitioner testified she felt some nausea after taking her medications the morning of her accident, which she took one hour before she started work. (T. 27) Petitioner further testified her nausea manifested as "a little queasiness in my stomach, which happens all the time." (T. 28) Petitioner denied feeling dizzy, weak, lightheaded, or unstable that morning. Petitioner testified her only reason for entering the storage room was to retrieve straws for the residents. She testified that her nausea had nothing to do with her decision to enter the storage room. (T. 31) In reference to her June 5, 2023 visit with Dr. Sexton, Petitioner agreed she had intermittent fainting episodes since she was a teenager. (T. 33-34) Petitioner also agreed she had a fainting spell about six weeks after

the accident on or around June 2, 2023; however, she denied having a fainting spell during the morning of her accident. (T. 34-35)

On cross-examination, Petitioner admitted she was not sure why she fell. (T. 41) Petitioner agreed she was not rushing or walking quickly at the time of her fall. (T. 41) Petitioner testified she was not carrying anything when she fell. (T. 41) Petitioner agreed there was no unsafe condition such as cracks in the floor or spills on the floor. (T. 41-42) Regarding her intention to retrieve straws, the following exchange occurred on cross-examination at page 42 of the transcript:

> Q. And I understand your testimony is you were on your way to get the straws. The straws themselves though, that had *nothing to do with why you fell*; is that correct? (Emphasis added.)
>
> A. Correct.

Petitioner further admitted it was possible she tripped over her own feet. (T. 42) Petitioner also testified she had not had any food during the morning of the accident. (T. 45)

Kayla Carbiener testified at Respondent's request. Ms. Carbiener testified she had been employed with Respondent for six years and worked as a cook. (T. 54) Ms. Carbiener testified she was in the kitchen the morning of the accident when she saw Petitioner walk past her to grab the garbage can. (T. 55) Ms. Carbiener further testified she then "tuned out" as she thought Petitioner was going to vomit and she "cannot listen to that noise." (T. 55) Ms. Carbiener testified she then heard Petitioner call her name. She went over and found Petitioner on the floor. Ms. Carbiener testified she believed Petitioner was going to vomit because Petitioner grabbed the garbage can. Petitioner further testified she did not hear Petitioner make any vomiting noise; however, Petitioner had vomited at work a couple of times in the past. (T. 56-57) Mr. Carbiener did not witness Petitioner's fall. On cross-examination, Mr. Carbiener repeated it was her belief Petitioner "was just grabbing the trash can so she would throw up in there and not in the actual kitchen itself." (T. 58) Ms. Carbiener further testified she observed Petitioner carry the trash can into the storage room. (T. 58) Ms. Carbiener conceded she never verified after the accident Petitioner's purpose for going into the storage room. (T.59)

Prior medical records produced by Respondent reflect an October 2017 cervical spine follow-up evaluation with Dr. Pineda at Springfield Clinic, which documented a past history of "balance problems for years." (RX4) Petitioner exhibited an unstable gait at that time and Dr. Pineda noted Petitioner had "spasticity in the upper and lower extremities." Dr. Pineda included the following comments in his office visit note:

> I am concerned even though her pain may get better, and she says that her neck pain is getting better, she has an unstable gait pattern. *I would be very concerned that she is at high risk for fall* or injury to herself or some of the people she is helping in that I have suggested that my concern would be she should re-evaluate that job

> option, and that while she may be able to manage it, I am concerned for her safety for risk of a fall. She is going to consider this, and we will see her back on a p.r.n. basis. (Emphasis added.) (RX4)

Respondent's Exhibit #4 also included a September 2020 visit with Dr. Chen which documented an apparent syncopal episode along with multiple emesis (vomiting) episodes. (RX4)

Claimants bear the burden of proving by a preponderance of the evidence that their injury arose out of and in the course of the employment. 820 ILCS 305/1(d). To satisfy the "arising out of" prong, claimants must show their injury had its origin in some risk connected with or incidental to the employment, so as to establish a causal connection between the employment and the injury. *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P36. To determine whether a claimant's injury arose out of the employment, we are required to first categorize the type of risk from which the injury originated. *Id.* Illinois recognizes three categories of risks, described as: (1) risks distinctly associated with the employment, (2) risks personal to the employee, and (3) neutral risks. *Id*. at P38.

Falls in the workplace caused by tripping or slipping due to the presence of a defect, uneven surface, object, or liquid on the floor at the employer's premises are clear examples of accidents originating from risks distinctly associated with the employment. See e.g., *Buckley vs. Ill. Workers' Comp. Comm'n*, 2022 IL App (2nd) 21055WC-U, P59. In the case at bar, there was no evidence to suggest the presence of any unsafe defect or object capable of causing Petitioner to trip. There was also no evidence to suggest the presence of a slippery foreign substance or liquid capable of causing Petitioner to slip. There was also no evidence to suggest Petitioner's vision was hampered inside the storage room due to insufficient natural or artificial lighting. Although the medical records and testimony described slipping and tripping, there was no contributing physical condition in or on the premises.

The Arbitrator determined Petitioner's fall arose out her employment after finding that Petitioner fell as a result of "twisting and reaching across her body" for the straws. (Arbitration Decision at 9.) I disagree with this finding. There was no mention of reaching, twisting or turning as a cause of the fall in any of the medical records and Petitioner never mentioned this during her recorded interview. Petitioner did not offer this account of her fall until trial, and only when specifically prompted to do so when asked on direct examination to "describe the movement" of her body as she fell. (T. 21) The documented histories (or lack thereof) contained in medical records created contemporaneously with or shortly after an alleged accident may be given more weight than subsequent medical histories and trial testimony. See *Ader vs. Ill. Workers' Comp. Comm'n*, 2021 IL App (1st) 200688WC-U, P47. Similarly, descriptions of accidents and injuries obtained from claimants during recorded statements may be given more weight, particularly when the medical records reflect inconsistent histories. See *Buckley*, supra, where the Court noted the claimant firefighter provided a recorded statement denying he sustained injury during his department's response to a motor vehicle crash and determined the Commission correctly applied a neutral risk analysis to his knee injury in the hallway after he returned to the station. *Buckley*,

2022 IL App (2nd) 21055WC-U, at PP49, 68. Even assuming Petitioner was in the act of twisting or turning and reaching, there was no testimony or evidence that Petitioner lost her balance while doing so. As such, the mere fact that Petitioner was twisting and reaching fails to explain *why* she fell. Indeed, by Petitioner's own admission, her intention to retrieve straws for the residents had no connection with the fall, other than to provide a reason for her entering the storage room. (T.42) "[C]ircumstantial evidence can only support an inference which is reasonable and probable, not merely possible." *First Cash Financial Servs. vs. Industrial Comm'n*, 367 Ill. App. 3d 102, 106, 853 N.E.2d 799 (2006). In light of Petitioner's admission that she did not know what caused her to fall, and her failure to furnish this information during her initial treatment visits or during her recorded interview, it is equally possible that her act of twisting and reaching with her arm had nothing to do with her fall in the storage room. "Where the evidence allows for the inference of the non-existence of a fact to be just as probable as its existence, the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot reasonably be drawn." *First Cash Financial Servs.,* 367 Ill. App. 3d at 106. See also *Baldwin vs. Ill. Workers' Comp. Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151 (2011), where claimant's theory that she tracked moisture onto her shoes in a walk-in freezer was properly rejected as conjecture because "more than a mere possibility" must be shown for a reasonable inference to be drawn.

The Commission confronted a similar situation regarding the quality of the evidence needed to draw reasonable inferences in *Pelletier vs. Indian Prairie School Dist*., 2010 Ill. Wrk. Comp. LEXIS 898. In that case, which involved a social worker who fell ascending stairs inside the high school where he worked, the Commission rejected the inferences drawn by the arbitrator, writing: "The Arbitrator relied on circumstantial evidence to infer that Petitioner's fall was caused by a risk associated with his employment, specifically wetness, salt, a loose tread, or, most likely, that he missed a step because he was distracted by students in the area rushing to their next class. While any of these causes is possible, *we find none of them to be probable*, and the Arbitrator's conclusions to be speculative." (Emphasis added.) The Commission's decision in *Pelletier* was affirmed by the Appellate Court in an unpublished Rule 23 Order. See *Pelletier vs. Ill. Workers' Comp. Comm'n*, 2012 IL App (2d) 110520WC-U. In its Rule 23 order, the Court noted, "It was claimant's burden to present evidence that would permit a reasonable inference that his fall was related to his employment. (citation omitted). Where the evidence presented indicates that it is equally as likely as not that the fall was unrelated to claimant's job, the evidence does not permit a *reasonable* inference that it was related to employment." *Id*. at P10.

The Arbitrator also noted there was "no evidence introduced" indicating that Petitioner's fall "was caused by anything unrelated to her employment." (Arbitration Decision at 9) As phrased, this statement comes close to improperly shifting of the burden of proof onto Respondent. See *First Cash Financial Servs. vs. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). In *First Cash*, the arbitrator noted "that *no evidence was presented* 'that the bathroom tiles were dry or free of hair, dust, debris, make-up, tissue, oil, water droplets or of the many other possible substances.'" (Emphasis added.) *Id*. at 106. The Appellate Court addressed this finding and noted "[t]he arbitrator appears to have improperly shifted the burden of proof to First Cash to disprove the existence of a defect on the floor." *Id*. Likewise, the Respondent in the case at bar was under no

obligation to produce any evidence that the cause of the fall was unrelated to her employment as it had no burden to disprove Petitioner's claim. See also *Hamid vs. AutoNation Mercedes Bentz*, 23 IWCC 0199; 2023 Ill. Wrk. Comp. LEXIS 316, where the Commission affirmed the arbitration award but modified the decision by striking the following sentence: "Respondent, *faced with the difficult task of proving a negative,* presented extensive testimony of service technicians who were working on the alleged date of accident, but the testimony did not negate the accident occurring." (Emphasis added.)

In my opinion, the Arbitrator misidentified the act of twisting and reaching as the mechanism of injury and thus incorrectly classified the risk of injury in this case as a risk distinctly associated with the employment. There was no evidence that the movement of twisting and reaching caused or contributed to Petitioner's fall. Significantly, there was no evidence regarding the physical location of the straws relative to Petitioner's body. Because I would find that Petitioner's fall was not related to any risk distinctly associated with the employment, the question then becomes whether the fall was caused by a personal risk or neutral risk. As mentioned, I would find that Petitioner failed to prove her accident arose out of her employment regardless of which version of her accident is adopted.

There is some evidence in the record before us to suggest a syncopal episode caused Petitioner's fall. Petitioner has had intermittent syncopal episodes since she was a teenager and her primary care provider's records noted Petitioner had been having syncopal episodes once a month. Additionally, the 2017 records of Dr. Pineda indicated Petitioner had a balance problem for years and was considered a high risk for falling. (RX4) That said, Petitioner testified she did not have a syncopal episode when she fell and there was no witness testimony or medical histories refuting her denial. There was also no evidence that Petitioner lost her balance. Assuming for the moment that Petitioner's fall was indeed caused by an episode of syncope or due to her history of balance issues, the accident did not arise out of the employment. Falls caused by dizziness, lightheadedness, fainting, or other personal infirmity or physical condition, commonly referred to as idiopathic falls, originate from a "personal risk" and do not arise out of the employment unless the employment exposed the employee to an increased risk of injury or placed the employee in a position which increased the effects of the injury. *Buckley vs. Ill. Workers' Comp. Comm'n*, 2022 IL App (2d) 210055WC-U, P60. See also *Illinois Consol. Tel. vs. Industrial Comm'n*, 314 Ill. App. 3d 347, 352, 732 N.E.2d 49 (2000) (Rakowski, J., specially concurring). In the case at bar, there is no evidence that Petitioner's employment posed an increased risk of falling or increased the effects of the injury. Petitioner walked into the kitchen storage room and fell onto the floor.

There is also some evidence suggesting Petitioner's fall may have been caused by Petitioner tripping over her own feet while feeling nausea. During her recorded interview, Petitioner stated, "Well, I was going out to the store room; and *I kind of felt a little nauseated*. *I don't know if I just tripped over my own feet or what*. I just went down." (Emphasis added.) (RX2 at 4) Petitioner also admitted her nausea came about during the morning of her accident secondary to the prescribed medications she took one hour before she started work. Under this scenario, the risk of injury causing Petitioner's fall would again be considered a personal risk (feeling unwell

from nausea) and her injury would not arise out of her employment absent evidence of an increased risk from the employment. If, as suspected by Kayla Carbiener, Petitioner proceeded to the storage room to possibly vomit, Petitioner would have remained in the "course of her employment" pursuant to the personal comfort doctrine. See *Union Starch Div. of Miles Laboratories, Inc. vs. Industrial Comm'n*, 56 Ill. 2d 272, 307 N.E.2d 118 (1974) (claimant "seeking relief from the heat" and went onto roof for fresh air and a beverage when roof gave way, causing claimant to fall to ground.) That being said, the personal comfort doctrine only has application for the "in the course of" element and has no relevance for the "arising out of" element. See *Karastamatis vs. Industrial Comm'n*, 306 Ill. App. 3d 206, 713 N.E.2d 161 (1999).

If Petitioner's nausea was not a factor, as asserted by Petitioner, and assuming Petitioner did not have a syncopal episode, then Petitioner's fall would stem from a "neutral risk" rather than a personal risk. Injuries from neutral risks do not arise out of the employment unless the employment exposes the employee to the neutral risk to a greater degree than the general public. See *Baldwin vs. Ill. Workers' Comp. Comm'n*, 409 Ill. App. 3d 472, 478-479, 949 N.E.2d 1151 (2011) "By itself, the act of walking across a floor at the employer's place of business does not establish a risk greater than faced by the general public." *First Cash Financial Servs. vs. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). A fall caused by tripping over one's own feet does not arise out of the employment. See *Hongsermeier vs. Rockford Memorial Hospital*, 2010 Ill. Wrk. Comp. LEXIS 721. As noted above, there is no evidence in this case showing the employment exposed Petitioner to a greater risk than the general public or added to the severity of her injury.

Viewing the evidence as a whole, Petitioner's fall can more readily be characterized as an "unexplained fall." The legal principles governing unexplained falls were discussed in *Builders Square, Inc. vs. Industrial Comm'n*, 339 Ill. App. 3d 1006, 791 N.E.2d 1308 (2003). There, the Court characterized falls stemming from an unknown or neutral source as an "unexplained" fall. Accordingly, in claims involving unexplained falls, the claimant must present evidence supporting a reasonable inference that the fall was caused by an employment-related risk. *Builders Square,* 339 Ill. App. 3d at 1010. Otherwise, allowing compensation for "purely" unexplained falls would eviscerate the required "arising out of" element which contemplates a causal link between the worker's injury and some risk connected with or incidental to the employment. *Id*. Requiring evidence implicating some risk of the employment contributing to the unexplained fall "avoids conflict with Illinois's disavowal of the positional risk doctrine." *Id*. at 1011. The Court thus declared that a "claimant alleging an unexplained fall *must present evidence supporting a reasonable inference that the fall arose out of the employment* (*i.e*., originated in some employment related risk)." (Emphasis added) *Id.* at 1011.

The Court's analysis in *Builders Square, Inc. vs. Industrial Comm'n* is also instructive regarding the requirement that inferences drawn from circumstantial evidence must be reasonable and based on more than supposition. In *Builders Square*, a store employee was bent over and opening boxes of merchandise stacked one foot high on a pallet when a coworker observed the employee suddenly straighten up, stagger two or three steps, and fall backwards into the shelves before collapsing onto the concrete floor. The employee suffered a fatal head trauma diagnosed

as an acute subdural hematoma with diffuse hemorrhage. There was no defect or condition on the floor that could have caused or contributed to the decedent's fall. The medical records revealed a past history for arrythmia and the decedent's daughter testified to a history for intermittent spikes in her heart rate. The arbitrator determined the decedent's fall was an unexplained fall but nevertheless found the accident arose out of the employment based on possible inferences that the decedent's fall could have occurred when the decedent either got her foot stuck on the pallet or lost her grip on a box or became startled by something inside a box she opened. The Commission reversed, finding the fall was idiopathic and non-compensable. On appeal, the Appellate Court determined that the Commission's finding that the fall was idiopathic was supported by the evidence. *Id*. at 1012. Regarding the arbitrator's decision, the Court pointed out that the inferences drawn were "***not based on existing evidentiary facts.***" (Emphasis added.) *Id.* at 1011-1012. Thus, the arbitrator's finding that the decedent's unexplained fall could have possibly occurred due to getting her foot stuck on the pallet or losing her grip on a box was not a valid inference. Based on the co-worker's testimony which established that the decedent suddenly straightened, staggard, and fell, the Court noted the Commission could have also properly determined that the decedent's accident resulted from a purely unexplained fall and therefore did not arise out of the employment. *Id*. at 1012.

In the present matter, Petitioner admitted she did not know what caused her to fall. The Arbitrator's finding that Petitioner's fall was the result of her "twisting and reaching across her body" while intending to retrieve the straws was, in my view, like the arbitrator's suppositions in the *Builders Square* case, supra, similarly based on speculation. By comparison, the circumstantial evidence in *Glister-Mary Lee Corp. vs. Ill. Workers' Comp. Comm'n*, 2024 IL App (5th) 230479WC-U, P27, provides a good illustration where an unexplained accident can reasonably be connected to the employment. In that case, the employee, who was found unconscious on the floor and later died from his injuries, was found to have a compensable accident by reason of starch dust covering his body and the surface of the floor in an area where his job duties required his presence. In contrast, I find the circumstantial evidence in the present matter insufficient. Other inferences explaining the cause of Petitioner's fall in the storage room could be drawn from the evidence based on Petitioner's history for syncopal episodes, balance problems, and medication induced nausea. Each of these inferences, including the inference drawn by the Arbitrator, were merely possible, not probable, as none of these inferences was more possible than the others. Based on the totality of the available evidence, I would find Petitioner sustained a purely unexplained fall. Compare, *First Cash Financial Servs. vs. Industrial Comm'n*, 367 Ill. App. 3d 102, 853 N.E.2d 799 (2006) (employee's fall in bathroom found not compensable); *Baldwin vs. Ill. Workers' Comp. Comm'n*, 409 Ill. App. 3d 472, 949 N.E.2d 1151 (2011) (security guard's two consolidated fall down accidents on stairs found not compensable); and *Desper vs. Granite City School District*, 18 IWCC 223; 2018 Ill. Wrk. Comp. LEXIS 113 (teacher's fall on stairs found not compensable despite offering three possible factual inferences attempting to show her unexplained fall arose out her employment).

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision as I would find Petitioner failed to prove she sustained an accident arising out of her employment.

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC026511
Case Name	Carol White v. Villas of South Park
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Noah Hamann

DATE FILED: 7/22/2024

/s/ Dennis OBrien, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 16, 2024 4.985%

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)

CAROL WHITE
Employee/Petitioner

v.

VILLAS OF HOLLY BROOK
Employer/Respondent

Case # **23** WC **026511**

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 **Springfield**, on **May 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 20, 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.

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

In the year preceding the injury, Petitioner earned $**18,294.64**; the average weekly wage was $**351.82**.

On the date of accident, Petitioner was **68** years of age, ***single*** with **0** dependent children.

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

After review of the evidence and testimony presented by the parties at the hearing on the above-captioned case, the Arbitrator finds as follows:

Petitioner suffered an accident on April 20, 2023, which arose out of and in the course of her employment by Respondent.

Petitioner's medical condition, right shoulder full-thickness tear of the supraspinatus and infraspinatus tendons with excessive retraction to the mid humeral head, with significant muscle atrophy in the supraspinatus and infraspinatus, is causally related to the accident of April 20, 2023..

The medical bills introduced into evidence are related to Petitioner's April 20, 2023, injury, are reasonable, and were necessitated to treat or cure Petitioner's injuries suffered in this accident. It is noted that all cardiac treatment was necessary to perform Petitioner's right shoulder surgery. The corresponding medical bills for such treatment, as identified in Petitioner's Exhibit 8, shall be paid by Respondent pursuant to the medical fee schedule. Respondent shall tender payment of the awarded medical bills, after application of the medical fee schedule, to Petitioner pursuant to Sections 8(a) and 16a(D) of the Act, as the medical bills were disputed by Respondent and attorney fees are chargeable for recovered disputed medical expenses.

Petitioner was temporarily totally disabled as a result of the accident from February 12, 2024 to the date of hearing, May 29, 2024, a period of 15 3/7 weeks.

Petitioner is entitled to prospective medical treatment as recommended by Dr. Ma, to wit: medical care specifically related to the already performed right reverse total shoulder arthroplasty, including, but not limited to, physical therapy and follow up appointments and testing. This award does not mandate any other medical procedure other than those in direct post-operative follow up for said surgery.

Petitioner's condition of ill-being has not yet reached maximum medical improvement.

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

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

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

Signature of Arbitrator

July 22, 2024

ICArbDec19(b)

FINDING OF FACT

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that on April 20, 2023, she was employed by Respondent as a Dietary Aide, having been employed there since July of 2020. Petitioner testified that her required job duties included setting up, and serving, breakfast to the residents of Respondent's assisted living facility, duties which she performed by herself on the days that she worked. She said setting up and serving breakfast included providing straws to those residents who requested them.

Petitioner testified that while working on the morning of April 20, 2023, at approximately 7:20 a.m., she noticed that the straws available to the residents were empty. Petitioner stated that the straws are kept in the kitchen storage room. She said she therefore went to the storage room to obtain more straws for the residents.

Upon arriving at the storage room, Petitioner stated that she reached out to the left with her right arm across her body to grab the straws, and, in doing so, she tripped and fell. Petitioner described the motion of her fall such that her right arm was folded under her, and her right shoulder struck the ground. She testified that she immediately had extreme pain in her right shoulder. No one saw Petitioner fall, nor was anyone present in the immediate vicinity at the time Petitioner fell. She then testified that she has never had any injuries to her right arm or shoulder prior to the accident of April 20, 2023.

After she fell, Petitioner yelled out for Kayla Carbiener, the breakfast cook who was working in the kitchen adjacent to the storage room. Ms. Carbiener came to Petitioner's aide, asked her if she was alright, and helped her up. Petitioner testified that she and Ms. Carbiener did not have any discussion as to the cause of the fall, the circumstances leading to the fall, or the reason for which Petitioner was in the storage room.

Petitioner was then asked about medications which she was taking on a daily basis on April 20, 2023. She testified that she had taken Levothyroxine, Plavix, low dose Aspirin, Duloxetine, and Lisinopril on the morning of the accident. All of the medications were required to be taken in the morning on an empty stomach. When asked whether the medications were causing her any side effects on the morning of the accident, Petitioner confirmed that she was suffering from slight nausea but that it was minimal and did not prevent her from performing her work duties. She testified that she was not feeling dizzy, weak, lightheaded, or unstable whatsoever on the morning of the accident. She stated unequivocally that the nausea had nothing to do with the reason she fell on the morning of the accident.

Petitioner was questioned about her medical history, particularly as it related to her history of syncopal episodes. She stated that she has suffered from periodic syncopal episodes since she was a teenager. The

episodes cause her to feel as though she is going to pass out. However, these types of syncopal episodes from which she suffers are preceded by warning signs, including a feeling of tingling and numbness all over her body, ringing in her ears, and feeling very hot. Petitioner testified that the symptoms associated with her syncopal episodes begin approximately 5 – 10 minutes prior to the episode occurring. Nausea is not one of her symptoms associated with an imminent syncopal episode, nor has it ever been one of her associated symptoms.

Petitioner was asked if she experienced a syncopal episode, or any related symptoms, on the morning of the accident, to which she stated she had not. Petitioner said she has been suffering from these episodes long enough to know the difference between a fainting spell and nausea, and that she did not have a fainting spell on the morning of the accident. She said that her purpose in going to the storage room was to obtain straws in furtherance of her job duties, and that she tripped and fell while doing so. She stated that the nausea was not a factor in the reason that she fell, and that there were no side effects of her medication which caused her to fall.

Petitioner said she went to ExpressCare on the morning of the accident and advised them that she had slipped and fallen while walking into the storage room, landing on her right shoulder. She was placed in a right arm sling to wear for the next week. She returned to ExpressCare on April 24, 2023, due to ongoing pain in the right shoulder. She said the right shoulder pain did not improve following that visit, so she saw her primary care physician on June 5, 2023. She said he gave her Lidocaine patches for the shoulder, as well as medication. She said she told the doctor on that date that a few days prior to that June 5 visit she had a fainting episode. She said she had experienced such episodes since she was a teenager. She testified that there were warning signs for those episodes about five to ten minutes before they episode, she would get a tingling, numb feeling all over her body, would get hot, and her ears would start ringing. She said nausea had never been a symptom for such an episode. She said she had not had such an episode on the morning of this accident.

Petitioner said she received physical therapy, and an MRI was conducted, which disclosed a full thickness tear of her rotator cuff. She said she came under the care of Dr. Ma on October 13, 2023, and after she was cleared for surgery by her cardiologist, Dr. Ma performed the shoulder replacement surgery on February 12, 2024.

Petitioner testified that she continues to receive treatment for her right shoulder from Dr. Ma, as well as physical therapy at the Springfield Clinic, as of the date of arbitration. She said she will attend a follow-up appointment with Dr. Ma upon the conclusion of her physical therapy treatment. Petitioner testified that Dr. Ma had not made any recommendations for future treatment, other than to continue physical therapy and to follow up with him.

Petitioner said that Dr. Ma restricted her from work as of February 12, 2024, the date of her surgery, and those restrictions continued as of the date of arbitration. Petitioner testified she had not received any workers' compensation benefits from Respondent, and, as far as she knew, none of her medical bills had been paid. She said she believed all bills remain unpaid, as she had not paid any of them.

Petitioner testified that as of the day of arbitration she continued to have right shoulder limitations, her range of motion had improved, but was not yet normal. She said moving her arm was still painful.

On cross-examination, Petitioner said she did not know why she fell, she was not carrying anything, whe was not rushing or walking quickly, and there was no problem with the floor. She agreed that it was possible that she just tripped on her own feet. She said she could not remember if she told her spine surgeon in 2017 that she was not steady on her feet, or if he suggested she change jobs, as she was at a high risk of injuring herself or others.

On re-direct examination Petitioner said that on the date of this accident she was not having instability issues. She said she did not have a syncopal episode or symptoms on the morning of this accident.

Kayla Carbiener

Kayla Carbiener was called as a witness by Respondent. Ms. Carbiener testified that she works as a cook for Respondent and has been employed in such a capacity for six years. She said that she was working in the kitchen on the morning of the accident and saw Petitioner walk past her to get a garbage can and she then "tuned out," as she thought Petitioner was going to vomit, and she did not want to listen to that noise. She said she then heard Petitioner calling her name, and she went and found Petitioner on the ground.

Ms. Carbiener testified that the only reason she believed Petitioner was going to vomit was Petitioner got a garbage can. She said Petitioner did not make any vomiting noise, or doing anything else to insinuate that she was going to vomit. She said Petitioner had on rare occasions in the past been nauseous. She said she did not witness Petitioner fall, nor did she have any discussion with Petitioner about what had happened.

On cross examination, Ms. Carbiener confirmed that she found Petitioner in the kitchen storage room after she had fallen. Ms. Carbiener stated that she does not have any firsthand knowledge as to why Petitioner was going into the storage room prior to falling on the morning of the accident.

MEDICAL EVIDENCE

Petitioner was seen at Memorial Medical Center Express Care on April 20, 2023. The record for that visit notes that Petitioner described her injury as occurring when she slipped and fell while walking into the storage room and landed on her right shoulder. X-rays of the right shoulder revealed no fractures. The impression of the medical staff was that of localized pain of the shoulder joint. She was placed in a right arm sling with restrictions to wear the sling for the next week. (PX 3, p.1,5,7,8)

Petitioner returned to Express Care on April 24, 2023, with ongoing pain in her right shoulder. As before, she described the accident as having occurred when she fell at work and landed on her right shoulder. At this time she was also complaining of pain in the right ribs. X-rays of the ribs were negative. The impression on this date was contusion of rib on right side. (PX 3, p.32-35,41,42)

The Arbitrator notes that other than a cover sheet with the exhibit number on it, no pages were submitted for Petitioner Exhibit 4.

Petitioner saw her primary care physician, Dr. Sexton, at Central Counties Health Centers on June 5, 2023, giving a history of a fall at work on April 20, 2023, and noting her shoulder pain had not gotten better since that time. She reported difficulty lifting her arm. She also said she had experienced an episode of syncope on the Friday before this visit. She was diagnosed with acute right shoulder pain, and prescribed lidocaine patches and muscle relaxers. (PX 5, p.6,9; RX 3, p.1,2)

Dr. Sexton saw Petitioner again on July 19, 2023, with persistent right shoulder pain. Petitioner was diagnosed with a traumatic right shoulder injury, an MRI of the right shoulder was ordered, and it was recommended that she begin physical therapy. (PX 5, p.1-5)

A right shoulder MRI was conducted on September 5, 2023, and was interpreted to show a full-thickness tear of the supraspinatus and infraspinatus tendons with excessive retraction to the mid humeral head, along with significant muscle atrophy in the supraspinatus and infraspinatus. (PX 7, p.)

Petitioner was seen by Dr. El-Bitar on October 2, 2023. The history given was of right shoulder pain beginning with the work-accident, and that the pain was aggravated with any activity that involved motion of her right shoulder. Petitioner reported d popping and grinding in her right shoulder, and that conservative treatment, including physical therapy, provided minimal relief. Dr. El-Bitar reviewed the MRI imaging, noted it showed a large rotator cuff tear in her right shoulder, examined her right shoulder, and found tenderness throughout the shoulder, atrophy of the supraspinatus and infraspinatus muscles, and several positive shoulder tests. and recommended an epidural steroid injection, which was performed during the visit that day. Dr. El-Bitar noted that if surgery was required, Petitioner likely required a reverse right shoulder replacement. (PX 6, p.1,2)

Dr. Sexton referred Petitioner to Dr. Ma for consultation on October 13, 2023, for orthopedic evaluation. Dr. Ma noted positive shoulder tests, significant tenderness, and reduced supraspinatus and infraspinatus strength. He reviewed her MRI and agreed with the prior interpretations. He referred her to her cardiologist for surgical clearance due to her cardiac history, recommended surgery in the form of a right reverse total shoulder arthroplasty pending surgical clearance from her cardiologist. He saw Petitioner again on December 15, 2023, and February 7, 2024, with similar findings and recommendations. (PX 7, 1,2,21,22,26,27)

On October 31, 2023, Petitioner was seen for cardiac evaluation clearance for the surgery by Physician Assistant (PA) Schuette, and EKG was performed, and a nuclear stress test was ordered. That testing was performed on November 7, 2023. (PX 7 p.12-17,19,20)

Dr. Ma then performed the previously recommended reverse right shoulder arthroplasty on February 12, 2024. Petitioner was instructed to avoid any lifting, pushing, or grasping following the surgery. (PX 7, p.32-34)

ARBITATOR CREDIBILITY ASSESSMENT

Both Petitioner and Ms. Carbiener appeared to be testifying to the best of their ability. Both answered all questions posed to them by both attorneys in a forthright manner with no apparent attempt to avoid answering the questions. Both also appeared to admit the limits of their knowledge in regard to what they did, saw, and heard. The only real discrepancy between the witnesses was whether Petitioner was holding a trash can when she went to the kitchen storage room. The Arbitrator does not believe either of these individuals were intentionally lying, that they were all trying to tell the truth as they remembered it more than a year later. The Arbitrator finds both Petitioner and Ms. Carbiener to be credible witnesses.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on April 20, 2023, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665, 671 (2003). If the injury coincides with these definitions and is traceable to a definite time, place, and cause, then said injury is accidental within the meaning of the Act. *Laclede Steel Co. v. Industrial Commission*, 128 N.E.2d 718, 720 (Ill. 1955).

"In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n*, 656 N.E.2d 1084 (1995); *Scheffler Greenhouses, Inc. v. Industrial Commission*, 362 N.E.2d 325 (1977). For an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro supra*. An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Industrial Commission*, 509 N.E.2d 1005 (1987).

The Illinois Supreme Court has held that, "typically an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts…which the employee might reasonably be expected to perform incident to assigned duties. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Caterpillar Tractor Company v. The Industrial Commission,* 129 Ill.2d 52(1989). The Illinois Supreme Court later held, "*Caterpillar Tractor*

prescribes the proper test for analyzing whether an injury 'arises out of' a claimant's employment, when a claimant is injured performing job duties involving common bodily movements or routine everyday activities. *Sisbro* and *Caterpillar Tractor* make it clear that common bodily movements and everyday activities are compensable and employment related if the common bodily movement resulting in an injury had its origin in some risks connected with, or incidental to, employment so as to create a causal connection between the employment and the accidental injury. *Sisbro,* 207 Ill.2d at 203 (citing *Caterpillar Tractor,* 129 Ill. 2d at 58). *Caterpillar Tractor* does not require a claimant to provide additional evidence establishing that he was exposed to the risk of injury, either qualitatively or quantitatively, to a greater degree than the general public, once he has presented proof that he was involved in an employment-related accident. *Caterpillar Tractor,* 129 Ill. 2d at 58." *McAllister v. Illinois Workers' Compensation Commission*, 181 N.E.3d 656, 450 Ill.Dec. 309, at 320 (2020).

Respondent did not introduce any evidence contradicting Petitioner's testimony that her job duties for Respondent as a Dietary Aide included providing straws for the residents at breakfast, or that the straws were kept in the storage room. Petitioner testified that she was obtaining straws for the residents from the kitchen storage room, that she was twisting and reaching across her body to get them, and that she fell while doing so. Petitioner obtaining straws for the residents was a function of, and incidental to, her employment with Respondent.

While Petitioner admitted that she was required to take prescription medication, and that she had taken her medication on the morning of the accident, she unequivocally denied experiencing any symptoms and/or side effects caused by the medication other than slight nausea. She denied that the medication contributed to her fall in any way and further denied having suffered from any type of syncopal episode on the morning of the accident. No evidence was introduced to contradict this testimony.

Petitioner's history contained in the medical records from the morning of the accident was consistent with Petitioner's testimony, confirms that she tripped and fell at work, and makes no mention of any symptoms or side effects caused by her medication. The medical records from the morning of the accident do not indicate Petitioner was suffering from a syncopal episode. No witness contradicted any portion of Petitioner's testimony other than Ms. Carbiener's claim that Petitioner was carrying a trash can toward the storage room prior to falling. Ms. Carbiener's testimony in regard to Petitioner's intent in carrying a garbage can was speculation on her part, she testified that she did not know why Petitioner was going to the storage room or what caused Petitioner to fall, nor did she witness Petitioner fall.

There was no evidence introduced indicating that Petitioner's purpose in going to the storage room was anything other than in the furtherance of her work-duties, or that her fall was caused by anything unrelated to her employment.

The Arbitrator finds that Petitioner suffered an accident on April 20, 2023, which arose out of and in the course of her employment by Respondent. This finding is based upon Petitioner's credible testimony, the

contemporaneous medical records which were consistent with her testimony, and the prior rulings of the Illinois Supreme Court cited above.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, right shoulder full-thickness tear of the supraspinatus and infraspinatus tendons with excessive retraction to the mid humeral head, with significant muscle atrophy in the supraspinatus and infraspinatus, is causally related to the accident of April 20, 2023, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

The findings in regard to accident, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

Petitioner stated that she fell onto her right shoulder. The pain was immediate and extreme. She consistently reported to her treating physicians that the pain in her right shoulder began with the accident, and that her shoulder has been painful ever since. Petitioner's account of the accident being the origin of her right shoulder pain is similarly noted throughout her medical records by several different providers at different practices. It is of note that Petitioner's primary care physician diagnosed her with a "Traumatic injury of right shoulder" in the record of July 19, 2023.

No evidence was introduced indicating Petitioner had prior right shoulder problems or had received any treatment to her right shoulder prior to the accident. Petitioner denied having any prior right shoulder problems. No evidence was introduced to indicate that Petitioner had suffered any intervening accidents subsequent to April 20, 2023.

The Arbitrator finds that Petitioner's medical condition, right shoulder full-thickness tear of the supraspinatus and infraspinatus tendons with excessive retraction to the mid humeral head, with significant muscle atrophy in the supraspinatus and infraspinatus, is causally related to the accident of April 20, 2023. This finding is based upon the chain-of-events. This finding is based upon Petitioner's unrebutted testimony to a pre-accident state of asymptomatic good health in the right shoulder, her having an accident on April 20, 2023, her testimony of having sudden pain immediately after said accident, prompt medical treatment and new diagnoses based on MRI diagnostic testing, the physical examination findings by Memorial Express Care, Central Counties, and Dr. Ma, and surgical findings of Dr. Ma. *Certi-Serve, Inc. vs. Industrial Commission*, 101 Ill.2d 236,244 (1984).

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of April 20, 2023, 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.

The Arbitrator's credibility assessment is incorporated herein.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from February 12, 2024 to the date of hearing, May 29, 2024, a period of 15 3/7 weeks. This finding is based upon the causal connection decision above, a review of the medical records summarized above, and Petitioner's uncontroverted testimony that her total work restrictions imposed by Dr. Ma have not been modified or lifted as of the date of arbitration.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of April 20, 2023, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

The findings in regard to the accident and causal connection, above, are incorporated herein.

The Arbitrator finds that the bills introduced into evidence are related to Petitioner's April 20, 2023, injury, are reasonable, and were necessitated to treat or cure Petitioner's injuries suffered in this accident. It is noted that all cardiac treatment was necessary to perform Petitioner's right shoulder surgery. The corresponding medical bills for such treatment, as identified in Petitioner's Exhibit 8, shall be paid by Respondent pursuant to the medical fee schedule. Respondent shall tender payment of the awarded medical bills, after application of the medical fee schedule, to Petitioner pursuant to Sections 8(a) and 16a(D) of the Act, as the medical bills were disputed by Respondent and attorney fees are chargeable for recovered disputed medical expenses. This finding is based upon the causal connection decision, above, a review of the medical records summarized above, and a review of the medical bills contained in Petitioner's Exhibit 8.

In support of the Arbitrator's decision relating to whether Petitioner is entitled to any prospective medical treatment, 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 the accident and causal connection, above, are incorporated herein.

The Arbitrator finds that Petitioner is entitled to prospective medical treatment as recommended by Dr. Ma, to wit: medical care specifically related to the already performed right reverse total shoulder arthroplasty, including, but not limited to, physical therapy and follow up appointments and testing. This award does not mandate any other medical procedure other than those in direct post-operative follow up for said surgery. This finding is based upon the causal connection decision above, a review of the medical records summarized above, and Petitioner's uncontroverted testimony that she continues to receive medical treatment related to that surgery.

The Arbitrator finds that Petitioner's condition of ill-being has not yet reached maximum medical improvement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025479
Case Name	Rachel Robinson v. Sunrise Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0174
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Derrick Lloyd

DATE FILED: 4/22/2025

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RACHEL ROBINSON,

Petitioner,

vs. NO: 19 WC 025479

SUNRISE TRANSPORTATION,

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, causation, and nature and extent of 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 Comm'n,* 78 Ill.2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 20, 2024, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(1) (West 2013). Based upon the denial of compensation herein, no bond is set by the Commission.

April 22, 2025
O041525
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	19WC025479
Case Name	Rachel Robinson v. Sunrise Transportation
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Derrick Lloyd

DATE FILED: 9/20/2024

/s/Gerald Napleton, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 17 2024 4.41%

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

Rachel Robinson
Employee/Petitioner

v.

Sunrise Transportation / ST Management
Employer/Respondent

Case # **19** WC **025479**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford, IL**, on **8/16/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other : ***1- Did petitioner exceed her two choices of providers; 2- Is petitioner barred from recovery of benefits for her failure to attend properly noticed Section 12 and 8.1b(a)examinations; 3- Is petitioner barred from presenting evidence of permanent partial disability under Section 8.1b due to her material interference with Respondent's ability to obtain rebuttal medical evidence and defenses as a result of her refusal to attend properly scheduled and noticed Section 12 and 8.1b(a) examinations. 4- Is Respondent entitled to a credit against petitioner for missed IME fees.***

FINDINGS

On **7/30/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**7,349.16**; the average weekly wage was $**141.33**.

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

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

ORDER

The Arbitrator finds that petitioner did not sustain an accident that arose out of and in the course of her employment for Respondent. All benefits are denied and all other issues are moot.

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. Napleotn **SEPTEMBER 20 2024**

Signature of Arbitrator

STATEMENT OF FACTS

This case was tried on August 16, 2024 in Rockford, Illinois. Petitioner alleges that she injured her left hip result of prolonged sitting while working for Respondent. She alleged a manifestation date of July 30, 2019.

PETITIONER'S TESTIMONY

Petitioner testified that she worked as a special needs bus driver for respondent. She worked in this position for seven and a half years. As a part of her job she would drive buses and strap children into harnesses and car seats. She would also take the car seats in and out of the vehicle. She indicated that she worked from approximately 6:00 a.m. until 5:00 p.m. but admitted that she had cut her hours to only morning and evening routes about halfway through her employment (in 2016). Petitioner indicated that she worked approximately three hours in the a.m. and three hours in the p.m. at the time of her alleged accident. She indicated she worked five days a week and would spend approximately five hours of her six-hour shifts actually driving.

Petitioner indicated that while she had driven a KinderCare bus for one year in 2016, the remainder of her time with respondent was spent driving a suburban SUV. Petitioner claims she was paid $18.00 per hour at the time of her alleged accident.

Petitioner alleged that on or around July 30, 2019 she began to experience left hip pain. She indicated it was her understanding that this hip pain was caused due to atrophy in her left buttocks caused by her prolonged sitting due to her work as a bus driver for respondent. She indicated that she experienced extreme pain that she described as aching and sharp. Petitioner testified that she had filed a formal notice of this injury and advised Respondent of her belief that it was work-related. She had filed an Application for Adjustment of Claim shortly thereafter.

Petitioner then testified that she first sought treatment at OrthoIllinois with Dr. Jasek. She testified that she then began treating with an orthopedic surgeon, Dr. Van Thiel. She testified that Dr. Van Thiel had ordered an MRI of the left hip and thereafter recommended surgery that was performed on August 29, 2019. She testified that Dr. Van Thiel diagnosed petitioner with a labral tear and bursitis. She testified that after this surgery she underwent post-operative physical therapy but did not receive any benefit from the surgery or the physical therapy. She indicated that Dr. Van Thiel "did not do it right." She testified that she thereafter underwent an injection in June 2020 which again did not provide any relief.

Petitioner testified that thereafter she transferred her care to Dr. Domb. When asked how she came under the care of Dr. Domb, petitioner testified that she did her own research and believed that Dr. Domb and the American Hip Institute was likely her best chance of "fixing her hip." Petitioner testified that Dr. Domb recommended a repeat MRI of the left hip and thereafter recommended an additional surgery.

Petitioner testified that she paid Dr. Domb $5,000.00 out-of-pocket "because much of his treatment is state-of-the-art and experimental and most insurances won't cover it." She testified that Dr.

Domb therefore wanted the patients to pay out-of-pocket in order to ensure that these experimental and state-of-the-art procedures are paid for when the insurance inevitably denies them.

Petitioner testified that her out-of-pocket expenses consisting of yoga balls, bicycle stands and bicycle seats were all obtained at the recommendation of Dr. Domb.

Petitioner testified that she continues to experience issues with the left hip and is unable to bend down. She indicates that she currently takes Celebrex on occasion due to these ongoing symptoms. Petitioner also noted that she recently underwent an injection to the right hip due to inflammation. Petitioner testified that she is not currently working and has not worked since her surgeries. She indicated that she did not believe that driving a bus "was for her." Petitioner testified that she has not received any workers' compensation benefits.

On cross examination, Petitioner confirmed she was alleging an accident date of July 30, 2019. Petitioner confirmed that she was not actively working for respondent at that time as it was the summer. Rather, petitioner indicated that the timing of her symptoms were "insidious" and that it gradually happened over time because of atrophy in her buttocks from prolonged periods of sitting.

When asked whether or not petitioner first reported her hip symptoms to Dr. Jasek during a telephones call in February 2019, petitioner agreed. When asked whether or not she reported during that telephone call that she believed that her injuries were related to her work duties for respondent, petitioner stated: "Yes. I told everybody that I believed that in was due to work duties." When confronted with the record of the call, petitioner admitted that she did not report that she had thought that her hip injury was work related at that time.

Petitioner admitted she first treated with Dr. Jasek for personal conditions of fibromyalgia and rheumatoid arthritis prior to the onset of her left hip pain. Petitioner admitted that she first saw Dr. Jasek with respect to these left hip complaints in April 2019 but indicated that Dr Jasek "is not an orthopedic surgeon and doesn't know about orthopedic injuries." Petitioner admitted that during this first visit she reported to Dr. Jasek that she had an onset of bilateral hip pain that began in December 2018. However, when confronted with the fact that the treatment note states that petitioner attributed the onset of her pain to a recent infusion injection, petitioner stated that she had no idea what was causing her pain and that it could have been anything. Petitioner testified that she merely mentioned the injection at that time that because her research indicated that this injection could cause increased symptoms.

When asked why the treatment note contained no mention or record of petitioner attributing her conditions to her work duties for respondent, petitioner testified that Dr. Jasek never asked what she believed caused her injury. Petitioner stated that regardless of what the medical records showed, she did tell Dr. Jasek what her job duties were and that she would have to sit for prolonged periods of time. Petitioner admitted this was not contained in her medical records. Petitioner testified that she does not believe Dr. Jasek would have recorded this history because "he is not an orthopedic surgeon and therefore does not know about orthopedic injuries."

Petitioner admitted that she thereafter transferred her care to Dr. Van Thiel, who is an orthopedic surgeon. She admitted that she first saw Dr. Van Thiel on July 26, 2019. Petitioner was provided

her with a copy of Dr. Van Thiel's treatment note from that visit during her testimony. After review of the treatment note, Petitioner admitted that she told Dr. Van Thiel that her left hip pain began in December 2018. However, Petitioner testified that the portion of the record wherein she indicates she did not know the cause of her injury and that she denied any specific injury as causing the symptoms was inaccurate. Rather, petitioner stated that she told Dr. Van Thiel what her job duties were and that she had to sit for prolonged periods of time.

Petitioner admitted that she treated with Dr. Van Thiel until June 8, 2020. When asked what date of service with Dr. Van Thiel it was documented that Petitioner attributed her left hip symptoms to her work duties for respondent, petitioner indicated "it's contained in the medical imaging which proves that this was caused by the atrophy from prolonged sitting as a bus driver."

When asked where in the medical records her job duties were ever recorded or found by Dr. Van Thiel to have been caused by her work duties for respondent, petitioner testified that she "doesn't know what the medical records contained but that she told Dr. Van Thiel that she believed her injuries were caused by prolonged sitting."

Petitioner admitted that she was seen by Dr. Dahlberg, a pain management physician on June 3, 2020. Petitioner admitted that prior to the visit she had treated with Dr. Dahlberg for a personal condition. She admitted that during this visit she had specifically requested injections for her left hip by Dr. Dahlberg. She admitted that no other doctor had referred her to Dr. Dahlberg. She admitted that she did not report to Dr. Dahlberg that she was attributing her symptoms to any work-related cause. Rather, she stated she was "just trying to get treatment make her hip feel better."

Petitioner testified that she transferred her care to Dr. Domb on June 25 2020. She admitted that Dr. Domb is also an orthopedic surgeon. Petitioner was provided with a copy of Dr. Domb's June 25, 2020 treatment note during her testimony. After review of the same, petitioner admitted that nowhere in that specific treatment note is it mentioned that she was attributing her work accident to her duties for respondent. However, petitioner reported that she had told Dr. Domb what her job duties and that Dr. Domb believed that her job duties caused her "dead butt disease." When asked what doctor had diagnosed her with "dead butt disease;" petitioner indicated "all of them." When asked where in her medical records the term "dead butt disease" appears, petitioner admitted that the term was obtained from her own research.

Petitioner confirmed that she treated with Dr. Domb until December 3, 2020. She admitted that none of Dr. Domb's treatment notes contain any mention of petitioner's work duties for Respondent or any allegation that the same caused her left hip symptoms.

Petitioner testified that Dr. Domb provided his causation opinion in a later treatment note, the January 13, 2022 narrative report. Petitioner admitted Dr. Domb authored this opinion two years after she last saw him for treatment.

Petitioner testified that it was her belief that her left hip injury was caused by prolonged sitting as a result of her work as a bus driver. Petitioner admitted that she would only work six hours per day and that she was part-time. Petitioner admitted that prior to the accident, she would only sleep between 6-8 hours per day. She admitted that therefore there was approximately 10-12 hours of

the remainder of her waking time for which she was not working or sleeping. She testified that during that period of time she "remained active, would clean up around her house, and would take care of her cats."

Petitioner testified that Dr. Domb's office is located in Des Plaines while she lives in Rockford. She admitted there is a number of orthopedic surgeons that practice closer to Rockford than Dr. Domb. She admitted she did not know what other surgery centers Dr. Domb was associated with other than the one in Munster, Indiana. Petitioner admitted that the surgery took place in Munster, Indiana which was approximately a three-hour drive from her home in Rockford. She testified that the surgery was scheduled for 10:00 a.m. She testified that when she would work for respondent she would often times get up at approximately 5:00 a.m. for a shift that would begin at 6:00 a.m. Petitioner admitted that she was driven to the surgery by her husband who was there with her as well. She did not know how long the surgery took.

On re-direct examination, petitioner testified that she is not intimately familiar with all of the medical records and does not know the last time she reviewed her medical records prior to trial. She indicated that she stayed in a motel because she "had to be at the surgery so early in the morning" and that she "was too groggy from the anesthesia after her surgery to have been driven home."

MEDICAL EXHIBITS

On December 22, 2016, two and a half years before Petitioner's claimed manifestation date, Petitioner presented to OrthoIllinois complaining of bilateral hip pain. She reported that she believed the same was due to a recent infusion she underwent and wanted to obtain an x-ray. -ray of the left hip was noted to be normal. X-ray of the right hip was noted to include calcification of soft tissue in the right greater trochanter that likely represented calcification of the bursa. There was also slight narrowing of the right hip joint. Petitioner had a diagnosis of bilateral hip pain. (Rx8 pg. 34)

On February 22, 2019, five months before petitioner's claimed manifestation date, Petitioner called complaining of increased pain in her bilateral hips at a 7/10. She again attributed the same to an infusion she underwent two weeks prior. (Px2 pg. 42)

Petitioner again called Orthoillinois on April 4, 2019, three months before her alleged manifestation date. Petitioner again complained of bilateral hip, thigh, and back pain after a recent infusion injection beginning on February 22, 2019. Petitioner wanted to get x-rays of her bilateral hips performed. (Px2 pg 41)

Thereafter, petitioner was seen by Dr. Andrew Jasek, a rheumatologist, on April 19, 2019. Petitioner was primarily being seen for a follow up of her fibromyalgia. Petitioner was complaining of bilateral hip pain that she described as dull and achy that she also claimed was made worse by recent infusion injection performed in January 2019. Physical examination of the bilateral hips revealed tenderness over the greater trochanter bursa bilaterally. X-rays of the hip were performed and showed mild narrowing of the hip joints bilaterally worse on the right as well as calcification of the soft tissue on the right greater trochanter bursa area. The SI joints were

noted to be normal. No specific diagnosis was rendered relative to her bilateral hips. Petitioner was given a prescription for Tramadol. (Px2 at 37-40)

Petitioner again called Orthoillinois on April 23, 2019. Petitioner reported that she continue to have pain in the bilateral hips and thighs. She reported that she was taking Tramadol and was inquiring as to whether or not she needed to see an orthopedic doctor for her bilateral hips. It was noted that she recently underwent a Kenalog injection on the 19th that provided her approximately 75% relief for three days and thereafter returned. Dr. Jasek did not want to provide petitioner with an orthopedic referral as petitioner was not a candidate for surgery. (Px2 pg 35-36)

Petitioner called complaining of left hip pain that had worsened on July 1, 2019. She reported that the pain significantly increased in June of 2019 without any associated symptoms. Petitioner was specifically requesting an additional injection into the left hip and noted that her pain was at a severity of 8/10. Petitioner was instructed to follow up the next day. (Px2 pg 34)

Petitioner was seen on July 2, 2019, four weeks before her alleged manifestation date. At that time, petitioner received a cortisone injection into the left hip due to her diagnosis of "other bursitis of the left hip." . (Px2 pg 32-33)

Thereafter, petitioner called on July 10, 2019 indicating that the injection did not help with her symptoms. She reported only 20% improvement in symptoms. She reported that thereafter, her pain returned and she was unable to perform activities of daily living. Dr. Jasek wanted petitioner to give the injection a little bit more time before beginning physical therapy. (Px2 pg 31)

Petitioner then transferred her care to Dr. Van Thiel. Petitioner called Dr. Van Thiel's office to provide a medical history on July 24, 2019. Petitioner reported left hip pain since December 2019 (potentially a typo). Petitioner denied any known injury as causing these complaints. Petitioner was noted to be self-referred. (Px2 pg 29)

Petitioner was then seen by Dr. Van Thiel's physicians' assistant, Stephanie Pease, on July 26, 2019. Petitioner reported left hip pain since December 2018 with a gradual onset and no known mechanism. Petitioner inquired about having surgery of the left hip to remove the bursa. It was noted that an x-ray had been taken of the left hip at OrthoIllinois on April 19, 2019. It was also reported that petitioner had undergone an injection by Dr. Jasek earlier that month without any relief. Petitioner was currently working part-time.(Px2 pg 25-27) It was recommended that petitioner undergo a left hip MRI to rule out any labral tear. In the meantime, petitioner was diagnosed with left hip pain. (Id.)

Petitioner underwent a left hip MRI on July 30, 2019. This was the first treatment petitioner received following her alleged manifestation date. According to the reviewing radiologist, Dr. Adam Olmsted, the same showed tendinopathic and frayed gluteus minimus and medius insertions with mild trochanteric bursal swelling. There was also small hip effusion without any substantive arthropathy. It was specifically noted that there was no stress injury seen. (Px2 pg 45)

Petitioner then followed up with Dr. Van Thiel on August 5, 2019. Dr. Van Thiel reviewed the MRI from July 30, 2019 and concurred with the radiologist's interpretations. Petitioner was

diagnosed with left hip pain, a strain of the unspecified muscle fascias and tendons at thigh level, and greater trochanteric bursitis of the left hip. It was recommended that petitioner undergo an arthroscopic labral repair, femoraplasty, and trochanteric bursectomy. Although the MRI did not reveal any labral pathology, Dr. Van Thiel suspected the same based upon petitioner's x-ray findings. Petitioner wanted to proceed with the surgery. (Px2 pg 22-24)

Thereafter, petitioner underwent arthroscopic surgery performed by Dr. Van Thiel on August 29, 2019. Dr. Van Thiel performed a labral repair, an acetabuloplasty, a femoraplasty, a capsular plication, and a trochanteric bursectomy. (Px2 pg. 11-14)

Petitioner followed up post-operatively with Dr. Van Thiel, underwent physical therapy, and was given instructions to hold off on driving a bus for four weeks. (Px2 pg 9-10) Petitioner returned to see PA Pease on October 7, 2019. Petitioner continued to complain of left hip pain but stated that she was doing better compared to her previous visit. Petitioner was not given any work restrictions at that time. She was instructed to follow-up in six weeks. (Px2 pg. 5-6)

Petitioner was last seen by Dr. Van Thiel's office on November 18, 2019. Petitioner's primary complaint was stiffness. Petitioner continued to report that she was doing better compared to her previous visit. Petitioner was instructed to continue physical therapy. No comment was made with respect to petitioner's work status. Petitioner was to return in three months (February of 2020). (Id.)

Petitioner next sought treatment seven months later on June 3, 2020 when she presented to Dr. Dahlberg, a pain management specialist. It was noted petitioner was also seeking to address her left hip and buttocks that day. Petitioner reported ongoing left hip and buttocks pain. Petitioner reported that she underwent a left hip arthroscopy in the past and was scheduled to follow up with her back with her hip surgeon. Dr. Dahlberg stated that he would defer to petitioner's previous hip surgeon for the treatment of her hip. However, he believed that petitioner could continue to use Tramadol every six hours as necessary, Celebrex daily, and Norco every six hours on a daily basis. Petitioner was diagnosed with hip pain. (Rx6 pg 18-19)

Petitioner then transferred her care to Dr. Domb, another orthopedic surgeon, on June 25, 2020. Petitioner reported left hip pain in the posterior aspect that was dull and constant. The records do not demonstrate any alleged work-related cause or component to her hip complaints. (Px3 pg 51-56) Dr. Domb diagnosed residual vs. recurrent PAI CAM impingement, a possible labral retear, and a partial high degree gluteus medius tear. He recommended an updated MRI arthrogram of the left hip. Surgery was discussed as a possible future treatment. (Id.)

Petitioner underwent an left hip MRI on July 2, 2020. According to the reviewing radiologist, the same showed tendinopathy and peritendinitis of the gluteus medius insertion with partial thickness undersurface tearing and interstitial tearing. Post surgical changes were also seen in the acetubular labrum with a re-tear not excluded. (Px3 pg. 64-65)

Petitioner was seen by Dr. Domb the same day as the MRI. Dr. Domb reviewed the MRI imaging and believed the same showed a labral tear and a gluteus medius tear. Petitioner was diagnosed with a labral tear and a gluteus medius tear. Surgery was recommended. (Px3 pg 57-63)

Petitioner then underwent a CT scan of the left hip on July 28, 2020. The same was compared to the July 2, 2020 MRI. Surgery was again recommended. (Px3 pg 66-72)

Petitioner underwent surgery on August 12, 2020. The same consisted of an arthoscopic acetabuloplasty, subsupine decompression, removal of loose bodies, labral reconstruction using an autograft, iliopsias burscectomy, femoroplasty, capsular plication, gluteus medius repair, and trochanteric burscectomy. Post-operative diagnosis were labral tear, loose body, iliopsoas bursitis, pincer, subsupine impingement, instabilitiy, trochanteric bursistis, and gluteus medius tear. (Px3 pg 76 -80)

Petitioner then called Dr. Van Thiel's office on August 18, 2020. Petitioner stated that she had received a bill from her surgery on August 29, 2019. Petitioner became belligerent on the phone and stated that she was refusing to pay her bill. She stated instead that she would not pay OrthoIllinois "another red cent because they had messed up so many of her surgeries." Petitioner reported that she recently underwent a revision of her left hip surgery because Dr. Van Thiel had did it wrong. Petitioner was then called back later on that day and was apparently quite upset. Petitioner indicated that she should not receive a surprise bill a year later. Petitioner stated that she had to go to Chicago and Indiana for revisional surgery because Dr. Van Thiel's surgery had failed. (Rx8 pg. 32)

Petitioner followed up with Dr. Domb, underwent physical therapy, and her pain meds were managed. She reported improvement in her hip symptoms. (RX7 pg 20-25).

Petitioner followed up with her rheumatologist, Dr. Jasek, for her fibromyalgia and hip issues and reported that her hip pain has improved.

Dr. Domb then authored a narrative report at Petitioner's request on January 13, 2022. In this narrative report, Dr. Domb indicated that petitioner's diagnosis relative to her left hip was 17 months status post left hip revision with labral reconstruction using an allograft, femoralplasty, acetabuloplasty, trochanteric bursectomy, iliopsoas bursectomy, capsular plication, removal of loose bodies, subspine decompression, and gluteus medius repair that was performed on August 20, 2020. (Px4 pg 91). Dr. Domb stated "based upon a reasonable degree of medical certainty and the records reviewed, there might or could be a causal relationship between Ms. Robinson's surgery on July 30, 2019 and job duties as a bus driver due to petitioner's prolonged sitting potentially causing gradual weakness and atrophy of the gluteus medius." Dr. Domb did not believe petitioner required any additional treatment or restrictions at this time. However, he also indicated that petitioner will "more likely than not" require additional treatment such as physical therapy, prescription medications, injections, and further surgery." (Id.)

Petitioner was scheduled to attend independent medical examinations under Section 12 and Section 8 with Dr. Troy Karlsson on December 19, 2022 and July 17, 2023. Notice of the these examinations were sent to Petitioner's attorney. Petitioner did not attend these examinations. (Rx2; Rx3; and Rx9).

A record review report was then authored at Respondent's request by Dr. Troy Karlsson, an orthopedic surgeon, on May 27, 2024. At the outset of the report, Dr. Karlsson provided a history

of the medical records he received from American Hip Institute & Orthopedic Specialists, ATI Physical Therapy, OrthoIllinois, and Rockford Orthopedic Associates, as well as intraoperative images, reports from medical imaging, operative reports, and many telephone consultations documented in the records. (Rx1 pg 1-7)

After review of all these records, Dr. Karlsson noted that petitioner had two surgeries for her left hip to address a diagnosis of impingement, labral tear, trochanteric bursitis, and partial gluteus medius tear. He noted that petitioner was not found to have significant arthritis on x-ray or during the arthroscopic surgeries. Petitioner did have some loose bodies removed, which were noted to be sutures from her first surgery. The operative findings, including a pincer deformity of the acetabulum and high alpha angle on the femoral neck, were noted to be anatomic variations that put petitioner at a higher risk of degenerative labral tears. Dr. Karlsson specifically noted that petitioner's medical records documented no history of trauma and that her work history of sitting and driving a bus would not predispose her to an acetabular labral tear or any partial tear of the gluteus medius. (Id.)

With respect to causation, Dr. Karlsson noted that petitioner's work activity of driving a bus would in no way predispose her to sustaining acetabular labral tears or tears of the gluteus medius. He then addressed Dr. Domb's narrative report, noting that Dr. Domb had opined that petitioner's prolonged sitting could potentially cause gradual weakness and atrophy of the gluteus medius. Dr. Karlsson considered this but noted that the same could be said about anybody who did not have a physical job with any muscle in their body potentially having weakness. Dr. Karlsson noted that individuals had many hours when they were not working and could not perform other activities that worked their muscles. Likewise, he noted that weakness of the gluteus medius muscle was not the same thing as having a tear of the gluteus medius muscle or a labral tear. He therefore opined that petitioner had no connection between her job duties and the need for her ultimate surgery. In further addressing Dr. Domb's opinions, he noted that the narrative report stated that petitioner was only at 95% improvement when the office note documented that petitioner's pain level was a 0/10, indicating complete resolution of her condition. (Id.)

Dr. Karlsson believed that petitioner had reached maximum medical improvement for her left hip condition and that she did not require any further care. He did not believe petitioner required any work restrictions relative to the left hip.(Id.)

Dr. Karlsson opined that petitioner's MRI and treatment were reasonable and necessary and that there did not appear to be any causal connection between her left hip injury and work activities. He further emphasized that petitioner made no mention of any work accident on or around July 30, 2019 documented anywhere in her medical records. (Id.)

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (C) Did Petitioner sustain an accident that arose out of and in the course of her employment; (E) Was timely notice of the accident given to Respondent;

Petitioner alleged that prolonged sitting while working as a driver for Respondent caused injury to her left hip. After carefully weighing the evidence and testimony, the Arbitrator finds petitioner failed to meet her burden in proving that she sustained a compensable accident on or around July 30, 2019.

Under the Act, a claimant must prove that she sustained an accident arising out of and in the course of her employment. 820 ILCS 305/2. An injury arises out of the 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. *Baggett v. Industrial Comm'n*, 201 Ill.2d 187, 194 (2002). In order to establish a compensable accident, the claimant bears the burden of proof with respect to both "arising out of" and "in the course of". Both elements must be satisfied in order to award compensation.

In determining whether or not an accident arose out of a claimant's employment, the claimant must show that the accident had an 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). There are three types of risks to which employees may be exposed: (1) risks that are distinctly associated with employment; (2) risks that are personal to the employee, such as idiopathic falls; and (3) neutral risks that do not have any particular employment or personal characteristics. *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 116 (1st Dist. 2007).

Risks are distinctly associated with employment when they arise from three categories of acts: (1) acts the employer instructs the employee to perform; (2) acts which the employee has a common law or statutory duty to perform while performing duties for his employer; (3) acts which the employee might be reasonably expected to perform incident to her assigned duties. *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2015 IL 115728 (2013).

"Personal risks include nonoccupational diseases, injuries caused by personal infirmities such as a trick knee, and injuries caused by personal enemies and are generally noncompensable." *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63; see also Illinois Consolidated Telephone Co. v. Industrial Comm'n, 314 Ill. App. 3d 347, 352, 732 N.E.2d 49, 247 Ill. Dec. 333 (2000) (Rakowski, J., specially concurring) (examples of personal risks include falls due to a bad knee or an episode of dizziness). "Injuries resulting from personal risks generally do not arise out of employment. An exception to this rule exists when the work place conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury." *Rodin*, 316 Ill. App. 3d at 1229.

"Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Springfield Urban League v. Illinois Workers' Compensation Comm'n,* 2013 IL App (4th) 120219WC, ¶27. "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metropolitan*

Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n, 407 Ill. App. 3d 1010, 1014 (2011).

In this case, Petitioner's alleged mechanism is sitting for prolonged periods of time. Sitting is a neutral risk without any particular employment or personal characteristics. Therefore, the question of compensability turns upon whether or not Petitioner experienced a quantitative or qualitative increased risk of injury from sitting due to her job as a bus driver. The Arbitrator finds that she did not.

First, the Arbitrator notes that there was no testimony that Petitioner's work for respondent carried with it a qualitative increased risk of injury. Petitioner testified that she worked as a driver for respondent. She did not drive a bus but instead drove a suburban SUV. There was no mention of any defects in the seat petitioner used nor any specific job duty as a driver that would have qualitatively increase her risk of injury from sitting,

Rather, Petitioner appears to allege that she had a quantitative increased risk of injury. Petitioner testified that her left hip injury was caused by the prolonged sitting she was required to perform as a driver for Respondent. Petitioner's testimony and the trial exhibits, however, prove definitively that Petitioner did not have a quantitative increased risk of injury. No evidence was provided to suggest the general public sits more or less than Petitioner in her line of work.

The Arbitrator places great weight on petitioner's admittance that she only worked part time for Respondent. The same is corroborated by Respondent's Exhibit 4, Petitioner's wage records. The wage records show that petitioner never worked more than 32 hours in a week and oftentimes worked less than 20 hours in a week. In fact, Petitioner testified that she spent twice as much time during the day awake and outside of work (10 to 12 hours per day) than she did at work (6 hours per day). Further, Petitioner admitted that all of her time at work was not spent solely driving. Rather, Petitioner would oftentimes get out of her seat to secure the students, install car seats, and remove any car seats necessary.

In light of the foregoing, the Arbitrator finds petitioner did not sustain an accident that arouse out of and in the course of her employment. Accordingly, Compensation is denied.

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

While the Arbitrator has found that Petitioner did not sustain a compensable accident, the Arbitrator further notes, that Petitioner's condition of ill-being was not causally related to her work duties for Respondent.

The Petitioner bears the burden of proving that her condition of ill-being was caused by her employment with Respondent. Petitioner claims that she sustained a left hip impingement, labral tear, trochanteric bursitis, and partial gluteus medius tear as a result of atrophy from prolonged sitting while working for Respondent.

The Arbitrator notes that the narrative opinion by Dr. Domb itself is premised on the inaccurate assumption that Petitioner's work duties for respondent required her to sit for such long periods

that she would develop atrophy of her leg muscles. As mentioned, Petitioner's own description of work duties does not appear to be consistent with Dr. Domb's descriptions of "prolonged sitting" that could cause atrophy or gradual weakness. At trial, Petitioner admitted that she only worked part time for Respondent. The wage records admitted at trial show that petitioner never worked more than 32 hours in a week and oftentimes worked less than 20 hours in a week. Further, Petitioner admitted that all of her time at work was not spent solely driving. Rather, Petitioner would oftentimes get out of her seat to secure the students, install car seats, and remove any car seats necessary. Also, Petitioner admitted that she spent twice as much time during the day awake and outside of work (10 to 12 hours per day) than she did at work (6 hours per day). She testified that during those 10-12 hours, she was "active."

The Arbitrator notes that the records in evidence do not support or corroborate Dr. Domb's narrative report. The records from OrthoIllinois and elsewhere do not mention Petitioner's work duties. Dr. Domb's report is the solitary instance where Petitioner's work duties are mentioned.

Based upon the above, the Arbitrator does not give much weight to the narrative opinion of Dr. Domb as it was based upon on inaccurate assumptions about petitioner's work for Respondent and is not corroborated or supported by the remainder of medical evidence a trial.

Conversely, the Arbitrator places great weight on the opinions of, Dr. Troy Karlsson, a board-certified orthopedic surgeon. The Arbitrator notes that Dr. Karlsson is the only physician in this case to review all of petitioner's medical records before rendering an opinion.

With respect to causation, Dr. Karlsson noted that petitioner's work activity of driving would in no way predispose her to sustaining acetabular labral tears or tears of the gluteus medius. Dr. Karlsson noted that individuals had many hours when they were not working and could not perform other activities that worked their muscles. Likewise, he noted that weakness of the gluteus medius muscle was not the same thing as having a tear of the gluteus medius muscle or a labral tear. Finally, Dr. Karlsson noted that Petitioner's medical records contained no mention or allegation that Petitioner's symptoms were caused by her work for Respondent.

Dr. Karlsson therefore opined that petitioner had no connection between her job duties and the need for her ultimate surgery.

The Arbitrator finds the opinions of Dr. Karlsson to carry greater weight than those of Dr. Domb. Accordingly, the Arbitrator finds that Petitioner has not met their burden of proof to demonstrate a causal relationship between her accident and her current condition of ill-being.

In support of the Arbitrator's decision relating to: (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; (K) TTD; (L) Nature and Extent; and (O) other myriad issues; the Arbitrator finds as follows

Having found in favor of Respondent on the issues above and that Petitioner has failed to meet her burden of proof, the Arbitrator finds all remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023392
Case Name	Timothy Sullivan v. Jones Lang LaSalle Americas, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0175
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Michael Scanlon
Respondent Attorney	Edward A. Coghlan

DATE FILED: 4/23/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMOTHY SULLIVAN,

Petitioner,

vs. NO: 22WC023392

JONES LANG LASALLE AMERICAS, INC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission makes the following changes and corrections:

- In the case caption on page 1, we correct the spelling of Respondent's name to reflect "AMERICAS."

- In the case caption on page 3, we correct the spelling of Petitioner's name to reflect "SULLIVAN."

- In the heading on page 3, we correct the spelling to reflect "ARBITRATION."

- On page 9, we strike the second full paragraph beginning with "The Arbitrator notes…."

- On page 10, in the last paragraph of Section F, the last sentence, we strike "20" and replace with "15" to reflect that Petitioner's accident occurred on "September 15, 2021."

- On page 12, under Issue O, we strike the last two sentences of the first paragraph.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 1, 2024 is hereby affirmed and adopted with the corrections noted above.

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

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

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

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

April 23, 2025

SE/
O: 3/25/25
49

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023392
Case Name	Timothy Sullivan v. Jones Lang LaSalle Americas, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Scanlon
Respondent Attorney	Edward A. Coghlan

DATE FILED: 7/1/2024

/s/ Joseph Amarilio, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

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

TIMOTHY SULLIVAN
Employee/Petitioner

Case # **22** WC **023392**

v.

Consolidated cases: **None**

JONES LANG LASALLE AMRIRICAS, INC,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was e-mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **April 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? (At the Arbitrator's Discretion)
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, 09/15/2021**,** 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 $**91,124.80**; the average weekly wage was $**1,742.50**.

On the date of accident, Petitioner was **56** 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 $**53,432.90** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**53,432.90**.

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

ORDER

Medical Benefits: Respondent shall pay reasonable and necessary medical services, pursuant to the fee schedule, in the amount of $6,047.00 to Athletico Physical Therapy, as provided in Section 8(a) and 8.2 of the Act.

TTD Benefits: Respondent shall pay Petitioner temporary total disability benefits of $1,161.67 per week for 136-2/7th weeks, commencing September 16, 2021 through April 26, 2024, as provided in Section 8(b) of the Act, representing $158,319.03.

Credit: Respondent shall be given a credit of $53,432.90 for temporary total disability benefits that it has provided.

Prospective Medical Benefits: Respondent shall authorize and pay for the prospective pain management and injections as provided in Section 8(a) of the Act.

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

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

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

/s/ *Joseph D. Amarilio*
Signature of Arbitrator Joseph D. Amarilio

July 1, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ATTACHMENT TO ARBIRATION DECISION

TIMOTHY SULLIAVN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No: **22** WC **023392**
	)	
JONES LANG LASALLE AMERICAS, INC.,	)	**19(b)/8(a)**
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Timothy Sullivan ("Petitioner"), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act") (820 ILCS 305/1 *et seq.*). Petitioner alleged he sustained an accidental injury on September 15, 2021 that arose out of and in the course of his employment while working for Jones Lang LaSalle Americas, Inc. ("Respondent').

The parties proceeded to hearing on April 26, 2024 pursuant to Sections 19(b) and 8(a) of the Act. The parties jointly submitted a Request for Hearing Form representing that the following issues were in dispute: (1.) Whether Petitioner's current condition of ill-being is causally connected to the September 15, 2021 work injury; (2) Whether Respondent is liable for unpaid medical bills; (3) Whether Petitioner is entitled to additional TTD beyond the period of time paid; (4) Whether Petitioner is entitled to prospective medical; and (5) Whether Petitioner is entitled to penalties and attorney fees under Section 19(k), Section 19(l), and Section 16 of the Act. The parties requested a written decision that includes findings of fact and conclusions of law. (Arb. X 1)

II. FINDINGS OF FACT

Background: Petitioner Timothy Sullivan was employed by Jones Lang LaSalle Americas, Inc. on September 15, 2021 as a stationary engineer. (TR. p. 21). His duties included operating boilers, air conditioning, plumbing and anything mechanical in the building he worked in. (TR. p. 22). He operated and maintained the HVAC system at the O'Hare Plaza located at 8755 West Higgins Road, Chicago, Illinois. (TR. p. 22-23). Petitioner worked in a full-duty capacity from when he started at Jones Lang LaSalle in October 2010 up until September 15, 2021. (TR. p, 35). Petitioner never took any extended leave from Jones Lang LaSalle until the date of his injury on September 15, 2021. (TR. p. 22, 35).

Accident: Accident is not disputed. On September 15, 2021, Petitioner received a work order to remove the air filters on the third floor of the O'Hare Plaza. (TR. p. 24). Petitioner could not access the filters from the ground because they were located above a drop ceiling. (TR. p. 25). Petitioner used a six-foot A-frame ladder to access the filters. (TR. p. 25). Because of office furniture in the way, Petitioner had to get as close to the filter as possible with the ladder, and then he had to manipulate his body through the drop ceiling to actually replace the filter. (TR. p. 25). He climbed all the way up the ladder and then began to access the area above the drop ceiling through one

of the panels. (TR. p. 27). Petitioner was halfway into the ceiling when he reached over about four or five feet toward the fan to replace the filters. (TR. p. 28). As he was reaching and twisting his body, Petitioner felt his back crack and his legs went numb. (TR. p. 29). Petitioner immediately felt "excruciating pain" in his lower back and legs. (TR. p. 29). Petitioner took a few minutes to compose himself so he would not fall from the top of the ladder. (TR. p. 29-30). He then descended the ladder and went back to the shop. (TR. p. 30). Petitioner did not work for the rest of the day and woke up with increased pain the next day. (TR. p. 31). When Petitioner arrived at work on September 16, 2021, he reported the accident to Larry Curran and filled out an incident report. (TR. p. 32). Petitioner then scheduled an appointment with Dr. Jerry Bauer and went home to rest. (TR. p. 33).

Petitioner's Pre-Accident Medical Condition of Ill-Being

In 2018, Petitioner treated with Dr. Jerry Bauer for lower back pain. (TR. p. 34). Petitioner received an MRI. (TR. p. 34). The pain was tolerable, so Petitioner just worked through it. (TR. p. 35). Petitioner saw Dr. Bauer again in 2020 for back pain but was again able to continue working in a full duty capacity. (TR. p. 35-36). Between October 12, 2020 and September 15, 2021, Petitioner did not treat with any physician for back pain. (TR. p. 36). Petitioner continued to work in a full duty capacity during that time. (TR. p. 36).

With respect to Petitioner's treatment with Dr. Bauer before the accident, Petitioner first began treating with Dr. Bauer on August 9, 2018 (RX 2), over three years before his accident on September 15, 2021. At the time of the August 9, 2018 examination, Petitioner reported a history of waking up with severe low back pain on Thanksgiving morning in 2017. He further reported severe low back pain radiating down the back of his legs and into his feet, with associated numbness, tingling and weakness, symptoms which had been present since Thanksgiving Day in 2017. He reported that chiropractic care provided some improvement in his symptoms.

At the initial examination on August 9, 2018, Dr. Bauer diagnosed lumbar spinal stenosis, possibly related to epidural lipomatosis. He also reviewed the lumbar MRI done on July 20, 2018 (RX 7). As for future treatment, Dr. Bauer raised the possibility of surgical intervention for "relief of his stenosis and removal of his epidural lipomatosis (RX 2, p. 4). Dr. Bauer's first examination ended with Petitioner being referred to the emergency room due to hypertension.

After the initial examination with Dr. Bauer on August 9, 2018, Petitioner did not see Dr. Bauer again until October 5, 2020, approximately 11 months before the work accident of September 15. 2021 (RX 3). At the examination on October 5, 2020, Petitioner reported that his severe right-sided back pain resolved spontaneously after the August 2018 examination but recurred in November 2019, with pain radiating down both legs with numbness, tingling and progressive weakness since November 2019. Dr. Bauer diagnosed lumbar spinal stenosis L5-S1 and lumbar facet arthropathy L5-S1. Additionally, Dr. Bauer recommended an updated lumbar MRI and EMG/NCV testing. The repeat lumbar MRI was done on October 12. 2020, while the EMG/NCV testing was done on November 17, 2020.

With respect to the MRI results, the MRI done on July 20, 2018 showed the following: (1) severe narrowing of the central canal at, above and below the L5-S1 level secondary to the deposition of epidural fat surrounding the thecal sac resulting in the absence of cerebral spinal fluid (CSF) around the spinal cord from the level of the mid-L5 vertebral body through S1; (2) mild-to-moderate bilateral neuroforaminal narrowing, and (3) synovial cyst extending off the anterior aspect of the right facet joint measuring 4-5 mm (RX 8). The second MRI was done on October 12, 2020. Per the report, it showed (1) stable mild lumbar dextrocurvature [abnormal curvature of the spine that bends to the right and away from the heart] Grade 1 anterolisthesis of L5 on S1; (2) severe central canal narrowing is again noted at L5-S1, predominantly due to epidural lipomatosis; (3) stable mild central canal narrowing at L4-5 due to mild epidural lipomatosis; and (4) 7 mm T2 hyperintense probable cyst within the right renal mid-pole (RX 9).The third and final MRI was done on October 14, 2021. This study showed: (1)

indeterminate bone lesion in the T10 vertebral body, incompletely characterized; (2) acute/sub-acute superior endplate Schmorl's node at L1; (3) Grade 1 anterolisthesis with epidural lipomatosis and bony degenerative changes causing moderate foraminal stenosis at L5-S1, stable; and (4) mild spondylotic changes (RX 10). When asked about the MRI results, Dr. Bauer stated that all three MRI results, two of which were done before the date of accident, were "consistent with one another" (PX4, p. 47).

The first EMG was conducted by Dr. Igor Rechitsky on November 17, 2020 (RX 6). Dr. Rechitsky opined that the testing suggested "the presence of chronic sensory and motor axonal and demyelinating peripheral polyneuropathy as the likely cause of the numbness and paresthesia in the feet. Etiology could be EtOH-related, but other causes of potentially treatable peripheral polyneuropathy should be pursued" (RX 6, p. 2). Dr. Rechitsky recommended decompressive surgery at L5-S1 for "treatment of severe spinal stenosis caused by epidural lipomatosis" (RX 6, p. 3), a surgical option raised. Dr. Rechitsky further recommended smoking cessation and alcohol abstinence programs for Petitioner. Petitioner testified that he did pursue alcohol rehabilitation but did not do any smoking cessation programs (TR p. 62).

Post Accident Medical Treatment and Section 12 Examination

On September 20, 2021, Petitioner presented to Dr. Jerry Bauer at Center of Brain and Spine Surgery complaining of constant pain in his legs and feet after hurting his back at work while on the ladder on September 15, 2021 (PX2, p. 18). Dr. Bauer ordered an MRI of the lumbar spine and x-rays. (PX2, p. 20). Dr. Bauer reviewed Petitioner's past medical.

Petitioner returned to Dr. Bauer on November 4, 2021 complaining of continued lower back pain. (PEX2, p. 23). Dr. Bauer reviewed Petitioner's October 14, 2021 MRI and noted a grade 1 spondylolisthesis as L5-S1 and a disc protrusion with an annular tear. (PX2, p. 25.) Additionally, Dr. Bauer noted epidural lipomatosis extending up to the L3-4. (PX2, p. 25). Dr. Bauer ordered further imaging. (PX2, p. 25). Dr. Bauer also ordered physical therapy. (PX2, p. 25).

On January 17, 2022, Petitioner returned to Dr. Bauer complaining of continued lower back pain and pain radiating down his legs. (PX2, p. 27). Dr. Bauer reviewed an EMG that was completed on November 19, 2021, which revealed mild neuropathy and radiculopathy. (PX2, p. 29). Dr. Bauer referred Petitioner to a pain management specialist for potential facet injection at L5-S1. (PX2, p. 29).

Petitioner completed physical therapy at Athletico Physical therapy from January 26, 2022 to March 4, 2022.

On March 4, 2022, Petitioner completed a functional capacity evaluation at Athletico Physical Therapy. (PX5, P. 12). During the FCE, Petitioner demonstrated increased symptom severity, especially during functional movement. (PX5, p. 16). Petitioner was unable to safely lift from floor to waist or overhead without severe pain. (PX5, p. 16). Petitioner attempted to climb a ladder but was unable to due to severe pain and safety concerns. (PX5, p. 16).

Petitioner presented to Dr. Bauer on March 16, 2022 complaining of continued lower back pain and pain radiating down his legs. Petitioner felt that physical therapy made his pain worse. (PX2, p. 31). Dr. Bauer suggested a pain management referral for possible facet injections. (PX2, p. 34).

On June 13, 2022, Petitioner presented to Dr. Harel Deutsch at Rush University Medical Center for a Section 12 examination at Respondent's request. (RX1, p. 9) (TR. p. 45). Petitioner had a short conversation with Dr. Deutsch

and the appointment lasted about 15 minutes. (TR. p. 46). Respondent terminated benefits based on the findings and opinions of Dr. Deutsch.

Temporary Total Disability

Petitioner received temporary total disability benefits from Respondent up until the June 13, 2022 Section 12 examination with Dr. Deutsch. (TR. p. 46). After June 13, 2022 Respondent stopped benefits. (TR. P. 46) (ArbX1, p. 2). No doctor ever cleared Petitioner to go back to work. (TR. p. 48). Dr. Bauer testified that injections would be a reasonable next step for Petitioner in terms of medical treatment. (PX 4, p 29). It was Dr. Bauer's opinion that Petitioner was unable to return to work. (PX 4, p. 25). Dr. Deutsch also agreed that injections would be reasonable. (RX 1, p. 43).

Petitioner testified that following the September 15, 2021 work injury, he did not return to work. He had not work as of the date of trial. No evidence was introduced that Petitioner was offered light duty work. Petitioner alleged to be entitled to TTD from September 16, 2021 through April 26. 2024. Respondent disputes Petitioner was temporality totally disabled for the time period alleged and claims that Petitioner was not entitled to TTD after June 13, 2022. (Arb X 1, p.2)

Medical Bills: Petitioner treated at Athletico Physical Therapy from January 26, 2022 to March 4, 2022. Athletico Petitioner submitted an Athletico Physical Therapy bill that has a balance of $6,047.00. (PX 5, pp. 85-86).

Evidence Deposition of Dr. Jerry Bauer (Petitioner's Exhibit 4)

Dr. Bauer testified by evidence deposition on December 20, 2023. (PX 4). Dr. Bauer is board certified in neurosurgery. (p. .7). For the past 10-15 years, Dr. Bauer has performed between 50 and 100 elective spine surgeries per year. (p. 8).

Dr. Bauer opined that the lumbar MRIs done in 2018 and 2020 showed no significant changes, with both studies showing epidural lipomatosis at L5-S1, degenerative disc disease and facet arthropathy at L5-S1, and a slight anterolisthesis at L5 on S1 (p.7).

Dr. Bauer noted that Petitioner reported being "on a ladder and hurt his back" at the September 20, 2021 examination. (p. 12).

Dr. Bauer opined that the post-accident October 2021 MRI showed a new finding - a Schmorl's node at L1. This finding being consistent with an acute injury. The finding is consistent with a fracture, consistent with a partial compression fracture or a Schmorl's node. Dr. Bauer testified that the Schmorl's node was "of no surgical or clinical significance as far as treating a patient" because there is no treatment to address it. (pp. 18-19).

Dr. Bauer testified that as far as treatment options as of the last examination on March 16, 2022, Petitioner was at maximum medical improvement from a neurosurgical perspective as of that date, with the only option for future treatment being pain management. (p. 25). Dr Bauer opined Petitioner was not an optimal or good surgical candidate, noting his smoking habit (p. 29). The record is silent if the current non-surgical recommendation is due to smoking.

Dr. Bauer opined that the EMG results both pre- and post-accident were consistent, with no material changes, and both studies showed the polyneuropathy (p. 46) And, that three MRI studies of July 20, 2018, October 12, 2020, and October 14, 2021, respectively were all consistent, with no material changes noted other than the Schmorl's node. (p. 47). Dr. Bauer opined that smoking is a risk factor for degenerative disc disease, and medical studies

show that the success rate of fusion surgeries decreases by 50% in patients who smoke (pp. 47-48). Dr. Bauer said that surgery was raised as an option at Dr. Bauer's first examination on August 9, 2018, but the operation would be a fusion, and Petitioner is a smoker.p.47)

Dr. Bauer said that Petitioner was in pain. He opined that pain management was had potential for treatment and had the potential to determine where the pain was coming from. It would depend on Petitioner's response to injections, indicating that injections being used as a diagnostic tool. (p. 29).

Dr. Bauer noted that Petitioner was working in a full duty capacity prior to September 15, 2021. (p. 12). Dr. Bauer testified that all of the treatment rendered to Petitioner was reasonable and necessary and that pain management for Petitioner's symptoms would be reasonable and necessary. (p. 30).

Dr. Bauer opined that Petitioner's mechanism of injury was consistent with the formation of a Schmorl's node or a mild compression fracture that was evidenced in Petitioner's October 14, 2021 MRI. (p. 30). Dr. Bauer agreed that Petitioner's mechanism of injury was consistent with an event that would cause an aggravation of a degenerative spine. (p. 30). Additionally, Dr. Bauer agreed that Petitioner's increase of symptomatology is consistent with the injury that occurred on September 15, 2021 (p.31)

Evidence Deposition of Dr. Harel Deutsch – Respondent's Exhibit 1

Dr. Deutsch examined Petitioner at Respondent's request pursuant to Section 12 of the Act. (RX 1). He testified via evidence deposition on October 23, 2023. Dr. Deutsch testified that when he reviewed Dr. Bauer's records from September 20, 2021, he did not believe that Petitioner mentioned a work accident. (p. 22). The record clearly references a work accident. Dr. Deutsch testified that he was not aware of, and did not review, the incident report in this case. (p. 23). Petitioner testified that he filled out an incident report and gave it to his employer. (p. 32). Respondent did not include the incident report as an exhibit at trial. Dr. Deutsch testified that he was not aware that Petitioner felt a crack and immediate numbness in his back after the September 15, 2021 accident. (p. 23). Additionally, Dr. Deutsch testified that he did not review Petitioner's October 2020 MRI. (p. 26).

Dr. Deutsch opined that there is no work injury because Petitioner "was treating for back problems before the alleged work injury and there's no mechanism of injury for the back." (p. 24). Dr. Deutsch admitted that Petitioner did not have any treatment for his back for 11 months prior to the work injury. (p. 5).

Regarding the October 2021 MRI, Dr. Deutsch initially refused to acknowledge that the MRI revealed a Schmorl's Node. (p. 32). However, when shown a photograph of the MRI, Dr. Deutsch admitted that Petitioner's MRI revealed a Schmorl's node. (p. 33-34). A Schmorl's node is "a disc herniation that goes into the vertebral body." (pp. 29, 34).

Dr. Deutsch testified that a combination of torsion and lifting could be a competent cause of lumbar spine injury or pain. (pp. 39-40). Dr. Deutsch opined that Petitioner's treatment after Petitioner's work accident of September 15, 2021 was reasonable and necessary. (p. 41). Finally, Dr. Deutsch testified that Petitioner is a candidate for pain management injections. (p. 49). He did not recommend surgery.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, 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 the elements of his claim including that there is some causal relationship between his employment and his injury. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980), *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony.

Petitioner testified in open hearing before the Arbitrator who had opportunity to view Petitioner's demeanor under direct examination, and under cross-examination. The Arbitrator finds the Petitioner demeanor to be sincere, a judgement supported by a consistency of his testimony that was generally corroborated by the stipulated facts, the medical records, and the record as a whole. The Arbitrator further finds that any inconsistency in the testimony appeared to be due the passage of time and not made with the intent to deceive or mislead.

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

Respondent stipulated that Petitioner sustained an accident arising out of and in the course of his employment. However, Respondent disputes that Petitioner's current low back condition of ill-being is causally related to the work accident based on Petitioner's documented pre-existing condition and based on the findings and opinions of Dr. Deutsch. For the reasons stated below and based on the record as whole, the Arbitrator finds that Petitioner's condition of ill-being to his back is causally related to his work accident of September 15, 2021. The Arbitrator reached the conclusion that Petitioner's back pain is causally related to his work accident based on Petitioner's credible testimony, on the chain of events and the opinions of Dr Bauer. The Arbitrator concludes that accident aggravated or accelerated the process which led to Petitioner's current condition of ill-being.

It is well-settled that an employee need only show that some act of employment was a causative factor, not the sole or principal cause, of his injury. *Alderson v. Select Beverage, Inc.*, 06 I.W.C.C. 0095, 01 W.C. 33435 (2006). "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Dunteman v. Illinois Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC, ¶ 42. The fact that the employee had a preexisting condition, even though the same result may not have occurred had the employee been in normal health, does not preclude a finding that the employment was a causative factor. *Id.* The question is whether the evidence supports an inference that the accident aggravated or accelerated the process which led to the employee's current condition of ill-being. *Id.* A work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id.* ¶ 43.

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). Expert testimony should be weighed like any other evidence, with its weight determined by character, capacity, skill,

and opportunities for observation. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The Commission may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 31 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225 (1992).

"The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Schroeder v. Ill. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC ¶ 26 (4th Dist. 2017). In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." *Walquist Farm Partnership v. Illinois Workers' Compensation. Comm'n,* 2021 IL App (5th) 190163 (Ill. App. Ct. 2021) (January 11, 2021) This is a Rule 23 Illinois Appellate Court decision. However, since it was issued after January 1, 2021 the decision may be cited for its persuasiveness, but not as precedent but does acknowledge and apply the settled principle stated in *Price v. Industrial Comm'n*/

The Arbitrator notes that Respondent's has not voiced any complaints about Petitioner's pre-accident work performance. No evidence was introduced that Petitioner missed time off work because of preexisting issue; no mention was made that Petitioner requested any accommodation because of a preexisting back condition prior to the accident and, further, no evidence was introduced that Petitioner was offered light duty work. And, finally, no evidence was introduced that his condition of ill-being had stabilized.

Petitioner's position with Respondent was physical in nature as evidenced by his accident. He injured his back while stretching and reaching overhead in an awkward position to change commercial grade celling-based air filters Accordingly, the Arbitrator finds that the chain of events in this matter demonstrates a previous condition of good health sufficient to perform his duties without complaint, an accident, and a subsequent injury resulting in disability is sufficient circumstantial evidence to prove a causal nexus between the accident and the Petitioner's injury to his back.

Here, Petitioner credibly testified that before his work injury, he had instances of back pain and he saw Dr. Bauer twice before his work injury for that pain. However, Petitioner was never limited in any capacity and always performed full duty work prior to his September 15, 2021 injury. After his September 15, 2021 work injury, reported a significant increase in back pain and stiffness. Petitioner was unable to return to work. Additionally, the diagnostic studies were consistent with acute trauma.

The Arbitrator finds the testimony of Dr. Bauer to be more persuasive and reliable than the testimony of Dr. Deutsch. Dr. Deutsch did not review images from either of the two pre-injury MRIs. Dr. Deutsch did not review the incident report. Despite the fact that Dr. Bauer's September 20, 2021 treatment note clearly references an injury that Petitioner suffered while on a ladder at work, Dr. Deutsch testified "[y]ou know when I reviewed the records, I guess I believe that it didn't mention any work accident." Dr. Deutsch was completely unaware of the fact that Dr. Bauer's September 20, 2021 treatment note referenced an injury on a ladder. Dr. Deutsch refused to acknowledge that Petitioner's post-injury MRI revealed a Schmorl's node. When he was shown a photo of the MRI, Deutsch then admitted that Petitioner had a Schmorl's node. Dr. Deutsch lacks sufficient reliability and persuasiveness to deny Petitioner the potential relief and curative benefits of pain treatment.

Dr. Bauer unequivocally and steadfastly opined that Petitioner's work accident caused or aggravated Petitioner's lower back problems. Dr. Bauer agreed that the mechanism of injury was consistent with the formation of a

Schmorl's node., an acute injury consistent with a fracture. Dr. Bauer agreed that Petitioner's mechanism of injury could cause an aggravation of a degenerative spine.

It is evident that Dr. Bauer believed Petitioner's pain to be real, consistent with the injury, and that his pain warranting pain treatment, including injections to get a better understanding of the source of Petitioner's pain and to address it. Like Dr. Bauer, the Arbitrator believes that Petitioner deserves a chance for pain relief.

Respondent argues that the Petitioner's s condition was not a natural consequence that flowed from the original injury and that his condition has not changed from his pre-accident status. Additionally, Respondent raised in its defense that Petitioner was a cigarette smoker. For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *Global Products v. Illinois Workers' Compensation Comm'n* 392 Ill.App3d 408, 411-412. (2009). The claimant's employment needs only to remain a cause, not the sole cause or even the principal cause, of his condition. "So long as a 'but-for' relationship exists between the original event and the subsequent condition, the employer remains liable." *Id.* The Appellate Court in *Global Products* held that the claimant's smoking was not an intervening cause of his disability. Like the Court in *Global Products*, the Arbitrator does not find persuasive evidence that Petitioner's smoking was an intervening cause. Petitioner was a cigarette smoker before the accident and still was after. The Illinois courts have repeatedly held that employers take employees as they find them and that the "chain of events" principle does not apply solely to workers in pristine health. See, e.g., *St. Elizabeth's Hospital v. Industrial Commission,* 371 Ill.App.3d 882, 888 (2007) and S*chroeder v. Illinois Workers' Compensation Commission* , 2017 IL App (4th) 160192WC

Here, the Arbitrator finds that Petitioner sustained a work-related accidental injury that aggravated or accelerated the preexisting disease such that the Petitioner'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 pre-existing condition. The Arbitrator finds that the testimony of Dr. Bauer is more persuasive than the testimony of Dr. Deutsch. The Arbitrator concludes that Petitioner's current condition of ill-being is related to his September 20, 2021 work injury.

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

Section 8(a) of the Act states, in relevant part: "The employer shall provide and pay 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." 820 ILCS 305/8(a) (West 2002).

The Arbitrator finds that all of the treatment that was rendered to Petitioner was reasonable and necessary in accordance with those opinions of both Dr. Bauer and Dr. Deutsch's. Moreover, it appears that Respondent's dispute was not on reasonableness nor of necessity of the treatment, but rather was on liability.

Petitioner has an outstanding balance of $6,047.00 with Athletico Physical Therapy. (PX 5). The Arbitrator finds that Respondent is liable for the medical bills pursuant to Section 8(a) of the Act.

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:

Temporary total disability (TTD) compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation shall be paid as long as the total temporary incapacity lasts,' which [Illinois courts have] interpreted to mean that an employee is temporarily totally incapacitated 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." *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010). A claimant reaches maximum medical improvement when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004).

Petitioner testified that following the September 15, 2021 work injury, he did not return to work. He had not returned to work as of the date of trial. No evidence was introduced that Petitioner was offered light duty work. Petitioner alleged entitlement to TTD from September 16, 2021 through April 26. 2024. Respondent disputed the time period alleged and claims that Petitioner was not entitled to TTD after June 13, 2022, the date Dr. Deutsch's examination (Arb X 1, p.2)

Dr. Bauer noted that there were further treatment options available for Petitioner. Specifically, Dr. Bauer testified:

> A. There was potential further treatment, I just didn't have a sense of -- So there was potential for the treatment. He had pain and there were further treatment options that had to do with trying to figure out where his pain was coming from. That would depend on what kind of response he would have from the injections that I referred him for and so that's where I ended with him.

(PX4, P. 29). Dr. Deutsch also thought that Petitioner had not reached maximum medical improvement and that pain management was appropriate to attempt to further improve Petitioner's condition: Dr. Deutsch's dispute was on causation, not need for treatment.

> Q. Okay. And is it your opinion that at that point in time Mr. Sullivan was at MMI or as good as he was going to get from a medical perspective as it relates to the lumbar spine at least?
>
> A. Not necessarily. I thought that I guess injections were planned. I thought that was reasonable.

(RX1, P. 43).

The Arbitrator finds based on the evidence that Petitioner's condition had not stabilized and had not reached maximum medical improvement as date of hearing. Petitioner still awaits authorization for pain management.

The Arbitrator finds that Respondent is liable for temporary total disability benefits from September 16, 2021 to April 26, 2024, totaling 136 and 2/7th weeks. Respondent is entitled to credit in the amount of $53,432.90 for TTD benefits previously paid.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that a petition for penalties and attorney's fees was not filed in this case. This issue was raised by Petitioner's counsel in the Request for Hearing form (Arb. Ex. 1). Respondent addressed the claim for penalties and fees in its Response (RX 14).

As noted in the analysis above, this matter involves a complicated medical picture, with significant pre-accident treatment, pre-accident diagnostic testing, and pre-accident surgical recommendations. Based on the medical evidence and Petitioner's testimony at trial, the Arbitrator hereby denies Petitioner's claim for penalties under both Section 19(k) and 19(l) of the Illinois Workers' Compensation Act, as well as the claim for attorney's fees under Section 16. Frankly, this case was well presented professionally by Respondent's attorney who made an excellent case for Respondent under the facts and circumstances. However, the preponderance of the evidence as applied to applicable law supported an award in favor of the Petitioner.

WITH RESPECT TO ISSUE (O), WHETHER PETITIONER IS ENTITELD TO PROSPECTIVE MEDICAL TREATMENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner is entitled to prospective pain management medical treatment, including therapeutic and diagnostic injections recommended by Dr. Bauer and which Dr. Bauer and Dr. Deutsch agreed was reasonable and necessary. Providing benefits sufficient to return injured workers to the work force is one of the primary purposes of the Act. The Petitioner deserves a chance to obtain pain relief, return to work and resume being a taxpayer.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC016715
Case Name	Amelia Ocampo v. Elite Staffing/Pactiv
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0176
Number of Pages of Decision	3
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	Marc Cairo

DATE FILED: 4/23/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Amelia Ocampo,

Petitioner,

vs. NO: 13 WC 016715

Elite Staffing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of denial of the Motion to Reinstate and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 26, 2024 is hereby affirmed and adopted.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 23, 2025

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

STATE OF ILLINOIS)
)
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
DECISION

Amelia Ocampo
Employee/Petitioner

v.

Elite Staffing
Employer/Respondent

Case # **13** WC **016715**

The ***petitioner*** filed a petition or motion for R**einstatement** on 2/28/24, and properly served all parties. The matter came before me on 6/11/24, at 9 am, in the city of Chicago. After hearing the parties' arguments and due deliberations, I hereby DENY the petition.

A record of the hearing ***was*** made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

History of cause was fully addressed by counsel for both parties and their thorough and forthright recitations on the record forcefully demonstrate Petitioner has entirely abandoned her interest in prosecuting this litigation and made herself unavailable to her lawyer.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Signature of arbitrator

June 26, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC016080
Case Name	Sean McCauslin v. Ascend Wellness
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0177
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 4/23/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sean McCauslin,

Petitioner,

vs. NO: 23 WC 016080

Ascend Wellness Holdings, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 6, 2024 is hereby affirmed and adopted.

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

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

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

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.

April 23, 2025
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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	23WC016080
Case Name	Sean McCauslin v. Ascend Wellness
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 5/6/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sean McCauslin
Employee/Petitioner

v.

Ascend Wellness Holdings, LLC
Employer/Respondent

Case # **23** WC **016080**

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 **March 28, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **05/31/2022**, 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 $**35,622.08**; the average weekly wage was $**685.04**.

On the date of accident, Petitioner was **51** 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 $**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 has failed to prove he suffered an accident on May 31, 2022, which arose out of and in his employment by Respondent.

Petitioner's right shoulder conditions is not causally-related to the accident of May 31, 2022.

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

Claim for compensation is therefore 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.

Edward Lee
Signature of Arbitrator

ICArbDec19(b) **May 6, 2024**

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b) ARBITRATION DECISION

SEAN MCCAUSLIN,
Employee/Petitioner,

v. Case # 23 WC 016080

ASCEND WELLNESS HOLDINGS, LLC,
Employer/Respondent.

FINDINGS OF FACT

Petitioner initially filed an Application for Adjustment of Claim alleging an injury to his right shoulder from repetitive trauma arising out of and in the course of his employment with Respondent for an accident/manifestation date of December 15, 2021. (Petitioner's Exhibit 1, "PX1"). Petitioner later filed an Amended Application for Adjustment of Claim, on November 13, 2023, revising the accident/manifestation date to May 31, 2022. (PX1).

The issues to be resolved in Case # 23WC016080 by this Hearing pursuant to Sections 19(b) and 8(a) of the Act are: whether Petitioner sustained a compensable accident under the Illinois Workers' Compensation Act; whether Petitioner's current condition of ill-being is causally-connected to the May 31, 2022 alleged accident; whether Respondent is liable for unpaid medical bills; whether Petitioner is entitled to temporary total disability benefits; and whether Petitioner needs any prospective medical treatment. (Arbitrator's Exhibit 1, "AX1").

Petitioner's Trial Testimony

Sean McCauslin ("Petitioner") is a 53-year-old who was employed by Ascend Wellness ("Respondent") on May 31, 2022, as a cultivation technician. (Trial Transcript at 7, "TT at 7"). He began working for Respondent on October 7, 2021. (TT at 44). In that role, his primary job duty

was marijuana plant defoliation. (TT at 8). At Respondent's facility, the plants sit on two set of racks. (TT at 8-9). He testified the first rack of plants begins two feet off the ground and reaches up to seven feet. He testified the second rack of plants begins seven feet off the ground and stretches up to almost nine feet up to the ceiling lights, and can reach up to 13 feet in some areas. (TT at 8-9; 54).

Petitioner's job duties as a cultivation technician required him to remove all leaves and stems from the plant skirt, or bottom two feet of the plant, by plucking or picking. (TT at 10). Sometimes, this can be accomplished by hand because, he explained, "a lot of time, you can actually put your finger on it and just snap down, kind of pop the leaf off" as it comes off very easily. (TT at 10). He also used lightweight "little garden shearers" to remove other non-effective growth on the plants. (TT at 10-11; 15). In addition, he sometimes performed cleaning duties, such as bleaching, scrubbing, vacuuming, and sweeping. (TT at 13). He carried bags of clippings and shucked the plants to remove buds off the stalks too, but his primary job was defoliation. (TT at 15; 24).

Petitioner testified he "continually" performed overhead work as a cultivation technician, or about 90 percent of the time. (TT at 12-13; 17). He disagreed with the written job duties/requirements (Respondent's Exhibit 5 "RX5) that indicated he only performed overhead work "occasionally." He testified he worked as a cultivation technician for seven months (from October 2021 through May 2022) before injuring himself, at which time he began working light duty for Respondent.

Petitioner denied right shoulder symptoms prior to December 2021. (TT at 42). On cross-examination, he conceded he did have some right shoulder/arm symptoms in July 2021 after he received a COVID-19 shot, but testified his arm only hurt for a month afterwards. (TT at 60).

Petitioner testified he began noticing right shoulder symptoms in December 2021 while cleaning at work. (TT at 25). Specifically, he testified he was using a ShopVac and injured his right shoulder, but continued working. (TT at 26). The following day, he testified he felt a pop in his right shoulder/arm after pulling on a hose, but continued working. (TT at 27). He did not

report either of these two incidents to his supervisor at Respondent because he "did not think it was serious." (TT at 28).

Petitioner continued working as a cultivation technician for the next several months and did not miss any time from work. (TT at 29). During this time, from December 2021 through May 2022, Petitioner testified his right shoulder was sore and painful and he had decreased range of motion. (TT at 30-31). He testified he also had difficulty performing everyday activities, like showering and shampooing as well. (TT at 58).

On April 25, 2022, Petitioner treated with Dr. David Coffey to follow-up on his "chronic active medical problems," and reported he was "still having problems" with his right shoulder. (PX3). He indicated his issues had been present for about one month. (PX3). No mention of the December 2021 incidents is noted. (PX3). An x-ray of the right shoulder showed a "high riding humeral head with moderate acromiohumeral narrowing, can be seen in setting of chronic rotator cuff tear," and mild GH joint arthritis. (PX3). On May 25, 2022, Dr. Coffey recommended he be seen by an orthopedic shoulder specialist. (PX3).

On May 31, 2022, Petitioner treated for right shoulder pain and weakness at Blessing. (PX2). He reported having symptoms for about one year that started shortly after his first COVID-19 vaccine. (PX2). He complained of weakness with overhead work, sharp constant pain, and swelling where he had the shot. (PX2). No mention of the December 2021 incidents is noted. (PX2). Prior x-rays of the right shoulder revealed a high-riding humeral head with moderate AC joint narrowing and mild GH joint arthritis. (PX2). An MRI of the shoulder was recommended to confirm a diagnosed rotator cuff tear, and surgery was discussed. (PX2).

On June 1, 2022, Petitioner filled out an accident report (TT at 33-34; PX5) indicating an incident date of December 15, 2021 for a right shoulder injury from "repetitive overhead reaching." (PX5). From this time until September 2023, he was worked light duty that Respondent "more than accommodated," according to Petitioner. (TT at 37).

On July 5, 2022, an MRI of the right shoulder revealed a massive, full-thickness tear of the supraspinatus and infraspinatus tendons with retractions and a tear of the subscapularis

fibers with background tendinosis as well as severe AC and GH joint arthritis. (PX2). The MRI indication was right shoulder pain since December 2021 and a popping sensation. (PX2).

On July 11, 2022, he followed up at Blessing and it was recommended he see Dr. Josue Acevedo for a surgical consultation in light of the MRI findings. (PX2). He was given light duty restrictions of no lifting, pushing, pulling more than 10 pounds. (PX2).

On July 22, 2022, he treated with Dr. Acevedo and reported right shoulder pain that began about eight months ago in December 2021. (PX2). He reported "there was not a traumatic injury that initiated these symptoms" and that it happened gradually. (PX2). Dr. Acevedo recommended an EMG/NCS of the right upper extremity. (PX2).

On September 28, 2022, Petitioner was examined by Dr. Nathan Mall pursuant to a Section 12 IME. (RX1). Petitioner described his job duties as having to work overhead for a prolonged period of time to trim marijuana leaves off plants. (RX1). Dr. Mall diagnosed right shoulder chronic rotator cuff tear with GH arthritis, which was a progressive and degenerative condition similar to osteoarthritis in other joints. (RX1). Dr. Mall opined the rotator cuff tearing had clearly been present for years to get to the point of this much atrophy and fatty infiltration seen on the MRI. (RX1).

Dr. Mall also opined his work activities performed overhead did not require a substantial amount of force or heavy lifting, so nothing about his work duties would have produced an aggravation or acceleration of his underlying condition. (RX1). Dr. Mall added that anything overhead would be problematic given the amount of weakness present with external rotation as well as chronic rotator cuff tearing on his superior cuff. (RX1). He believed it was only because of the severity of his shoulder condition that he experienced symptoms with his work activities rather than his job duties being of significant stress to produce symptoms in an otherwise normal or at least severe shoulder condition. (RX1). He placed him at MMI and released him full duty as a result of the alleged work injury/job duties. (RX1).

On February 15, 2023, he returned to Dr. Coffey reporting right shoulder pain that was somewhat improved. (PX3). He was continued on light duty restrictions. (PX2).

On April 7, 2023, he returned to Dr. Acevedo who reviewed the EMG/NCS to show incidental right carpal tunnel syndrome. (PX2). He reported an injury at work on "12/2022" when he was on a ladder and developed right shoulder pain. (PX2). The next day, he felt a pop in his right shoulder. (PX2). He denied there were any significant issues with his right shoulder before the injury, but conceded to having "light, tolerable pain" in the right shoulder before the work injury. (PX2).

Dr. Acevedo noted "he has a massive rotator cuff tear that is causing his symptoms currently. He does have chronic changes in the shoulder that have resulted in right rotator cuff tear arthropathy. It is difficult to decide if this injury at work worsened a previous rotator cuff tear." (PX2). But given he had no prior symptoms, he believed it was reasonable that the work injury in December was the inciting event for his shoulder condition. (PX2). Dr. Acevedo recommended a reverse total shoulder replacement. (PX2).

On June 12, 2023, he treated with Dr. Darr Leutz and reported right shoulder pain for the past 1.5 years. (PX2). He described an injury in 2021 when he was lifting a ShopVac and felt pain in his shoulder and, the next day, when he was pulling on a hose and felt a ripping and popping sensation. (PX2). Based on this history, Dr. Leutz believed the December 2021 work injuries directly caused his current right shoulder problems and recommended surgery. (PX2).

On August 7, 2023, he was seen at Blessing Health System and continued on light duty restrictions and recommended "avoiding aggravating activities and allowed time for breaks when symptomatic/painful episodes occur." (PX3).

On September 7, 2023, Petitioner was terminated by Respondent for attendance violations. (TT at 39). He understood he was terminated for "taking too long of lunch breaks off the clock," but testified he provided Respondent with a doctor's note for this. (TT at 47-48). He was aware of Respondent's attendance policy and ramifications of showing up late for work. (TT at 48). He testified he was never given any verbal warnings or write-ups for his attendance issues and claimed Respondent even told him he could take extended lunch breaks. (TT at 50). He denied telling anyone at Respondent he was routinely showing up late to purposefully get fired. (TT at 53).

Theresa Christison's Trial Testimony

Theresa Christison testified on behalf of Respondent. (TT at 68). She has worked as a fulfillment transport manager for Respondent for the past five years. (TT at 69). Before this, she previously worked in the cultivation department from 2019 through June 2021 and was aware of Petitioner's job duties as a cultivation technician. (TT at 70; 72).

Ms. Christison disagreed with Petitioner's testimony that 90 percent of his job duties were performed overhead because of the positioning of the plants. (TT at 71). She explained that the first rack of plants does not go above chest level and the second rack of plants does not go above chest level when on a ladder. (TT at 71). She maintained the only plants that go above six feet are the mother plants, which are not located on either of the racks where Petitioner worked. (TT at 76). She clarified that, as a cultivation technician, you are not touching the tops of the plants either. (TT at 77).

Ms. Christison testified "you don't have to lift your hands above your head" to perform your job duties as a cultivation technician. (TT at 72). She maintained the only reason Petitioner's hands would be overhead is to get supplies off a shelf and testified "there's really no aspect of the job why your hands are above your head at a lengthy period of time." (TT at 72).

Ms. Christison explained "there is no way -- if the tables that he was working on the lower level is -- I mean it's even smaller than this table (indicating). The next level, if he was holding his hands above that, he could not touch the plants. So, there is no reasoning whatsoever for him to be repetitively having his hands above his head if he was taking care of the plants." (TT at 76). She confirmed the written job description (RX5) was accurate, which indicated overhead activity was only "occasional" and not "continuous." (TT at 73).

Ms. Christison confirmed Petitioner was terminated because of his lengthy lunch breaks, and other breaks, and that he was aware doing this was against company policy. (TT at 73). In fact, Respondent notified Petitioner continuously about his attendance issues. (TT at 74). But Petitioner replied he had a doctor's note allowing him to take extended breaks, which she was

never provided, and indicated he said sometimes he would fall asleep in his car on break, causing him to take unauthorized extended breaks. (TT at 74).

Westin Richards' Trial Testimony

Westin Richards testified on behalf of Respondent. He works as fulfilment lead for Respondent and was Petitioner's boss in the fulfillment department prior to his termination in September 2023. (TT at 79). He confirmed Petitioner was terminated for continuous attendance issues. (TT at 81). He testified Petitioner told him and a group of co-employees that "[his lawyer] told him it was better to get fired than to quit" at the time he was taking extended lunch breaks. (TT at 81). He confirmed Petitioner was aware of Respondent's attendance policy and the number of minutes he was allotted for breaks. (TT at 82). He was never provided with a doctor's note allowing him to take extended breaks. (TT at 83).

Dr. Darr Leutz's Deposition Testimony

Dr. Leutz testified by way of virtual deposition on October 25, 2023. He saw Petitioner on one occasion, on June 12, 2023, for right shoulder pain. (PX4). Petitioner reported to him he was lifting a ShopVac on a ladder in December 2021 and felt some right shoulder pain, and then he was pulling a hose at work and felt severe right shoulder pain and a ripping sensation. (PX4 at 15). He reviewed the MRI to show a massive rotator cuff tear and recommended a rotator cuff repair instead of a reverse total shoulder replacement at that time. (PX4 at 18).

Dr. Leutz testified some of the MRI findings would predate December 2021 and conceded that even all of the MRI findings could predate December 2021. (PX4 at 20; 25). He testified the treatment records from May 31, 2022, would indicate he had right shoulder pain and weakness since May or June of 2021. (PX4 at 29). He further agreed with Dr. Acevedo's note indicating Petitioner has "chronic changes in the shoulder that have resulted in right rotator cuff arthropathy." (PX4 at 31).

When asked what Petitioner's job duties were, Dr. Leutz testified "I believe he does like labor work on yards; is that true? I'm assuming . . . I know he's pulling hoses, so I knew he was doing that much." (PX4 at 15). When asked if he asked Petitioner about the specifics of his job

duties, he replied "that was something I just didn't understand exactly what every detail of his work involved. I knew he pulled on garden hoses, but I assumed that was in the yard." (PX4 at 24). He denied reviewing a formal job description of Petitioner's job duties. (PX4 at 23). He denied knowing how often he performed overhead work. (PX4 at 24). He denied knowing how much weight or how often he lifted at work. (PX4 at 24). He denied knowing how often he performed his work activities entirely. (PX4 at 25).

Dr. Leutz testified that Petitioner's December 2021 incidents would be consistent with causing his right shoulder condition. (PX4 at 19). He also testified Petitioner's alleged job duties of working overhead for "prolonged periods of time" could aggravate or accelerate his right shoulder condition. (PX4 at 21).

Dr. Nathan Mall's Deposition Testimony

Dr. Mall testified by way of virtual deposition on November 13, 2023. He testified IMEs make up just about one percent of his practice. (RX1 at 5). He testified Petitioner did not mention any specific, acute accidents during his examination, but instead, he reported having a gradual onset of right shoulder pain beginning around December 15, 2021. (RX1 at 8).

Dr. Mall reviewed x-rays to show degenerative findings. (RX1 at 9). The MRI findings were also indicative of a chronic rotator cuff tear instead of an acute rotator cuff tear. (RX1 at 11). He testified Petitioner's rotator cuff tear was not acute-on-chronic either because the MRI did not reveal any tearing in that acute-type pattern. (RX1 at 13).

Dr. Mall asked Petitioner specifics about his job duties for Respondent, including overhead work to trim leaves off marijuana plants. (RX1 at 9). Based on the detailed history from Petitioner, Dr. Mall testified his job duties did not produce enough force to aggravate an underlying condition. (RX1 at 13). He did not feel the type of work Petitioner performed was a substantial trauma to the shoulder to put a lot of force through the rotator cuff or significantly damage or accelerate the underlying condition or problem that was already present. (RX1 at 13-14).

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?

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).

It is axiomatic that in order to be entitled to benefits under the Act, a claimant must prove, by a preponderance of the evidence, all elements necessary to justify an award. *Quality Wood Products Corp. v. Industrial Comm'n*, 97 Ill.2d 417, 423 (1983). This includes establishing that he or she experienced an injury arising out of and occurring in the course of employment.

Orsini v. Industrial Comm'n, 117 Ill.2d 38, 44 (1987). In the context of an acute-trauma injury, a claimant must show that an injury is traceable to a definite time, place, and cause. *Majercin v. Industrial Comm'n*, 167 Ill.App.3d 894, 900 (1988). Conversely, in the case of a repetitive trauma injury, a claimant must identify the date on which the injury manifested itself. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 191 (1988). An injury manifests itself when it and its relationship to employment become plainly apparent to a reasonable person. *White v. Illinois Workers' Compensation Comm'n*, 374 Ill.App.3d 907, 910 (2007).

Here, the Arbitrator finds that Petitioner failed to prove he sustained an accident that arose out of and in the course of his employment by Respondent on May 31, 2022. The Arbitrator finds Petitioner did not carry the burden of proving a compensable accident or a compensable repetitive-trauma injury, as required by the Act. The Arbitrator further finds Petitioner is not a reliable witness, and that Ms. Christison and Dr. Mall are more reliable witnesses and their testimonies are most credible.

Petitioner's testimony that he began noticing right shoulder pain after two acute events while cleaning at work in December 2021 is unreliable. He testified he felt right shoulder pain using a ShopVac and, the following day, felt a pop in his right shoulder pulling on a hose. But he continued working both of those days as well as five months thereafter performing his full job duties as a cultivation technician. He did not report either of these two alleged events to Respondent. (TT at 28). On April 25, 2022, he did not mention either of these two alleged events to Dr. Coffey and, instead, indicated his right shoulder pain had been present for about one month. (PX3). On May 25, 2022, he did not mention either of these two alleged events to Dr. Coffey. (PX3). On May 31, 2022, did not mention either of these two alleged events to Dr. Coffey, but instead, reported that his right shoulder pain began after receiving a COVID-19 shot in July 2021. (PX2). On July 22, 2022, he reported "there was not a traumatic injury that initiated [his right shoulder] symptoms" and that it happened gradually since December 2021 to Dr. Acevedo. (PX2). He did not mention the December 2021 events to Dr. Mall during his IME on September 28, 2022, either, and only that he began having a gradual onset of right shoulder pain around December 15, 2021. (RX1 at 8).

Petitioner's testimony that he did not have prior right shoulder symptoms before December 2021 is also unreliable. On cross-examination, he testified he did have right shoulder and arm symptoms in July 2021 after a COVID-19 shot. (TT at 60). Dr. Coffey's medical records from April 25, 2022, indicate he was being seen for "chronic" problems, and he reported he was "still having problems" with his right shoulder. (PX3). Blessing medical records from May 31, 2022, indicate he reported having right shoulder symptoms "for about one year" starting after his COVID-19 injection in July 2021. (PX2).

Petitioner's testimony that he performed overhead worked "continually" and it made up about "90 percent" of his job duties as a cultivation technician is unreliable. Ms. Christison, who worked in the cultivation department for 1.5 years for Respondent, testified more credibly that the positioning of the plants would not require Petitioner to reach overhead at all. (TT at 71). The first rack of plants do not grow above chest level, and the second rack of plants do not grow above chest level when on a ladder. (TT at 71). Additionally, cultivation technicians do not even touch the tops of the plants. (TT at 77). She explained, "there's really no aspect of the job [as a cultivation technician] why your hands are above your head at a lengthy period of time" and the only reason Petitioner would reach overhead is to grab supplies off a shelf. (TT at 72). Petitioner's written job description as a cultivation technician indicates overhead work is only "occasional" and not continuous, which she agreed was accurate and more representative of Petitioner's job duties. (RX5; TT at 73).

Moreover, Dr. Leutz's opinion that Petitioner's condition of ill-being was causally-connected to his December 2021 events and/or his work duties is flawed. Dr. Luetz did not have a clear understanding of Petitioner's job duties as a cultivating technician, of which his medical-legal opinion is based. When asked what Petitioner's job duties were, he replied "I believe he does like labor work on yards; is that true? I'm assuming . . . I know he's pulling on hoses, so I knew he was doing that much." (PX4 at 15). When asked whether he knew about Petitioner's specific job duties, he replied "that was something I just didn't understand exactly what every detail of his work involved." (PX4 at 24). He did not review a formal job description (PX4 at 23); he did not know how often he performed overhead work (PX4 at 24); he did not know how

often he lifted anything at work (PX4 at 24); and he did not know how often he performed any of his work activities as a cultivation technician. (PX4 at 25).

Conversely, Dr. Mall's opinion that Petitioner's condition of ill-being is chronic and degenerative, and that his work duties did not produce enough substantial force to cause, aggravate, or accelerate an underlying condition is most credible. Dr. Mall diagnosed a right shoulder chronic rotator cuff tear with GH arthritis, which is a condition similar to osteoarthritis in other joints. (RX1). Dr. Mall opined the rotator cuff tearing had clearly been present for years to get to the point of this much atrophy and fatty infiltration seen on the MRI. (RX1). He further testified the rotator cuff tear was neither acute nor acute-on-chronic because the MRI did not reveal any tearing suggestive of that pattern. (RX1 at 13).

Dr. Mall testified Petitioner's work activities as a cultivation technician – even if performed overhead – did not require a substantial amount of force, so nothing about his work duties would have caused or aggravated an underlying condition (*e.g.,* a chronic rotator cuff tear). (RX1). In fact, anything overhead would have produced some amount of pain in the right shoulder, given the amount of weakness present with external rotation and the chronic rotator cuff tearing on the superior cuff. (RX1).

Based on the above evidence, the Arbitrator finds Petitioner failed to prove he sustained accidental injuries that arose out of and in the course of employment by Respondent. The Arbitrator further finds Petitioner's current condition of ill-being is not causally-connected to his employment by Respondent.

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?

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

Given the Arbitrator's findings of no accident and no causal relationship, all other issues are rendered moot.

Edward Lee_____ DATED: May 6, 2024

Arbitrator Edward Lee

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC026109
Case Name	Brian Purcell v. Walmart
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0178
Number of Pages of Decision	26
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Richard Turner
Respondent Attorney	Matthew Rokusek

DATE FILED: 4/23/2025

/s/Deborah Simpson,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

Brian Purcell,
Petitioner,

vs. NO: 14 WC 26109

Walmart,
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 permanent disability and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 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 pay the petitioner the sum of $502.90/week for life, commencing May 28, 2024, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of the petitioner.

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

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

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

April 23, 2025

o: 4/9/25
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	14WC026109
Case Name	Brian Purcell v. Walmart
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Richard Turner
Respondent Attorney	Matthew Rokusek

DATE FILED: 6/27/2024

/s/ Paul Seal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

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

BRIAN PURCELL
Employee/Petitioner

v.

WALMART
Employer/Respondent

Case # **14WC026109**

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 **Geneva, IL**, on **May 28, 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 **July 19, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$13,523.64**; the average weekly wage was **$260.07**.

On the date of accident, Petitioner was **24** years of age, 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 **$68,265.74** for TTD, **$174.79** for TPD, **$0.00** for maintenance, and **$3,960.00 (statutory PPD)** for other benefits, for a total credit of **$72,400.53**.

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

ORDER

Respondent shall be given a credit of $68,265.74 for TTD, $174.79 for TPD, and $3,960.00 in statutory PPD, for a total credit of $72,400.53.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,436.00 to OSF St. Anthony Medical Center, $1,945.00 to Perryville Surgical Assoc., $2,075.00 to Dr. N. Hanif, $775.00 to Illinois Pathologists, $249.00 to OSF Medical Group, $131.88 to Rockford Anesthesiologist, $930.00 to Rozman Institute, $1,158.00 to Prairie Eyecare, $425.00 to NIU Speech Clinic, $38.10 to OSF Lifeline, and $410.00 to Centennial Counseling; and shall reimburse the Petitioner the sum of $185.00 for out of pocket medical; and pay or otherwise resolve the liens to Medicaid Meridian of $5,434.50 and Medicaid Molina of $897.17 as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner maintenance/temporary total disability benefits of $220.00/week for 80.14 weeks, commencing 11/15/2022 through 5/28/2024, for a total of $17,630.80 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of $502.90/week for life, commencing 5/28/2024, as provided in Section 8(f) of the Act.

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

Penalties and fees are 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

June 27, 2024

FINDINGS OF FACTS

The central issue presented at arbitration in this case is whether the Petitioner is permanently totally disabled for purposes of Section 8(f) of the Act, which requires a showing of "complete disability which renders the employee wholly and permanently incapable of work". 820 ILCS 305/8(f). The most frequently litigated type of case under this section of the statute is that of "odd lot" permanent total disability, and the Petitioner's case is examined under the applicable law promulgated in the development of that doctrine. Professor Larson encapsulates the odd lot concept in his treatise:

> Under the odd-lot doctrine, which is accepted in virtually every jurisdiction, total disability may be found in the case of workers who, while not altogether incapacitated for work, are so handicapped that they will not be employed regularly in any well-known branch of the labor market. The essence of the test is the probable dependability with which claimant can sell his services in a competitive labor market, undistorted by such factors as business booms, simply of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his grips and handicaps.
>
> 2A Larson, Workers' Compensation Sec. 57.4 (1996).

Illinois has adopted the odd lot doctrine, beginning with the case of *E.R. Moore Co. v. Industrial Comm'n*, 71 Ill. 2d 353, 376 N.E. 2d 206 (1978), and continuing with the cases in *A.M.T.C. of Illinois, Inc. v. Industrial Comm'n*, 77 Ill. 2d 482, 397 N.E. 2d 804 (1979), and *Valley Mould & Iron Co. v. Industrial Comm'n*, 84 Ill. 2d 538, 419 N.E. 2d 1159 (1981). The central question here is whether a young man who sustained a significant injury to his head with damage to the frontal lobes and his executive function, followed by repeated attempts subsequent to his injury through surgical procedures to address his injuries in order to attempt to facilitate a return to return to work on a sustained basis, unsuccessfully in the end, should be considered permanently totally disabled under this odd lot theory. For the reasons set out below, the Arbitrator finds that Brian Purcell does fall within the odd lot category of permanent total disability.

The Injuries and the Medical Treatment and Return to Work Efforts

Brian Purcell testified that on July 19, 2014, he was working for Walmart as a 'tire tech' and was still within his 90-day probationary period. His duties were to change tires, rotate tires, stock tires and do oil changes. He had no prior experience in either a tire center or auto repair center, in that his past employment experience consisted only of a position as a delivery driver for a local restaurant in Sycamore, Illinois. He had previously attended high school in Michigan, completing the ninth grade, but had no other formal education or training. At the time of his injury in July of 2014, he was attempting to complete his GED, but had not yet done so. (Tr.22-23, 24-25).

On the above date, as he was changing a tire on a tire mount, the tire exploded up into his face and head, lifting him several feet off the ground. The incident is visible in the surveillance video admitted as PX 44. The claimant has no recollection of anything that happened in the Walmart tire shop that day after clocking in; and his first conscious memory after the incident was waking up at OSF St. Anthony Hospital in Rockford, Illinois. (Tr.24).

On arrival at the ER at Kishwaukee Community Hospital, the Petitioner was noted to have markedly comminuted and displaced fractures of the frontal bones in his skull and nasal bones with fragments extending into his frontal lobes; with displacement of the frontal lobes of his brain as well as significant hemorrhage and displaced fractures through the right temporal and parietal bones extending into mastoid air cells with fluid in the right mastoid and middle ear. He had displaced fractures of the left maxillary sinus extending into the anterior aspect of the left orbital floor. Because of the significant injury to his head and brain a transfer to the trauma center at St. Anthony Hospital in Rockford was arranged. (PX 1, pp. 30-34).

At St. Anthony Medical Center, in addition to the multiple facial fractures, depressed frontal bone fracture and intracerebral hemorrhages, the Petitioner was noted to have fractures to the left 4th and 5th metacarpal bones in the left hand. (PX 2, p. 216). The initial surgery was a bifrontal craniotomy for the depressed skull fracture on July 19th. (PX 2, p.202). On July 21, 2014, while still at St. Anthony, a second surgical procedure was performed involving debridement and a complex closure of the facial lacerations. (PX 2, pp. 182-183). On July 25, 2014, the treating orthopedic surgeon performed a closed reduction and percutaneous skeletal

fixation of the metacarpal fractures in the left hand. (PX 2, p. 142). In an ophthalmology consult on July 31, 2014, Brian was noted to have double vision from a vertical standpoint with monocular diplopia, likely the result of the trauma. (PX 2, pp. 124-125). He was discharged from St. Anthony with transfer for inpatient rehabilitation to the Van Matre Rehabilitation Center on that same date.

He was assessed at the rehabilitation center with impaired gait and balance deficits as well as visual perception deficits. (PX 9, p. 533). In addition to physical therapy and occupational therapy, speech therapy was afforded to Brian because of mild speech deficits. While in the rehabilitation center, he was noted to have mildly decreased memory in addition to his balance and endurance deficits. (PX 9, pp. 168-170). A plastic surgeon noted, on August 4, 2014, that he had upper eyelid ptosis, which the doctor felt was related to diplopia and recommended a return to ophthalmology. (PX 4, p. 10).

Brian returned to see Dr. Alexander, the neurosurgeon, on August 6, 2014, where the neurosurgeon noted double vision in the left eye and an inability to hear out of the right ear. (PX 6, p.33). The petitioner was discharged from Van Matre Rehabilitation Center the following day where he was noted to demonstrate good balance with ambulation transfers but mild difficulty with high level balance transfers. (PX 9, p. 494).

The Petitioner has some limited recollection of his time at St. Anthony Medical Center, primarily of being in the ICU most of the time. He does recall his time in the rehabilitation center for “a couple of months”, where they assisted him in focusing on balancing and walking, before he was discharged to home health care. (Tr., pp. 28-29). He has no recollection of what the home health care providers did for him other than an insertion of a PICC line to administer antibiotics. He was back in the ER as a result of infection and the development of cellulitis, with swelling and persistent fluid collection. (PX 2, pp.276-281). He was treated with an infectious disease protocol to address cellulitis. (PX 2, pp.264-267).

After more MRI scans and further home health care, Brian Purcell established care with Dr. Syed Zaidi for primary care follow up on September 15, 2014. (PX 10, p.75).

The medical records in this case, which are voluminous and fill the major part of three bank storage boxes, were summarized in a medical summary prepared by Petitioner’s counsel in accordance with Rule 1006 of the Illinois Rules of Evidence and admitted as PX 41. The

originals of the treatment records were admitted as part of the numerous exhibits admitted at trial. As indicated in the records and the summary, PX 41, Petitioner continued to treat for the after-effects of his injury for more than a year, in neurosurgical consults and ER visits for ongoing incidents of cellulitis/redness and swelling in the front of the brain, ophthalmology and optometry visits for the diplopia and visual disturbance, and headaches. He was diagnosed with pneumocephalus in the brain area. A bifrontal craniotomy to repair an anterior cranial fossa defect and cerebrospinal leak with insertion of an external ventricular drain and a bone graft insert was performed by Dr. Alexander at St. Anthony Medical Center on November 12, 2014. (PX 2, p.500).

Recurrent cellulitis with pneumocephalus developed following the surgery on November 12, 2014. More antibiotics were administered. A admission to Van Matre Rehabilitation Center is noted. Following a visit with Dr. Zaidi on December 29, 2014, where the doctor noted concerns about the patient's mood and suggested seeing a psychiatrist, though he wanted to return to work, a mental health assessment was done at a local counseling center, Ben Gordon Mental Health Center. (PX 10, p.143; PX 17, p.42). Dr. Alexander determined to allow Brian to return to work full duty in a letter addressed to Dr. Zaidi on January 22, 2015. (PX 6, p.69).

Brian testified that, for a period, he returned to Walmart as a stocker, with duties including stocking and rotating shelves, as well as helping customers on the floor. He remained in this position until June of 2015. He testified that he "kept getting written up" for wearing a hat because he was in and out of the cooler, and he eventually quit. (Tr.30-31). Following that he helped a friend run dogs across the country to kennels for approximately two weeks, then worked for a couple of months changing tires at Lovell Tires in DeKalb, prior to another reoccurrence of his facial cellulitis. (Tr.32-33). He describes the symptoms as his face swelling up "to pumpkin size" and turning black and purple, with sensitivity to touch. (Tr.33). He was re-hospitalized at St. Anthony and treated with antibiotics for several months. The records reflect returns to the ER at St. Anthony for facial cellulitis with inflammation and swelling noted on MRI and a re-setting of another PICC line for antibiotic therapy. (PX 2, pp.641-691).

In an office visit on October 22, 2015, Dr. Zaidi diagnosed Brian Purcell with intractable chronic proximal hemicrania, bifrontal encephalomalacia, and optic neuropathy; and referred him to neurology. (PX 10, p.176). Dr. J. Collins at the Illinois Neurological Institute diagnosed

him with post-traumatic encephalopathy with encephalomalacia in the bifrontal lobes as a result of a "serious blow to the head". He started Brian on Topamax. (PX 19, p.24).

On November 18, 2015, Brian was diagnosed at the NIU Speech-Language-Hearing Clinic with bilateral hearing loss consistent with trauma from the exploding tire and fitted for hearing aids. (PX 18, pp.2-3). On January 8, 2016, Dr. Zaidi determined to refer the Petitioner to Northwestern Medicine for facial cellulitis due to the metal plate in his forehead. The doctor noted that the patient would need surgery to replace the metal plate due to bacterial growth. (PX 10, p.224). Brian recalled that it was Dr. Alexander who eventually determined to refer him to Dr. Marco Ellis at Northwestern University Medical Center. (Tr.33-34). In his note of January 19, 2016, Dr. Alexander relates that the patient has a scheduled appointment at Northwestern, which he thought was reasonable. (PX 2, p.913). The first appointment with Dr. Ellis at Northwestern was on May 3, 2016. Dr. Ellis notes in this visit that this patient will need revision cranialization and cranioplasty revision. (PX 21, p.28).

On July 12, 2016, Dr. Ellis, assisted by Dr. Chandler, performed a complex brain surgery at Northwestern Memorial consisting of reconstruction of the forehead superior orbital rims and orbital roof with the use of an alloplastic implant, first doing a craniectomy of the prior cranioplasty and removal of the existing deep hardware. (PX 23, p. 187-189).

Dr. Natalya Romaniv of Brightbill-Ericson Eye Associates authored a report on July 5, 2016, admitted as PX 28, in which she indicated that Brian had extraocular pain, double vision and ptosis of the left upper eyelid, decreased vision in the right eye and astigmatism, myopia and refractive error. These had been corrected with glasses. The injuries likely caused temporary drooping of the left eyelid, now resolved, and abnormal vision and pupillary reaction in the right eye, which is now resolved. He is at future risk of ocular problems developing, such as glaucoma, premature cataract formation and retinal tears and detachment due to blunt trauma to the eye. (PX 28).

The Petitioner began consultation and treatment on referral from Dr. Zaidi with a psychiatrist at Mathers Clinic, Dr. Jose Montes, on May 18, 2017, who diagnosed him with post-traumatic stress syndrome. The doctor started Brian on Pexeva and Klonopin. (PX 22, pp.47-53). Brian continued to treat with Dr. Montes and Dr. Zaidi for several years and engaged in psychological therapy sessions locally at the Ben Gordon Mental Health Center in DeKalb,

working on controlling anger, aggression and other symptoms from his head injury. The doctors continued to recommend that Brian not attempt to return to work during these periods due to the effects of his injury. The records of the doctors in this period are summarized in PX 41. The records of Ben Gordon Center were admitted as PX 17.

On March 22, 2019, Dr. Ellis saw Brian on a repeat visit at Northwestern because of recurring symptoms of swelling and infection resulting in two emergency room visits. The doctor related this to the mobility of his cranioplasty implant and indicated the patient would need surgical revision. (PX 32, p.689). On April 16, 2019, Dr. Ellis performed a sinusotomy with obliteration of the frontal sinus, and removal of the deep buried cranioplasty hardware, with a free flap reconstruction of the anterior skull base. (PX 32, pp. 354-356). On June 24, 2019, Dr. Ellis issued a 'to whom it may concern' letter, admitted as PX 33, in which he indicated that in the surgery two months prior "unfortunately…we had to remove previous cranioplasty hardware and screws leaving an area without bone/hardware to protect the brain…Mr. Purcell is permanently disabled and not cleared to return to work."

At trial, Petitioner testified that he had no further surgeries to his brain or skull. He is not contemplating any further surgical procedures. The Arbitrator observed the scarring at arbitration as extending from one ear to the other across the top of the forehead along the hairline and approximately a half inch wide. The scar length is approximately 12 inches. (Tr.37-38). Petitioner brought to the arbitration hearing a protective mask which Dr. Ellis prescribed, which the Arbitrator observed as a clear plastic full-size mask which covers the face with eye openings. (Tr.39-40).

Despite the concerns expressed by his treating medical providers as to his ability to return to work, noted in the records of treatment summarized in PX 41, Petitioner did return to work at Mavis Tires, using the mask that had been prescribed, working there for almost a year, until November 14, 2022, as a 'tire tech' and 'oil tech'. In that period of employment, he testified at arbitration that he needed to seek counseling because he started going into "fits of rages". His employer wanted a note as to his return-to-work status and although he provided a note, "it wasn't the proper note they wanted". He voluntarily left Mavis Tires and has not worked since. (Tr.40-42). During this time, Brian had been seeing John Deku, MS, LCPC, at Centennial Counseling Center. The counseling records were admitted as PX 39. A home invasion in

November of 2022 triggered symptoms of what Dr. Deku described as severe stress in a note of December 1, 2022. (PX 39, 67). The note that Brian attempted to get for Mavis Tires in an attempt to return to employment was from John Deku, but apparently it was not what human resources wanted so Brian testified that he got mad and told them that he quit. (Tr.58-59).

Brian wears glasses now and never had vision problems such as to need glasses before his injury. He wears hearing aids and never had hearing loss or difficulty prior to his injury. He still follows up with the hearing clinic and his eye doctors as necessary for updating eyewear or hearing aids. (Tr.43-44).

He has attempted to find work again since leaving Mavis and did obtain an interview at Bell Tire in Sycamore but was not hired. Brian produced a job search log printed from his Indeed account, admitted as PX 45. He has not been able to obtain employment since leaving Mavis, despite efforts to find work. (Tr.44-46). The job search log shows positions sought as oil or lube technicians, restaurant worker and dishwasher positions, among others. (PX 45).

The Petitioner testified that he does not socialize any longer and stays in the house all day now. He does not like crowds and angers easily. He plays video games all day and sleeps maybe three hours per day. He no longer takes medication but will return for counseling when he needs it to Centennial Counseling. He has not received temporary total disability or maintenance from November 15, 2022, to the date of arbitration. (Tr.48-50).

Brian's mother, Dianna Purcell, testified at arbitration that she lives with Brian in an apartment in DeKalb, after moving to Illinois from Michigan following Brian's injury in 2014. (Tr.67-68). She confirmed that he had completed the ninth grade and she had been assisting him in his attempt to complete his GED prior to his injury. (Tr.70). She describes him as very outgoing and a normal 24-year-old prior to his injury. He is now very stand-offish and has difficulty in engaging with other people as he would rather be by himself. He does not engage in any other activities other than video games. (Tr.71-72).

The Testimony of the Medical and Psychiatric Treaters and Experts

Dr. Syed Zaidi is and has been Brian's primary care physician following his brain injury. In his deposition taken on May 6, 2021, the doctor indicated that based on a psychological inventory assessment conducted in his office, he referred Brian for psychiatric assessment and counseling. (PX 35, pp.32-34). Because of a concern with respect to infection in the inserted plate in his brain, in that infection could sit on the plate despite the administration of antibiotics, a referral back to neurosurgery was recommended in early January of 2016. (PX 35, pp.48). It was the doctor's opinion that the swelling and infections in the brain and the chronic nasal and ENT conditions and symptoms were all directly related to the trauma from the exploding tire. (PX 35, pp.69-70). Referring to his letter in the chart addressed to the patient on June 7, 2019 (PX 10a, p.147) with respect to work status, Dr. Zaidi indicated at deposition that given the constellation of symptoms from his injury, including the recurrent swelling, headaches, inflammation, with accompanying surgeries, he opined in the letter that the Petitioner was not capable of returning to work. (PX 35, pp.76-77). As of December 9, 2020, he offered an opinion in his records that Brian was unable to keep any form of gainful employment, and at deposition the doctor agreed with the statement in his records (PX 10b, p.35) but would defer opinions with respect to the patient's mental competency to a psychiatrist, as far as Brian's PTSD and ability to function in society/employment. (PX 35, pp.84).

Dr. Marco Ellis, Petitioner's most recent treating neurosurgeon, testified at deposition that the surgery performed on July 12, 2016, was to remove the infected bone from Brian's head and remove the fixation hardware that had become loose or discharged as well as to reconstruct the sinus and the bone structures that were contributing to the draining sinus. The existing plate and screws were removed in this procedure. (PX 34, pp.13-15). One of the goals was to obliterate the sinus, or seal it off, as it is very difficult to repair the sinus. Once obliterated, the sinus is no longer functional. (PX 34, p.24). In the second surgery, Dr. Ellis attempted to repeat the obliteration, removing the implant that he had previously placed, leaving the patient with an unprotected area in the skull. (PX 34, pp.27-28). Following this, the surgeon has no further plans on any subsequent implant to protect the brain, given that the prior procedure usually provides some success and did not in this instance. With any further procedure, Brian would be

at high risk of disrupting the seal from the nose to the scalp and forehead. (PX 34, pp.32-33, 38-39). In a letter of June 24, 2019, admitted as PX 23, written at the request of the patient's mother, Dr. Ellis had indicated that Brian was permanently disabled and not cleared to return to work. He testified that the word "permanent" is better substituted with the word "indefinite", in that he was not eligible to work through the staged procedures. (PX 34, p.34). As of his final visit with Brian on December 11, 2019, Dr. Ellis would allow Brian to return to work with a protective helmet or face mask, in that Brian is at high risk with having a skull deformity. His prognosis was "guarded" inasmuch as the doctor is unable to predict future complications with respect to the sinus. (PX 34, pp.39-40). All of the conditions which he diagnosed and treated are related to the traumatic injury of July 19, 2014. (PX 34, p.41).

Dr. Jose Montes had been Brian's treating psychiatrist following his traumatic brain injury. His narrative report of November 30, 2017, was admitted as PX 27. The transcript of his deposition was admitted as PX 29. He first saw Brian as a patient on referral from Dr. Zaidi on May 18, 2017. (PX 29, p.12). His diagnosis based on the DSM V criteria was post-traumatic stress disorder, based on the following: near-death experience, nightmares/flashbacks, hypervigilant behavior, avoidance of activities that would bring on anxiety or flashbacks, and poor sleep and irritability. (PX 29, p.20). It is the doctor's opinion that Brian's PTSD arises from the injury he sustained on July 19, 2014. (PX 29, p. 24). From the frontal lobe damage, you can expect behavioral changes, and research suggests that usually there are behavioral changes when there is injury to the frontal lobe. Some of the anxiety and irritability could be due to the frontal lobe damage or to PTSD. (PX 29, p.25). Dr. Montes prescribed Pexeva, along with Klonopin, and recommended counseling at the Ben Gordon Center. (PX 29, pp.19-23). Brian could not return to work at that time due to the symptoms which would interfere with his ability to focus to the point of maintaining any type of gainful employment. (PX 29. Pp.23-24). The family stressors with his wife were likely due to his impulsive behavior, a result of his brain injury. The resulting impulsive behavior and irritability became worse over time. (PX 29, pp.35-36). Dr. Montes felt at the time of his deposition that Brian would likely need chronic treatment in the nature of therapy and psychiatric follow-up as well as medications for the rest of his life. (PX 29, pp.42-43). Dr. Montes testified that he does not think that Brian will ever be able to return to work, in that he will not get back to the point where he is going to be cognitively intact

enough to be able to function around other people or in any type of work environment. (PX 29, pp.54-55). The doctor testified that with frontal lobe damage, a patients' behavior can be unpredictable at times, and with PTSD dissociative episodes may occur where the patient may have a difficult time putting events in proper sequence or may exaggerate symptoms or conditions. He recalls Brian giving exaggerated responses. (PX 29, pp.51-52). He had recommended that Brian not attempt to find work because of his illness and that he would be "setting himself up for failure". (PX 29, p.59).

Dr. Stephen Dinwiddie is a forensic psychiatrist with the Northwestern Medicine Division of Forensic Psychiatry, who examined Brian on April 25, 2023, at the request of counsel for Petitioner and provided a forensic report admitted as PX 37. His deposition transcript was admitted as PX 40. Dr. Dinwiddie is the Director of the Division of Forensic Psychiatry at Northwestern. More than 75 per cent of the work he does in the forensic field is for the defense/employer in worker's compensation cases. (PX 40, pp.8-11). As a result of the trauma to his brain, Brian's sense of what types of behaviors are appropriate has been adversely affected. His emotional disinhibition or dysregulation matches up with the anatomical evidence of injury to the brain. The frontal lobe pathology matches up very well with the symptoms one would expect from the injury. (PX40, pp.35-36). The doctor describes this as a situation where "a significant chunk of wiring has simply been ripped out, is not there any longer" and describes 'frontal lobe syndrome' as being well recognized and well accepted in the field. (PX 40, pp.37-39). In his report, Dr. Dinwiddie indicates that the damage to the frontal lobes can manifest itself by disorders of movement, language difficulties, by emotional and behavioral problems, or by impairment in "executive function" – the ability to control attention or inhibit extraneous or inappropriate behaviors. (PX 37, p.16[15]). The damage to the ventral medial prefrontal cortex is evidenced in the lack of appropriate regulation of emotional response in Brian Purcell. (PX 40, pp.42-43). His difficulties in maintaining employment, and his anxiety and emotional reactivity, and outbursts of frustration and anger all result from the frontal lobe injuries. (PX 40, pp.45-46). With respect to prognosis, there are no psychotherapies and no anger management protocols that work to address these symptoms because "the circuitry just isn't there to support that". There are no medications that he would suggest employing, so unfortunately for this patient, "the odds of significant benefit are quite low". (PX 40, pp. 46-47). It is Dr. Dinwiddie's

opinion that Brian's ability to inhibit emotional responses and appropriately deal with feelings of frustration or anger has been affected because of his injury and renders him permanently unable to cope with the usual and customary stresses and demands of any work environment. (PX 40, pp.47-48). Because of his neuropsychiatric issues, normal and everyday stressors will take their toll and will ultimately lead to his failure in a job situation. (PX 40, p.64).

Steven Rothke, PhD., is a licensed clinical psychologist retained by Respondent to examine and provide reports concerning Brian Purcell. The transcript of his initial deposition on January 28, 2019, was admitted as RX 4. His supplemental deposition transcript of December 8, 2020, was admitted as RX 5. His examination report of August 15, 2023, was admitted as RX 6. Based on the history of injury to the brain and his aptitude testing, it was Dr. Rothke's opinion that Brian showed some reduced visual motor speed on some, but not all, of the testing that he administered. He showed below average attention and concentration on some tasks and low average on others but in his opinion these deficits were not related to the injury but to his longstanding history of attention deficit hyperactivity disorder. Brian displayed an adjustment disorder with mixed anxiety and depressed mood, which he described as a significant psychological reaction to a negative life event. The event could be a significant injury and may manifest itself either with anxiety or depression or both. He also noted that Brian displayed increased anger and irritability following his injury. (RX 4, pp.25-26). It was his opinion that there was no objective reason that the Petitioner could not work, in a general way, in looking at the full range of job prospects. (RX 4, p.42). After reviewing further treatment records, including psychiatric records of Dr. Montes, in formulating new opinions in a supplemental report, Dr. Rothke testified that it was still his opinion that the Petitioner should be able to return to employment, and that returning to work would be beneficial and provide him with the purpose, improving his self-esteem. (RX 4, pp.47-48). Interestingly, Dr. Rothke admitted on cross examination that in a prior case where he had diagnosed a patient with the same adjustment disorder as he diagnosed in Brian Purcell, superimposed on pre-existing bipolar disorder, he found that that patient was permanently disabled and unable to return to work. (RX 4, pp.54-55). He also admitted that damage to the prefrontal lobes is known to play an important role in executive functions and that damage to the frontal lobes has been associated with significant personality changes. (RX 4, p.56). He agreed that with a fourth grade reading level, lack of a

high school education, increased irritability and anxiety, Brian certainly could have difficulty in finding job placement. (RX 4, pp.72-73). The damaged tissue in the brain, including the damage to the frontal lobes from the injury, will not regenerate or repair itself. Some of the functions lost as a result of the physical damage to the brain and are permanent, regardless of medication management or psychiatric or psychological counseling. The impairments of the executive function that he found at the time of the second evaluation would likely be permanent. Those executive dysfunctions can include increased risk-taking behavior. These can have an impact on behavior as far as interacting with other people. (RX 4, pp.79-80). In his supplemental deposition, after performing an updated neuropsychological evaluation of Brian Purcell on October 7, 2020, he found that the Petitioner continued to perform in the low-end range for some memory and recall testing, and his ability to learn from experience remained in the impaired range along with abstract or conceptual reasoning. (RX 5, pp.20-21). From a psychological or neuropsychological perspective, the only work restrictions required for Brian would be to refrain from any job that might involve working on tires. (RX 5, pp.29-30). On cross examination, Dr. Rothke agreed that a traumatic brain injury to the frontal lobes, such as Brian experienced, could exacerbate psychiatric conditions and impair executive function, causing increased risk-taking behavior because of reduced self-awareness and self-assessment. (RX 5, pp.41-42). The brain injury to Brian Purcell puts him at increased risk for danger, whether responding to a dangerous environment or in doing something to himself inadvertently. Personality changes associated with damage to the frontal lobe may manifest themselves in terms of impulse control, irritability, problem-solving, interacting with co-workers or the public, or in carrying out tasks for an employer. (RX 5, pp.43-44).

The Testimony of the Vocational Experts

Dan Minnich was hired by Respondent in this case to assess and afford vocational services to Petitioner under Section 8(a) of the Act. His deposition transcript was admitted as RX 7. His addendum report of May 24, 2024, was admitted as RX 11. Dan Minnich worked extensively with the Petitioner over a significant time period in vocational placement efforts. These efforts are documented in the group of records admitted collectively as RX 9, which

include vocational assessments, plans, and progress reports. Brian was noted to be an unskilled worker without a high school education. (RX 7, pp.33-34). Brian had not developed transferable skills. (RX 7, p.43). He felt that Brian did have the capacity to return to work in the unskilled labor market near his home despite some barriers to employment. (RX 7, pp.44-46). Available positions in this category of work might include production work, janitor/cleaners, landscape labor, pest control work, truck driving, or warehouse work. (RX7, pp.48-49). On cross examination, Mr. Minnich admitted that he never had a face-to-face meeting with Brian Purcell despite his belief previously expressed that a face-to-face meeting is critical. He did not personally interview Brian and therefore did not personally interact with him to assess how Brian interacts or responds to questions. (RX 7, pp.67-68). He did not limit the available occupations in his vocational search to those that would allow the worker to wear a helmet or face shield, though he was aware of the concerns of Dr. Ellis and the prescribed use of that type of prosthetic device. (RX 7, pp.72-73). He agreed that if an individual has difficulty with impulse control or anger management, it might affect his job performance in any of the given occupations he cited as available to Petitioner. (RX 7, pp.77-78). He agreed that Brian had significant physical, medical and psychological barriers in any attempt to return to work. (RX 7, pp.87-88). In his vocational addendum report of May 24, 2024, RX 11, having reviewed the report of Dr. Dinwiddie, the neuropsychological report of Dr. Rothke of August 15, 2023, and records of John Deku of Centennial counseling, while finding that Brian Purcell "presents with challenges", he indicated that Brian might best be placed in jobs that do not require customer-facing duties or high-pressure and time-limited tasks. These positions might be in custodial/janitorial work at a wage rate of between $14.56 and $20.00 per hour.

Joseph Belmonte was retained by Petitioner to provide a vocational assessment and opinions with respect to employment prospects for Brian Purcell. His reports were admitted as PX 30 and 30a, and the transcript of his deposition was admitted as PX 31. Joe Belmonte conducted a personal interview of Brian Purcell on February 25, 2019, and retained Lisa Byrne, an associate, to conduct intelligence testing and vocational aptitude assessments on Brian to develop a skills analysis. He reviewed extensive medical treatment records and reports. (PX 31, pp.12-19). As a result of the testing by Ms. Byrne, Mr. Belmonte determined that Brian Purcell was at a 2.9 grade spelling level and 6th grade math level; and his functional reading ability and

vocabulary were at a low average level compared to other 9th graders. (PX 31, pp. 32-34). He had a low average ability to understand, retain, process and carry out quick verbal instructions, particularly in written form. This would be important in jobs involving verbal communication, such as customer service, or expediting and dispatch work. (PX 31, p.37). His opinions were (a) Brian Purcell has lost access to return to perform his pre-injury job of tire repairer/mechanic helper; and (b) he does not have access to any viable, stable labor market in any well-known sector of the economy. He bases his findings in part on the medical opinions of Drs. Montes and Zaidi. (PX 31, pp.42-43). While Dr. Montes and Dr. Ellis expressed some optimism that Brian might benefit from being back in the workplace, there was no firm indication from either doctor of a release to return to work with defined capacities and tolerances from either a medical or psychiatric perspective. So, there was no basis to change his opinion even in light of the hopes of these doctors for a return to competitive employment. (PX 31, p.56). [The Arbitrator notes that at the time of the reports and his deposition of Mr. Belmonte, Dr. Dinwiddie had not yet examined Brian Purcell nor offered any opinions, and therefore Mr. Belmonte was not aware of those opinions. Those medical/psychiatric opinions might further bolster the opinions of Mr. Belmonte.] Mr. Belmonte felt that it was improbable that Brian could get a GED. Brian had a very limited work history pre-injury; his treating psychiatrist opined that Brian was incapable of maintaining employment, and the vocational testing result, including the transferable skills analysis, did not indicate compatibility with competitive employment. This is a young man who does not have transferable skills. (PX 31, pp.44-45). There is no indication that vocational rehabilitation intervention would result in a return to gainful employment. (PX 31, p.53).

With respect to "J", were the medical expenses 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:

There really is no dispute between the parties and to reasonableness or necessity of the medical expenses incurred for treatment of the Petitioner's injuries. The Respondent stipulated to the medical expenses on the Request for Hearing, Arb. Ex. 1. Petitioner testified that the medical billing records admitted as PX 25 and 25a through 25d were true and accurate

reflections of medical billing for treatment to the date of arbitration. The records of liens for payments by the Illinois Department of Healthcare and Family Services and Equian on behalf of Meridian, marked as PX 26 and PX 36 were true and correct as well. (Tr.46-48). The Arbitrator finds that the following expenses should be paid by Respondent pursuant to the Fee Schedule: OSF St. Anthony Medical Center for $1,436.00; Perryville Surgical Center for $1,945.00; Dr. N. Hanif for $2,075.00; Illinois Pathologist for $775.00; OSF Medical Group for $249.00; Rockford Anesthesiologists for $131.88; Rozman Institute for $930.00; Prairie Eyecare for $1,158.00; NIU Speech Clinic for $425.00; OSF Lifeline for $38.10, Centennial Counseling for $410.00. The Petitioner should be reimbursed for out-of-pocket medical expenses of $185.00. Respondent should resolve the subrogation/lien claims for payments made on medical expenses by Medicaid Meridian of $5,434.50 and Medicaid Molina in the amount of $891.17.

With respect to "K", what temporary benefits are in dispute, the Arbitrator finds as follows:

It is undisputed that Petitioner has not worked since leaving his last post-injury position with Mavis Tire on November 14, 2022. It is also undisputed that he has not received temporary total disability nor maintenance from Respondent since that date and that he has not been successful in any attempt to secure employment since that date. The question is whether the Petitioner is entitled to TTD/maintenance from November 15, 2022, to the date of arbitration. For the reasons set forth below, the Arbitrator finds that he is.

Brian Purcell testified that after working at Mavis Tires for some time, he "became distracted" and "had a problem and had to go seek counseling for it". He had to seek counseling and "started going into my fits of rages". (Tr.41-42). In a note from John Deku, his counselor at Centennial Counseling, of November 21, 2022, there appears to have been a telephone consult with Brian where he stated that a person broke into his home which "activated [his] PTSD", and the client/patient indicated that he needed a note from a doctor to allow his absence from work. A video session was arranged for the following week. In a follow-up note in the counseling records, Mr. Deku notes from the video session that there is reported notable anxiety after finding his home was invaded after he returned from a trip to the store. The diagnosis from Deku was a reaction to severe stress. (PX 39, pp.66-67). On cross examination, Brian indicated

that he apparently had some type of confrontation or argument with a co-employee after the break-in and that "really set me off". (Tr.59-60). Brian testified that his employer, Mavis Tires, wanted a work status note in order to return to work, which he obtained. But he testified that this was not the "proper note they wanted" so he voluntarily left employment as of November 14, 2022. (Tr.41-42). This testimony was not rebutted.

The sequence of events that led to Brian leaving employment with Mavis are in keeping with the testimony of the medical, psychiatric/psychological, and vocational experts in this case. Namely, an emotional/psychological/behavioral response by the claimant as a result of a stressor that leads to an inability to cope with his work environment, and an inability to return to employment; all stemming from his brain injury and the accompanying damage to the parts of the brain that would control the emotional/psychological/behavioral response in an otherwise appropriate fashion. While in some other situations where an employee voluntarily removes himself from employment there might be a basis for denying temporary total disability, where a doctor has not imposed work restrictions, that is not the case here. Petitioner did attempt to produce some type of acceptable return to work slip from his counselor and Mavis Tires did not accept it, so he left. There is even a question of, from a psychological perspective, whether there was even any ability on the part of the claimant to control his response to the stresses such that his termination could really be considered "voluntary."

The Petitioner has not been successful on his own in efforts to find employment following severance from Mavis Tires. As evidenced in the job search logs (PX 45), he looked for positions back in the tire/lube job market, assembly work, and pizza maker. None of the attempts to secure employment went anywhere beyond one unsuccessful interview with Bell Tire. (Tr.44-46, 61-62).

The Petitioner is entitled to maintenance in the same amount or rate as temporary total disability benefits from November 15, 2022, to the date of arbitration, in that it could be said that he had reached MMI by November 15, 2022. Because his condition had stabilized for the most part by that date, if one could consider any brain-injured worker's condition to be 'stable', these interim benefits are most appropriately classified as maintenance, while he continued to attempt to find work. He is due $220.00/week for 80.14 weeks from November 15, 2022, through May 28, 2022, for a total of $17,630.80 in maintenance.

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

To prove an odd lot permanent total disability under the Act, a claimant needs to demonstrate him that they are so handicapped by their disability that they will not be employed regularly in any well-known branch of the labor market. *City of Chicago v. IWCC*, 373 Ill. App. 3d 1080, 871 N.E. 2d 765 (2007). This can be established in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that, because of their age, skills, training, and work history, they will not be regularly employed in a well-known branch of the labor market. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 865 N.E. 2d 342 (2007), *Sharwarko v. IWCC*, 2015 IL App (1st) 131733WC, *Lenart v. IWCC*, 2015 IL App (3d) 130743WC.

If the claimant's disability is such that they are not obviously unemployable, or if there is no medical evidence supporting a claim of total disability, the burden is on the claimant to prove by a preponderance of the evidence that they fit into this "odd-lot" category. *Sharwarko*, 2015 IL App (1st) 131733WC, *Lenhart v. Illinois Workers' Compensation Com'n,* 2015 IL App (3d) 130743WC , *Old Ben Coal Co. v. Industrial Comm'n*, 261 Ill.App.3d 812 (1994), *Valley Mould & Iron Co. v. IWCC,* 84 Ill.2d 538 (1981). Once the claimant establishes that they fall within the odd-lot category, the burden then shifts to the employer to demonstrate that the claimant is employable in a stable labor market and that such a market exists. *Westin Hotel v. Industrial Comm'n of Illinois*, 372 Ill.App.3d 527 (2007), *Sharwarko v. IWCC,* 2015 IL App (1st) 131733WC , *E. R. Moore Co. v. Industrial* Commission, 71 Ill.2d 353 (1978).

The claimant does not need to be reduced to total physical incapacity before a permanent total disability award may be granted. Rather, the claimant must show that they are unable to perform services except those that are so limited in quantity, dependability, or quality that there is no reasonably stable market for them. *City of Chicago v. IWCC*, 373 Ill.App.3d 1080 (2007), *Westin Hotel v. Industrial Comm'n of Illinois*, 372 Ill.App.3d 527 (2007), *E. R. Moore Co. v. Industrial Commission*, 71 Ill.2d 353 (1978).

The Arbitrator finds the opinions of Petitioner's retained vocational expert, Joseph Belmonte, and the opinions of the examining forensic psychiatrist, Dr. Steven Dinwiddie, to be

persuasive. Because of the significant deficits that remain some ten years after his injury, particularly with respect to executive function and control of his emotions due to the damage to the frontal lobes from the trauma to the head and brain in this incident, which also impaired his vision and his hearing, the Arbitrator finds that the claimant here is unable to perform services for any extended period of time except those that are limited in quantity, dependability or quality, such that there is no reasonably stable market for those services. Brian Purcell has neither the intellectual skills and abilities nor the ability to control his emotions for an extended period of time in a workplace environment and is not likely to be able to remain stable in any competitive work environment. He is therefore not employable in a stable labor market.

The Petitioner has made repeated attempts following his injury to return to work both at Walmart and in other tire centers, where he has been unable to maintain a position and interact with co-employees, managers or customers over any significant period of time. He does not have the ability to control his emotions and impulsive behavior, because of the damage to his frontal lobes from the injury, such as to allow him to even maintain employment in any of the unskilled positions that Mr. Minnich indicated might be available to him. There is no evidence, despite the formation of a vocational plan and the efforts of both Mr. Minnich and the Petitioner on his own, that Brian has been able to get more than an interview in his efforts to return to work following completion of his medical treatment.

The witnesses on both sides agree that he has no real transferable skills and limited work history. He has, at best, grade school level skills in math and spelling and limited reading/comprehension skills. The witnesses for the Respondent agree there are significant barriers to returning to employment because of the significant damage to his brain and the consequential intellectual and emotional deficits from that damage. There do not appear to be employment prospects for him in any well-known, stable branch of the labor market. The Petitioner met his burden of proving that he does fall in the “odd lot” category, and the Respondent has not met its burden of showing the claimant is employable in any stable labor market that exists for him. As a result, the Petitioner is permanently totally disabled for purposes of Section 8(f) of the Act. He is entitled to $502.90 per week for life, commencing May 28, 2024.

With respect to "M", should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Penalties and fees are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC028805
Case Name	Selma Tombosky v. Endeavor Air
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0179
Number of Pages of Decision	13
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Michael Rusin, Brian Bendoff

DATE FILED: 4/23/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Selma Tombosky,

Petitioner,

vs. NO: 21 WC 28805

Endeavor Air,

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 medical expenses and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 10, 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 $35,000.00. 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.

April 23, 2025
o: 4/9/25
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	21WC028805
Case Name	Selma Tombosky v. Endeavor Air
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Michael Rusin, Brian Bendoff

DATE FILED: 7/10/2024

/s/Jennifer Bae, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 9, 2024 5.08%

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)

SELMA TOMBOSKY
Employee/Petitioner

v.

ENDEAVOR AIR
Employer/Respondent

Case # **21** WC **028805**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **May 10, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 9, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**45,379.25**; the average weekly wage was $**872.68**.

On the date of accident, Petitioner was **60** 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 $**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 any and all reasonable and necessary medical services related to Petitioner's right small finger through December 1, 2021, pursuant to the medical fee schedule as provided in sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any related medical expenses it has already paid.

Prospective medical benefits are denied.

Respondent shall pay Petitioner temporary total disability benefits of $581.79/week for 4 weeks, commencing September 22, 2021 through October 20, 2021, as provided in Section 8(b) of the Act.

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

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

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

Jennifer Bae

Signature of Arbitrator

July 10, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

SELMA TOMBOSKY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC028805
ENDEAVOR AIR,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Ms. Selma Tombosky ("Petitioner"), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014)* Petitioner alleged that she sustained an accidental injury on September 9, 2021 while employed by Endeavor Air ("Respondent"). A hearing was held on May 10, 2024 on the following Issues: causal connection, reasonable and necessary medical services, prospective medical, and temporary total disability.

Petitioner testified in support of her claim. The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Petitioner testified that she was employed by Respondent as a flight attendant in September of 2021 while she lived in Reno, Nevada. (T. 9-10) She had been working for Respondent approximately two and a half years. (T. 22) She explained that her home base airport in September of 2021 was Cincinnati, Ohio. (T. 10) Currently, she lives in Texas. (T. 10) She was terminated by Respondent in July of 2022. (T. 22) Petitioner was informed that she was terminated because she was not getting along with co-workers. (T. 22-23) Petitioner claimed that she was terminated because of this worker's compensation claim and turning in some co-workers for safety-related issues. (T. 22-23) Petitioner did not remember when she returned to work after the accident as she claimed that she could not work while she had a splint on her finger. (T. 23)

Accident

On September 9, 2021, she flew into Chicago and was scheduled to fly out on the next day. (T. 10-11) Respondent had arranged for a hotel room in Chicago on September 9, 2021. (T. 11) Petitioner testified since she had a layover in Chicago, she and a co-worker decided to venture out to Navy Pier for dinner. (T. 11) On her way back to hotel, as she was looking for a correct subway to take, she tripped on an uneven pavement and fell to the ground. (T. 11) Petitioner stated that she fell to her right side, knocked her glasses off her face, and landed hard on her knees. (T. 12) Petitioner testified that she felt discomfort to her right hand and pain to her knees. (T. 12) She felt embarrassed and attempted to get off the ground but was unable to on her own. (T. 12) Petitioner then was assisted by a couple who were walking by. (T. 12) Petitioner testified that she shook it off and continued to walk toward the subway. (T. 13)

Once back at the hotel, Petitioner put a band aid on her right hand that had began to bleed and iced her knees. (T. 13) On September 10, 2021, Petitioner arrived for work and felt "a lot of pain and discomfort." (T. 13)

On cross-examination, Petitioner admitted that her knees hurt more than her finger from the accident. (T. 25-26)

Summary of Medical Records

On September 11, 2021, after returning home to Reno, Nevada, Petitioner presented herself to the emergency room at Renown Health when her right hand swelled up. (T. 13-14, 26-27; PX 1) The medical records showed that Petitioner reported a trip and fall landing on her knees and swelling and pain to right pinky finger. (PX 1 p. 68) At the emergency room, x-rays for her right hand and both knees were taken. (T. 14; PX 1 pp. 62-67) X-rays of the bilateral knees were negative for fractures. (PX 1 p. 72) X-ray of the right hand was positive for a nondisplaced intra-articular fracture of the right small finger. (PX 1 p. 72) Petitioner testified that the doctors told her that she had a fracture on the base of her pinky finger and some abrasions on her knees. (T. 14) She was prescribed with antibiotics for the swelling of her right hand and given a splint. (T. 14; PX 1 p. 70)

On September 12, 2021, Petitioner returned to the emergency room because she felt a burning sensation on her arm. (T. 15, 29) The medical records reflected that Petitioner's chief complaint was "hand pain." (PX 1 p. 6) The ER doctor explained to Petitioner that they had given her a wrong splint and that the splint was put on too tight. (T. 15; PX 1 p. 10) She was given a correct splint and was told to contact an orthopedic physician. (T. 15, 29-30; PX 1 pp. 10-11)

On September 15, 2021, Petitioner sought treatment at Great Basin Orthopedics. (T. 15, 30; PX 2 pp. 38-41) The medical records stated that Petitioner had "a right minimally displaced proximal phalanx fracture of the right small finger." (PX 2 p. 40) Dr. Aaron Dickens suggested that Petitioner support the right small finger by buddy taping to the ring finger. (PX 2 p. 40) Dr. Dickens scheduled Petitioner to return in 3 weeks for addition x-rays for the right small finger. (PX 2 p. 40)

On September 22, 2021, Petitioner sought additional treatment at Great Basin Orthopedics. (PX 2 pp. 31-32) The medical records reflect that Petitioner was following up "a little sooner than previously scheduled due to complaints of right small finger pain." (PX 2 p. 31) Dr. Dickens noted that Petitioner had not been buddy taping the right small finger to the ring finger as he recommended. (PX 2 p. 31) Petitioner informed him that she was taping the small finger and wanted some other type of immobilization to return to work. (PX 2 p. 31) Dr. Dickens noticed that Petitioner had healing abrasions to the finger, some swelling but no angular or rotational deformity, and a mildly tender to palpation of the proximal phalanx. (PX 2 p. 31) Dr. Dickens recommended an ulnar gutter type of brace. (PX 2 p. 31) Dr. Dickens placed Petitioner on light duty with no use of the right hand. (PX 2 p. 31) Petitioner was informed to return in 4 weeks. (PX 2 p. 31)

Petitioner testified that on September 21, 2021, Petitioner was placed on light-duty restrictions for work. (T. 16) Petitioner claimed that Respondent did not have any work for her within the restrictions. (T. 16)

On October 20, 2021, Petitioner returned to Great Orthopedics because she felt discomfort and had difficulty grabbing things without her pinky finger getting in the way causing pain. (T. 17) Dr. Dickens recommended discontinuation of the hand brace. (PX 2 p. 26) Petitioner testified that she struggled to bend down, squat down, or get back up because of discomfort she felt in her knees. (T. 17) Petitioner's physical examination demonstrated negative ligamentous injury, normal strength, normal range of motion, with a small effusion in the right knee. (PX 2 p. 26) Dr. Dickens indicated that he could not rule out a meniscus tear, but that Petitioner may simply have a soft tissue contusion. (PX 2 p. 26) He recommended an MRI scan of the right knee to rule out a medial meniscus tear, as well as a new x-ray of the left knee. (PX 2 p. 27)

Petitioner testified that the doctors suggested that she undergo MRIs for her knees to determine if there was any internal damage. (T. 16, 27) Petitioner had not completed MRIs because it was not approved by Respondent. (T. 17-18)

On cross-examination, Petitioner admitted that she did not have any reason to dispute the contents of the medical records from the Renown ER. (T. 27) Petitioner did not recall if the medical records from September 11th and 12th of 2021 required an MRI. (T. 28) Petitioner also did not have any reason to dispute medical records from Great Basin Orthopedics that only showed treatment for her finger and not her knees during the first two appointments. (T. 30-31)

Further, on cross-examination, Petitioner admitted that on October 20, 2021 was the first time she reported injury to her knees and received a referral for an MRI from Great Basin Orthopedics. (T. 32) Petitioner believed that Dr. Dickens from Great Basin Orthopedics opined that her injury to right knee was causally related to her work accident of September 9, 2021. (T. 32-33) Petitioner did not dispute that no causation opinion was in her medical records. (T. 33)

The medical records showed Petitioner had follow-ups with Dr. Dickens for occupational therapy for her right small finger November 1, November 29, and December 1, 2021. (PX 2) No additional treatment followed.

Petitioner's Current Condition

Petitioner testified that her pinky finger is crooked and bends in. (T. 18) She explained that when she attempts to grab stuff, her pinky finger bends in and gets in the way. (T. 18) She further explained that she had an appointment with a hand surgeon and an orthopedic surgeon in Texas but could not get an approval through Respondent's insurance company, Sedgwick. (T. 19) Petitioner testified that she would like to see another doctor for her hand and finger. (T. 20)

Currently, Petitioner works as a flight attendant for a different airline. (T. 20) Petitioner testified that she has managed to work with her finger. (T. 21) She further testified that she needs help getting back up when she is disarming the aircraft doors which requires her to squat down. (T. 21)

Petitioner testified that in 1980's, she had an arthroscopic done on her right knee but did not have any ongoing issues with her right hand. (T. 21) Petitioner testified that her pinky gets in the way when she makes a fist. (T. 34-35) Petitioner testified that she does not have pain in her hand. (T. 35)

The last appointment with Great Basin Orthopedics was in December of 2021 where she complained about difficulty in writing, opening lids, and holding a coffee pot. (T. 35-36) Currently, Petitioner does not have these issues. (T. 36)

At her current employment, Petitioner states that she takes care of her customers to make sure that they get from point A to point B in a safe manner which included arming and disarming door, being able to evacuate the aircraft in case of an emergency and serving them during domestic and International flights. (T. 36-37) As a part of service, Petitioner is required to push a cart down the aisle to provide snacks and drinks, pick up trash walking down the aisle, and stay in the galley so that she is available when additional snacks or drinks are needed. (T. 39)

So far, Petitioner has completed two International flights. (T. 40) The longest flight has been from Detroit to Paris that lasted about 7 hours. (T. 40) Petitioner explained that she got an hour and 45 minutes break during this trip and was standing when on duty. (T. 40)

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be truthful at times but tends to exaggerate the accident and her injuries. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did find some material contradictions that would deem the witness unreliable.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator notes that there is no dispute as to whether Petitioner sustained an accidental injury to the right small finger. However, there is a dispute as to Petitioner's knees. The x-rays of the bilateral knees were negative for fracture on September 11, 2021 ER visit at Renown Regional Medical Center in Reno, Nevada. (PX 1 p. 72) Petitioner visited ER again on September 12, 2021 and Dr. Dickens at Great Basin Orthopedics twice (September 15, 2021 and September 22, 2021) and did not complaint about her knees. On October 20, 2021, a scheduled follow-up for her right small finger, Petitioner for the first time complained of bilateral knee pain to Dr. Dickens. She claimed that her right knee was hurting more than the left. A physical examination demonstrated negative ligamentous injury, normal strength, and normal range of motion. X-rays showed mild underlying degenerative changes. Dr. Dickens prescribed an MRI for the right knee.

Petitioner testified that she was referred for an MRI of the knees on September 11, 2021 at her initial ER visit. The medical records do not indicate any referral for an MRI.

Petitioner testified that she complained of and received treatment for knee pain on September 15, 2021 at Great Basin Orthopedics. Petitioner testified that her physician "suggested I have some MRIs done." (T. 16) The medical records do not indicate this. However, medical records did indicate that Petitioner was comfortable in her splint on her right small finger and was hoping to

return to work as soon as possible. Based on this, Dr. Dickens returned Petitioner back to work on a light duty with no use of right hand. There was no mention of her knees.

Petitioner testified that she had another discussion with her orthopedic physician at Great Basin Orthopedics on September 22, 2021 and was referred for diagnostic scans of her knees. (T. 17) The medical records do not indicate any complaints, diagnoses, or treatment recommendation for either of her knees.

Based on the above, the Arbitrator finds the Petitioner's testimony to be not credible. Petitioner did complain of knee contusions on September 11, 2021 and the medical records noted Petitioner having abrasion on her knees and x-rays that showed no fracture. She failed to bring up her knee issues until October 20, 2021, despite having ample opportunity to do so. She was eager to return to work on September 15, 2021. Petitioner testified that her knees hurt more than her finger from the accident. (T. 25-26) However, she failed to inform her physicians on September 12, 2021, September 15, 2021, and September 22, 2021.

Given the findings above, the Arbitrator finds that Petitioner's condition of bilateral knee contusions resolved after the September 11, 2021 ER visit. The Arbitrator further finds that Petitioner's right small finger condition resolved at the conclusion of her December 1, 2021 occupational therapy session.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. *See Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds that medical treatment for the right small finger through December 1, 2021, the date of Petitioner's final occupational therapy session at Great Basin Orthopedics was reasonable, necessary, and causally related to the work accident of September 9, 2021. No additional treatment, including an MRI of the right knee, is causally related to the work accident of September 9, 2021.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Arbitrator denies any requests for prospective medical treatment.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

There is no dispute as to the temporary total disability benefits in this matter. Petitioner is awarded temporary total disability benefits between September 22, 2021 through October 20, 2021.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

July 10, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005080
Case Name	Mark Chubb v. Simos Insourcing Solutions
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0180
Number of Pages of Decision	12
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Bryan Shell
Respondent Attorney	Mark Vizza

DATE FILED: 4/23/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Chubb,

Petitioner,

vs. NO: 20 WC 5080

Simos Insourcing Solutions,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses and causal connection 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 23, 3024, is hereby affirmed and adopted.

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

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

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

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

April 23, 2025
o: 4/9/25
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	20WC005080
Case Name	Mark Chubb v. Simos Insourcing Solutions
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Bryan Shell
Respondent Attorney	Mark Vizza

DATE FILED: 8/23/2024

/s/Frank Soto, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 20, 2024 4.77%

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)

MARK CHUBB
Employee/Petitioner

v.

SIMOS INSOURCING SOLUTIONS
Employer/Respondent

Case # **20** WC **005080**

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 **Joliet**, on **June 25, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **1/13/2020**, 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 $**18,674.95**; the average weekly wage was $**713.04**.

On the date of accident, Petitioner was **56** 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 $**0.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0.00**.

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

ORDER

Respondent shall pay the outstanding medical bills, as identified in Petitioner's Exhibit #1 through 15, pursuant to Sections 8(a) of the Act subject to the fee schedule in Section 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving an 8(j) credit, as set forth in the Conclusions of law attached hereto.

Respondent shall authorize and pay for prospective treatment recommended by Dr. Templin, consisting of an L4/5 fusion, including reasonable and necessary attendant care, pursuant to Sections 8.2 of the Act and subject to the schedule, as set forth in the Conclusions of law attached hereto.

The issue of whether the Law of the Case Doctrine applies to the current issues of causation and prospective medical care is moot and need not be addressed, as set forth in the Conclusions of law attached hereto.

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
Arbitrator

August 23, 2024

ICArbDec19(b)

Procural History

This case was previously tried pursuant to Section 19(b) and 8(a) of the Act and a decision issued on October 4, 2018. (Px.20). At that time, Petitioner's low back condition at L4/5 was found causally related to his January 13, 2020 accident and Respondent was required to authorize facet injections at L4/5. At that hearing, the arbitrator found the opinions of the treating physician, Dr. Templin, to be more persuasive than those of the IME, Dr. Wehner, regarding the issues of causation and prospective medical treatment. At that time, Dr. Templin opined Petitioner's work injury aggravated his L4/5 spondylolisthesis requiring the need for the facet injections and potential for a fusion surgery at L4/5. (Id.). On June 25, 2024, this case was tried for a second time pursuant to Section 19(b) and 8(a) of the Act regarding the issues of causation and prospective medical treatment. Petitioner is seeking approval for L4/5 fusion surgery.

Findings of Fact

At the first hearing, Dr. Cary Templin, a board-certified orthopedic surgeon who specializes in spinal surgery, testified that he reviewed Petitioner's MRI which showed spondylolisthesis at L4-5 with facet hypertrophy and moderate central canal and foraminal narrowing and the mechanism of lifting a heavy product from the floor to overhead aggravated Petitioner's facet arthropathy. Dr. Templin noted after Petitioner was released to return to work full duty that his low back pain increased. Dr. Templin explained that an L4/5 facet injection may alleviate Petitioner's pain but, if it doesn't last, then Petitioner's remaining option would be the L4-5 fusion surgery. Dr. Templin indicated a L4-5 facet injection would be good diagnostically because if there is a positive response that doesn't help long term it shows the actual pain generator. Dr. Julie Wehner, Respondent's first Section 12 examiner, agreed that Petitioner was a surgical candidate but, she believed, the surgery to be performed was a decompressive laminectomy and fusion due to spondylolisthesis. (Px. 20 at 7).

Since the October 5, 2022 decision, Petitioner returned to Dr. Templin on December 22, 2022. (Pet. Ex. 5 at 21-24). Dr. Templin ordered a new MRI. (*Id.* at 23). Petitioner underwent the MRI on January 10, 2023. Petitioner returned to Dr. Templin on January 19, 2023 Dr. Templin reviewed the MRI report, noting the findings of grade I anterolisthesis with severe degenerative changes involving the facet joints at L4-5 and thickening of the ligamentum flavum which resulted in narrowing of the left lateral recess and moderate narrowing of the central canal. (*Id.* at 28). At that time, Dr. Templin continued to recommend the L4-5 facet injections to see if they offer any benefit. (*Id.*).

On January 25, 2023, Petitioner went to Pain & Spine Institute and a L4-S1 diagnostic medial branch block (DMBB) was recommended. (Px. 6). Petitioner underwent the injections on February 8, 2023. (*Id.*).

Petitioner returned to Dr. Templin on February 9, 2023 and, at that visit, Dr. Templin reviewed the MRI images noting spondylolisthesis with facet hypertrophy and stenosis. At that time, Dr. Templin opined that Petitioner was a candidate for a L4-5 lateral fusion with posterior instrumentation. (Px. 5 at 30).

On February 14, 2023, Petitioner returned to Dr. Patel, of Pain & Spine Institute, reporting 80 % pain relief for five (5) hours from the prior injections. At that time, Dr. Patel recommended a second bilateral L4-S1 DMBB injection and, if Petitioner experiences concordant pain, then a radiofrequency ablation (RFA). (Px. 6). Petitioner underwent the second DMBB injection on March 1, 2023. (*Id.*).

Petitioner returned to Dr. Templin on March 2, 2023, reporting some relief from the second DMBB injection. At that time, Dr. Templin noted that Petitioner was returning to Pain & Spine for an RFA and to discussed surgical options, including the L4-5 fusion. (Px. 5 at 33). On March 10, 2023, Petitioner returned to Pain & Spine and scheduled the RFA. (Px. 6). On March 22, 2023, Petitioner underwent left side L4-S1 RFA. (Px. 6).

On March 28, 2023, Petitioner returned to Dr. Templin who recommended the L4/5 fusion surgery. Dr. Templin referred Petitioner back to pain management until the surgy was approved. (Px. 5 at 37-38).

On April 19, 2023, Petitioner underwent right side L4-S1 RFA. (Px. 6). Petitioner underwent a video conference with Dr. Patel who noted Petitioner's decreased functionality and quality of life. (Px. 6 at 21/35). Dr. Patel scheduled an in-person appointment for June 8, 2023. At that appointment, Dr. Patel referred Petitioner back to Dr. Templin. (Px. 6 at 23/35).

On August 14, 2023, Petitioner was examined by Dr. Edward Goldberg pursuant to Section 12 of the Act. During that examination Dr. Goldberg noted Petitioner's lumbar flexion was 80 degrees with pain, the straight leg test was negative, and Petitioner had minimal pain at 30-40 degrees of extension. (Rx.1). Dr. Goldberg diagnosed an aggravation of asymptomatic degenerative spondylolisthesis at L4-5 and he opined that Petitioner's work injury aggravated his preexisting condition. (*Id.*). At that time, Dr. Goldberg recommended a FCE to determine Petitioner's work capabilities. (*Id.*). Dr. Goldberg opined Petitioner was not a surgical candidate because he didn't have radicular complaints or nerve type

symptoms. (*Id.*). Dr. Goldberg also opined that Petitioner would be at MMI on the date he undergoes the FCE. (*Id*.).

Petitioner returned to Dr. Templin on October 24, 2023 who agreed an FCE would be reasonable but that a L4/5 fusion surgery would be reasonable if the FCE recommends significant restrictions and Petitioner wishes to proceed with the surgery. Dr. Templin indicated that Petitioner's facet arthropathy and degenerative spondylolisthesis could be improved with surgical intervention. (Px. 5 at 41-42).

Petitioner underwent the FCE on November 2, 2023 which placed him at a light-medium category which was outside the physical requirements for his job. (Px. 5 at 47). Petitioner returned to Dr. Templin on November 21, 2023 and, at that time, Dr. Templin reviewed the FCE and noted that Petitioner was extremely sore after the FCE. Dr. Templin recommended fusion surgery at L4-5 due to Petitioner's ongoing back pain and because failed conservative treatment. (Px. 5 at 45-46).

Petitioner testified he is still in pain and does not want to continue living this way. He is doing the best he can but he is always in pain and tries to avoid most activities he used to do. Petitioner testified he takes over the counter medication three times per day. Petitioner testified to experiencing difficulties getting out of bed. Petitioner testified that he would like to be able to pick up his grandchildren and play with them but he can't due to pain. Petitioner testified he would like to return to work in the same capacity as he did before his work accident.

The Arbitrator found 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).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that his current low back condition is causally related to his work accident of January 13, 2020. Drs. Templin and Goldberg, who performed the Section 12 examination, both opine that Petitioner's current low back condition is causally related to his work injury of January 13, 2020 and that his work accident aggravated his preexisting spondylolisthesis at L4/5.

With Respect to Issue (J) Whether the Medical Services Provided to Petitioner were Reasonable and Necessary, the Arbitrator Finds as follows:

The Arbitrator incorporates the Conclusions of Law in Section F into this Section. 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 has proven by the preponderance of the evidence that Respondent is liable for the unpaid medical bills identified in Petitioner's Exhibit #1.

As stated above, the Arbitrator found Petitioner's current low back condition to be causally related to his January 13, 2020 work injury. Dr. Goldberg, who performed Section 12 examination, opined all the treatment Petitioner received including the medical branch blocks and radiofrequency ablations and FCE were reasonable and necessary.[1] (Rx.1). Having found Petitioner's current low back symptoms to be causally connected to his work injury, the Arbitrator further finds that all the medical services provided to Petitioner, including the DMBB injections, RFA, and FCE, were reasonable and

[1] The Arbitrator notes that Dr. Goldberg's opinions regarding the reasonableness and necessity of Petitioner's treatment was for the treatment through the date of his examination which occurred on August 14, 2023.

necessary. As such Respondent shall pay the outstanding medical bills, as identified in Petitioner's Exhibit #1 through 15, pursuant to Sections 8(a) of the Act subject to the fee schedule in Section 8.2 of the Act.

The Arbitrator also finds Respondent shall be given a credit for medical benefits which have been paid and that Respondent shall hold Petitioner harmless from any claims by any providers for the services which Respondent is receiving a credit pursuant to Section 8(j) of the Act.

With Respect to Issue (K) Is Petitioner entitled to any prospective medical care, the Arbitrator Finds as follows:

The Arbitrator incorporates the Conclusions of Law in Sections F and J into this Section. 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 finds Petitioner has proven by the preponderance of the evidence that he is entitled to prospective medical care consisting of the L4/5 lumbar fusion surgery. Dr. Templin opined it is reasonable for Petitioner to undergo the L4-5 fusion given his facet arthropathy which can be improved with surgical intervention. (Pet. Ex. 5 at 42). Regarding prospective medical treatment the Arbitrator finds the opinions of Dr. Templin to be more persuasive than the opinions of Dr. Goldberg. See *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d. 1, 31 Ill. Dec. 789, 394 N.E. 2d. 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d. 225, 168 Ill. Dec. 756, 590 N.E. 2d. 78 (1992). The Arbitrator notes that Dr. Wehner, who performed the first Section 12 examination, agreed that a L4/5 fusion surgery is reasonable for spondylolisthesis.

Dr. Goldberg, who performed the second Section 12 examination, acknowledged, at the time of his examination, Petitioner was not at maximum medical improvement but that, he believed, Petitioner should have an FCE and live with permanent work restrictions rather than undergoing fusion surgery. Petitioner testified he would like to undergo the surgery recommended by Dr. Templin because he doesn't wish to continue living with pain and permanent work restrictions. The Arbitrator notes that Respondent proffered no compelling reason justifying affording greater weight to Respondent's expert than the treating physician. See *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL. App. (2d) 121283WC; see also *International Vermiculite Co., v. Industrial Comm'n*, 77 Ill.2d 1, 4 (1974), *Sears v. Rutishauser*, 102 Ill. 2d. 402, 407 (1984).

The Arbitrator finds the recommended L4/5 fusion surgery necessary and reasonably required to cure or relieve Petitioner from the effects of his injury. As such, Respondent shall authorize and pay for prospective treatment recommended by Dr. Templin, consisting of an L4/5 fusion, including reasonable and necessary attendant care, pursuant to Sections 8.2 of the Act and subject to the schedule.

With Respect to Issue (O), Whether the Law of the Case Doctrine Settles the Current Question of Causation and Prospective Medical Treatment, The Arbitrator finds as follows:

Having found Petitioner's current condition to be causally related to his work injury and the recommended prospective medical treatment to be reasonable, necessary and related to his January 13, 2020 work injury the issue regarding the application of the Law of the Case Doctrine is moot and need not be addressed.

By: /o/ Frank J. Soto — August 22, 2024
Arbitrator — Date

August 23, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014117
Case Name	Cortney Jones v. Estes Express Lines
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0181
Number of Pages of Decision	11
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Patrick Morris

DATE FILED: 4/23/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
KANKAKEE

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cortney Jones,

Petitioner,

vs. NO: 22 WC 14117

Estes Express Lines,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

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

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

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

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

April 23, 2025
o: 4/9/25
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	22WC014117
Case Name	Cortney Jones v. Estes Express Lines
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Patrick Morris

DATE FILED: 8/13/2024

/s/Gerald Granada, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 13, 2024 4.795%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
19(b)

CORTNEY JONES
Employee/Petitioner

v.

ESTES EXPRESS LINES
Employer/Respondent

Case # **22** WC **014117**

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 **Kankakee**, on **6/20/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/11/22**, 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 $**61,744.80**; the average weekly wage was $**1,187.40**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**23,295.67** for TTD, $**0** for TPD, $**0** for maintenance, and $**26,973.27** for other benefits, for a total credit of $**50,268.94**.

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

ORDER

Respondent shall pay any unpaid, related, reasonable, and necessary medical services as set forth in Petitioner's Exhibit #2, subject to the Fee Schedule 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.

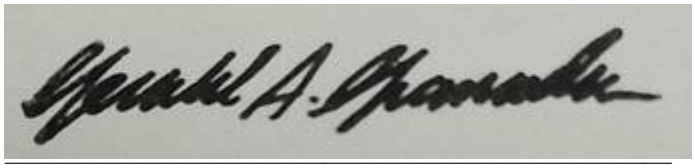
Respondent shall authorize and pay for the prospective medical care recommended by Dr. Mekhail.

Respondent shall pay Petitioner temporary total disability benefits of $791.60/week for 107 3/7 weeks, commencing 5/28/22 through 6/10/24, as provided in Section 8(b) of the Act. Respondent shall be given a credit for temporary total disability benefits that have been paid.

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

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

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



Signature of **Arbitrator Gerald Granada**

August 13, 2024

FINDINGS OF FACT

This case involves Petitioner Cortney Jones, who alleges to have sustained injuries while working for the Respondent Estes Express Lines on May 11, 2022. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) causation; 3) medical expense; 4) prospective medical; and 5) TTD.

On May 11, 2022, Petitioner worked for Respondent as a mechanic doing inspections, follow up work, tires, brakes, suspension work, and electrical work. On that date, he was working on changing a tire. Using a pry bar lifting device, he removed the old tire, lifted the tire up and felt pain in his lower back. Petitioner estimated the tire weighed approximately 100 pounds. Petitioner texted his supervisor about the incident and another employee finished the tire job. Petitioner testified that he felt a dull pain down his right side into his leg.

Petitioner sought initial medical treatment with Dr. Frost in the ER at Franciscan Health in Hammond, Indiana on May 15, 2022. He provided a history of injuring his lower back four days prior while attempting to lift a heavy object at work. He complained of lower back pain concentrated on the right side. Dr. Frost commented that he previously saw Petitioner for left low back pain which resolved. At trial, Petitioner denied seeking treatment for left-sided lower back pain at Franciscan Health with Dr. Frost six weeks prior. He confirmed that no work restrictions were imposed by Dr. Frost on May 15, 2022. The discharge diagnosis was acute right-sided lower back pain. Petitioner was given prescriptions for pain and anti-inflammatory medication and released to home. (R. Ex. 5)

On May 20, 2022, Petitioner sought treatment with PA-C Tagtmeyer at Physicians Immediate Care. He complained of moderate right-sided lower back pain, which was characterized as sharp and spasmodic due to a work injury on May 11, 2022, while putting a tire on a trailer. Of note, Petitioner's physical examination was positive for Waddell signs. The differential diagnosis was lumbar spine sprain/strain vs. herniated disc. Light duty work restrictions were imposed including avoidance of bending and twisting and no lifting, pushing, or pulling greater than 20 lbs. (R. Ex. 6)

Respondent sent a letter to Petitioner on or about May 24, 2022, in which light duty work was offered in accordance with the recommendations from Physicians Immediate Care. (R. Ex. 7) Petitioner accepted the light duty work offer, and he testified that he worked light duty from May 24, 2022 through May 27, 2022.

On May 27, 2022, petitioner presented to James Hanna, NP-C at Parkview Orthopedic Group. He stated that he had injured his lower back on the right side on May 11, 2022, while changing a tire on a trailer. Petitioner denied any prior low back injuries. Petitioner stated that he had experienced some relief of symptoms with over-the-counter anti-inflammatory medication and Tylenol. He also stated that he was working light duty. X-rays taken on this date showed no obvious deformities such as fractures or instability. Petitioner was diagnosed with acute lower back pain. He was referred to physical therapy and instructed to remain off work. If Petitioner was still having lower back pain upon follow up in four weeks, a lumbar MRI would be ordered. The physical therapy order indicated diagnoses of low back pain and acute strain of neck muscle, sequala. (P. Ex. 4) At trial, however, Petitioner confirmed that he is not claiming to have injured his neck on May 11, 2022.

On May 31, 2022, Petitioner was evaluated at MNT Pro Active Rehab/Grandview Health ("*MNT*"). Following this initial evaluation Petitioner completed twelve sessions of therapy through July 1, 2022. (P. Ex. 5)

Petitioner was seen by Dr. Mekhail at Parkview Orthopedics on July 7, 2022, for ongoing lower back pain. MRI of the lumbar spine was ordered. Dr. Mekhail commented that if the study was negative, petitioner would likely be at MMI. If not, there would likely be additional treatment recommendations. (P. Ex. 4)

On July 28, 2022, Petitioner underwent MRI of the lumbar spine which revealed transitional lumbosacral anatomy with a partially formed disc at S1-2; a central disc protrusion with annular tear at L4-5 indenting the ventral surface of the thecal sac and causing mild central canal stenosis; and an incidental finding of a 2.6 cm upper pole renal cyst. (P. Ex. 7)

Petitioner followed up with Dr. Mekhail on August 8, 2022, for ongoing complaints of right-sided lower back pain. The MRI of the lumbar spine was reviewed, and Dr. Mekhail commented that the images showed a disc protrusion at L4-5 with an annular tear. Lumbar epidural steroid injections at L4-5 were ordered. (P. Ex. 4)

Petitioner received the first L4-5 ESI from Dr. Bayran on September 8, 2022, and reported about 80% relief of his pain. He received a second injection at the same level, this time from Dr. Lee, on October 4, 2022. (P. Ex. 8)

On September 28, 2022, Petitioner's employment with Respondent was terminated. (R. Ex. 8)

On October 24, 2022, Petitioner followed up with Dr. Mekhail and reported that he had two injections, which did not provide lasting relief. The diagnosis was L4-5 degenerative disc annular tear and disc protrusion with right lumbar radiculopathy. Dr. Mekhail recommended that petitioner undergo disc replacement surgery at L4-5. (P. Ex. 4)

Petitioner returned to the ER at Franciscan Health on November 12, 2022, with complaints of elevated blood pressure. He stated that he had not taken his medication the day prior and felt like his head was throbbing. He mentioned his low back was at baseline. Petitioner was discharged with a diagnosis of an acute elevated blood pressure reading, and he was advised to follow-up with personal physician. (P. Ex. 3)

On December 13, 2022, Petitioner underwent a Section 12 examination with Dr. Ghanayem at Respondent's request. Petitioner complained of lower back pain on the right side, as well as pain radiating across his lower back. Dr. Ghanayem reviewed the lumbar MRI scan and noted a "*very tiny*" disc bulge at L4-5 on the left side, which he noted is opposite the side of Petitioner's subjective complaints, which are on the right. Dr. Ghanayem opined that Petitioner sustained a lumbar strain injury resulting from the alleged work accident, and he opined that the surgical recommendation from Dr. Mekhail is not reasonable and necessary. According to Dr. Ghanayem, Petitioner does not have a central disc protrusion, but rather just some early degenerative changes that are asymptomatic toward the opposite side of Petitioner's alleged leg symptoms. (R. Ex. 1)

Petitioner followed up with Dr. Bayran on January 16, 2023. He stated that he was still awaiting approval for surgery. Dr. Bayran advised Petitioner to continue to use pain patches and participate in a home exercise program. (P. Ex. 8)

On January 23, 2023, Petitioner followed up with Dr. Mekhail and reported that he was still having significant lower back pain which was occasionally radiating down his right leg. Petitioner shared that he underwent an IME, and he was told he could go back to full duty work. Dr. Mekhail opined that Petitioner could not do his regular job. Dr. Mekhail also ordered a lumbar discogram, and he stated that if the study was positive at L4-L5, he would recommend surgery. Dr. Mekhail prescribed cyclobenzaprine, diclofenac, lidocaine ointment, meloxicam, rabeprazole, and Zylotrol patch. Dr. Mekhail also released Petitioner to return to modified work duty with no lifting greater than 20 lbs. (P. Ex. 4)

On January 30, 2023, Petitioner was seen by PA-C Steplowski at Midwest Anesthesia and Pain Specialists, and an order for an L4-L5 discogram was generated. Petitioner underwent the discogram on March 2, 2023. (P. Ex. 12)

The post-discogram CT scan of the lumbar spine was done at MRAD Imaging on March 2, 2023, and showed a disc herniation at L4-5 in the left paracentral zone indenting the thecal sac and associated with a 2-3 mm herniation of the central nuclear polyposis into the outer annulus of the herniation. Mild L4-5 canal stenosis, as well as mild to moderate left and mild right neuroforaminal stenosis were also noted. (P. Ex. 14)

On March 13, 2023, Dr. Mekhail reviewed the discogram and post-discogram CT scan. He stated that the discogram showed concordant lower back pain at L4-5. Petitioner again expressed his desire to proceed with surgery, and Dr. Mekhail modified his surgical recommendation to right L4-5 decompression and posterior interbody fusion. (P. Ex. 4)

On December 14, 2023, Dr. Mekhail testified via evidence deposition on December 14, 2023. Dr. Mekhail noted that Petitioner consistently complained of right-sided lower back pain radiating to his right buttock and occasionally down his right leg throughout the course of treatment from May 27, 2022 through July 7, 2023. (P. Ex. 16 pgs. 10 & 29-30) He noted that Petitioner had tingling and numbness in his right lower extremity, but he did not know whether these complaints pertained to the front or the back of the right leg or the thigh or the calf or foot. (P. Ex. 16 pgs. 46-47) Dr. Mekhail opined that Petitioner has a disc herniation at L4-5 with discogenic pain and occasional radiculopathy to the right lower extremity. (P. Ex. 16 pgs. 29-30) Dr. Mekhail testified that Petitioner's is a "*classic*" case of a person lifting a heavy object then complaining of lower back pain, and since Petitioner had informed him that he had never had lower back pain before the alleged work accident, his ongoing complaints are causally related. (P. Ex. 16 pgs. 19-20) Dr. Mekhail reiterated his recommendation for lower back surgery. (P. Ex. 16 pgs. 27-28)

On February 27, 2024, Petitioner saw Dr. Bayran and reported that the pain location had shifted, and it now could be across his lower back or the pain could be worse on one side than on the opposite side. Dr. Bayran renewed Petitioner's prescriptions for Lenza Pro patches, Meloxicam, and Cyclobenzaprine, and Petitioner was instructed to remain off work. (P. Ex. 8) Petitioner followed up with Dr. Bayran on March 29, 2024, and complained of pain across his low back radiating to his bilateral legs and feet. (P. Ex. 8)

On April 8, 2024, Dr. Ghanayem testified via evidence deposition. Dr. Ghanayem examined Petitioner on December 13, 2023 as Respondent's Section 12 examiner. (R. Ex. 2 pg. 10) According to Dr. Ghanayem, Petitioner complained of lower back pain on the right side, as well as radiating across his back. (R. Ex. 2 pg. 12) Dr. Ghanayem testified that he had reviewed the MRI films which showed a very tiny disc bulge at L4-5 on the left side. (R. Ex. 2 pg. 14) According to Dr. Ghanayem, if there is disc

pathology on one side of the lumbar spine it cannot cause nerve compression on the opposite side. *Id.* Moreover, Dr. Ghanayem testified that even on the left side the disc bulge at L4-5 was not pushing against the nerve. (R. Ex. 2 pg. 15) As such, he believed Petitioner had a soft tissue injury to his lower back. Id. Dr. Ghanayem noted Dr. Mekhail's initial recommendation for lumbar disc replacement surgery at L4-5, but he stated that Petitioner did not meet the criteria for such a procedure. (R. Ex. 2 pg. 16) He also noted Dr. Mekhail's characterization of Petitioner's disc pathology, i.e., annular tear as acute and Dr. Mekhail's claim that annular tears are always acute and stated that there is no medical literature to support such a contention. (R. Ex. 2 pg. 18) Dr. Ghanayem also noted Dr. Mekhail's revised plan to do a lumbar fusion at L4-5, but he again noted that Petitioner's pathology is on the left side, but his complaints are on the right side, so whether disc replacement or spinal fusion, both proposed surgical procedures are wrong. Id. Upon being asked to reconcile the radiologist's reading of the MRI as showing mild narrowing of the central canal as opposed to his belief that the study showed left-sided findings, Dr. Ghanayem stated that the radiologist used a vague, non-specific term whereas he (*Dr. Ghanayem*) objectively described what the MRI showed regarding nerve compression, i.e., there was none. (R. Ex. 2 pgs. 22-24)

On April 29, 2024, Petitioner informed Dr. Bayran that his symptoms had not changed, and he was still complaining of pain across his lower back radiating to his bilateral legs and feet. Dr. Bayran once again renewed Petitioner's prescriptions for Lenza Pro patches, Meloxicam, and Cyclobenzaprine, and Petitioner was again instructed to remain off work. (P. Ex. 8)

Petitioner testified that he would like to undergo the lower back surgery recommended by Dr. Mekhail. He also stated that he has a Medicaid plan, but he has made no attempt to proceed with medical treatment for his lower back, surgery or otherwise, through Medicaid. Petitioner confirmed that he received TTD benefits from Respondent through December 2022. The TTD payment ledger submitted into evidence by Respondent at trial shows that TTD benefits were paid to Petitioner through December 22, 2022. (R. Ex. 3)

Petitioner testified that he had started a new job with ISS Intermal ("*ISS*") approximately one week prior to the hearing on June 20, 2024. His new job with ISS is as a chassis and container inspector and includes pre-trip inspections of equipment including checking lights and brakes and making sure everything is up to DOT specifications. According to Petitioner, his new job is full-time (*40 hours per week*), and he earns approximately $25.00 per hour. Petitioner testified that this new job is within the initial light duty work restrictions imposed in May 2022 of no lifting greater than 20 lbs.

CONCLUSIONS OF LAW

1. Regarding the issue of accident, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the preponderance of the evidence showing that Petitioner sustained an injury arising out of and in the course of his employment with Respondent on May 11, 2022 when he was changing a tire on a trailer. There was no evidence offered to rebut Petitioner on this issue.

2. 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 unrebutted testimony and the preponderance of the medical evidence showing that Petitioner injured his lower back as a result of his May 11, 2022 work accident. The Arbitrator finds persuasive the opinions of Petitioner's treating physician, Dr. Mekhail, who diagnosed Petitioner with a central disc protrusion with an annular tear at L4-5, indenting on the thecal sac and causing stenosis. Dr. Mekhail's opinion is supported by the objective findings of the MRI and CT scans. The Arbitrator notes that Respondent disputes this issue based on the medical record showing Petitioner had prior complaints of lower back pain – but the records show that those complaints resolved by the time Petitioner had his work accident. Respondent also relies on the opinions of its IME, Dr. Ghanayem, who disagrees with Dr. Mekhail's assessment and surgical recommendation. However, Dr. Ghanayem's opinions are outweighed by the preponderance of medical evidence and Petitioner's unrebutted testimony. As such, the Arbitrator concludes that the Petitioner's current condition of ill-being in his lower back is causally related to his May 11, 2022 work accident.

3. Regarding the issue of medical expenses and consistent with the finding above, the Arbitrator further finds that the Petitioner's medical treatment related to his May 11, 2022 work accident has been reasonable and necessary in addressing his work-related back condition. Accordingly, the Arbitrator hereby orders Respondent to pay any unpaid, related medical expenses as set forth in Petitioner's Exhibit #2, subject to the Fee Schedule pursuant to Section 8(a) and 8.2 of the Act. Respondent shall receive a credit for any medical expenses it has already paid.

4. Regarding the issue of prospective medical and consistent with the findings above, the Arbitrator further finds that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing his work-related neck condition stemming from his May 11, 2022 work accident. Dr. Mekhail has recommended a right L4-5 decompression and posterior interbody fusion. The Arbitrator finds this recommendation to be reasonable and in line with the evidence in this case. Therefore, the Arbitrator hereby orders Respondent to pay the costs associated with the surgical procedure recommended by Dr. Mekhail, as well as any post-surgical follow up care, subject to the Fee Schedule and in accordance with the provisions of Section 8 and 8.2 of the Act.

5. Consistent with the findings above, the Arbitrator further finds the Petitioner was temporarily totally disabled from May 28, 2022 through June 10, 2024. This finding is supported by Petitioner's unrebutted testimony and the medical evidence that show Petitioner was either completely taken off work or was given work restrictions that Respondent did not accommodate. Therefore, the Arbitrator awards Petitioner TTD benefits for these periods and Respondent shall be credited for any TTD it has paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC018121
Case Name	Jeremy Roberts v. Springfield Police Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0182
Number of Pages of Decision	10
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Francis Lynch
Respondent Attorney	L. Robert Mueller

DATE FILED: 4/24/2025

/s/Stephen Mathis, 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

Jeremy Roberts,

Petitioner,

vs. NO. 23WC18121

Springfield Police Department,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of 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 December 9, 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.

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.

April 24, 2025
SJM/sj
o-4/9/2025
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	23WC018121
Case Name	Jeremy Roberts v. Springfield Police Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Francis Lynch
Respondent Attorney	L. Robert Mueller

DATE FILED: 12/9/2024

/s/Linda Cantrell, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 3, 2024 4.31%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Jeremy Roberts
Employee/Petitioner

v.

Springfield Police Department
Employer/Respondent

Case # **23** WC **018121**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **11/22/24**. By stipulation, the parties agree:

On the date of accident, **6/8/23**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**87,193.42**, and the average weekly wage was $**1,676.80**.

At the time of injury, Petitioner was **45** years of age, ***married*** with **1** dependent child.

Necessary medical services and temporary compensation benefits have been provided by Respondent. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$998.02 (Max. rate)**/week for **37.5** weeks, because the injuries sustained caused **7.5%** loss of use of the body as a whole (left shoulder), as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **11/15/23** through **11/22/24**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Arbitrator Linda J. Cantrell

December 9, 2024

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

JEREMY ROBERTS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 23-WC-018121**
	)	
SPRINGFIELD POLICE DEPARTMENT,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Springfield on November 22, 2024. The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 6/8/23, and that his current condition of ill-being is causally connected to the injury. The parties stipulated that all medical bills and temporary disability benefits have been paid, and 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. The sole issue in dispute is the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 45 years old, married, with one dependent child at the time of accident. Petitioner has been employed by Respondent as a police officer for 19 years. He testified that on 6/8/23 he responded to a service call and encountered an intoxicated and agitated male. The male ignored Petitioner's orders to set down a laundry basket and began descending stairs. Petitioner grabbed the basket with his left hand and the male forcibly yanked the basket from him. Petitioner testified that the basket shattered in his hand, and he felt sharp pain in his left shoulder. A foot pursuit ensued, and Petitioner had a physical altercation with the male to place him in handcuffs.

Petitioner testified that he had stiffness and tightness in his shoulder the remainder of his work shift. He worked nights and went home and slept for a few hours. He awoke at 11:00 a.m. the following day with pain in his left shoulder. Petitioner reported to work at 7:00 p.m. on 6/9/23 and his sergeant took him to the emergency room. Petitioner had grinding in his shoulder and pain and numbness into his hand. His symptoms did not improve with medication and

therapy. Petitioner worked light duty from the date of accident until he underwent a left shoulder surgery on 9/1/23.

Petitioner returned to full duty work as a patrol officer approximately five weeks after surgery. He testified that the grinding in his shoulder resolved but he continues to have pain. Sitting in his patrol car with a ballistic vest causes numbness and tingling in his shoulder because the vest changes his position and puts pressure on his shoulder. Petitioner has difficulty holding any weight with his left hand for an extended period of time. He testified that during training he had to hold up a 2.5-pound revolver for a few seconds with his nondominant left hand and it started to shake and was painful. Petitioner denied any issues with his left shoulder or arm prior to the work accident.

Petitioner has been involved in altercations since returning to full duty work. He testified that his left side is not as strong as it was prior to the accident. He feels a twinge in his shoulder when suspects pull away from him causing his shoulder to be painful for the next few days. Petitioner has been a police officer for 25 years. Although he is eligible to retire in three years, he does not have any plans to do so. He has no other training in any fields other than law enforcement and plans on continuing employment with Respondent until retirement. He testified that if he obtains work after leaving employment with Respondent it would still be in the field of law enforcement. Petitioner has not returned to Dr. Herrin since being released on 11/15/23.

MEDICAL HISTORY

On 6/9/23, Petitioner presented to St. John's Hospital and was referred to the Orthopedic Center of Illinois (OCI) for further care. On 6/14/23, Petitioner was examined by Dr. Carolyn Senica at OCI who ordered x-rays and an MRI. The MRI showed an abnormality between the anterior and superior labrum and underlying glenoid suggesting a SLAP tear. Dr. Senica referred Petitioner to Dr. Rodney Herrin for surgical evaluation.

On 8/10/23, Dr. Herrin recommended a left shoulder arthroscopy with probable subpectoral biceps tenodesis and superior labral debridement. On 9/1/23, Dr. Herrin performed a diagnostic arthroscopy and found no evidence of intraarticular pathology. He noted mild fraying of the posterior superior labrum that was slightly debrided with a shaver, which he felt was most likely incidental. (PX1, p. 42) On 9/14/23, Dr. Herrin noted that the preoperative concern of a superior labral tear was found to be a false-positive and the superior labrum appeared to be normal intraoperatively. (PX1, p. 40) Dr. Herrin recommended four weeks of physical therapy and placed Petitioner on restrictions of no use of his left upper extremity.

On 11/15/23, Dr. Herrin noted Petitioner had completed physical therapy but had not reached MMI. Petitioner reported that his shoulder improved quite a bit, but he was not 100%, and he requested to return to work. Physical examination was negative, with some mild pain with passive external rotation of the shoulder. Dr. Herrin released Petitioner to return to work without restrictions but advised that Petitioner would remain under his care for at least another month. Petitioner did not return for further treatment.

CONCLUSIONS OF LAW

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of 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 returned to full duty work without restrictions as a patrol officer. He testified that his left shoulder injury has negatively affected his ability to use a revolver and apprehend suspects with his left arm. He has increased pain, numbness, and tingling with wearing a ballistic vest. The Arbitrator places significant weight on this factor.

(iii) **Age**: Petitioner was 45 years old at the time of accident. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to *Jones* v. *Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed accident, Petitioner sustained a left shoulder injury resulting in a diagnostic arthroscopy. Intraoperatively, Dr. Herrin found no evidence of intraarticular pathology, with incidental mild fraying of the posterior superior labrum that was slightly debrided with a shaver. Petitioner underwent four weeks of physical therapy and was released to full duty work without restrictions on 11/15/23.

Petitioner testified that he continues to have pain, numbness, and tingling in his left shoulder when sitting in his patrol car wearing his ballistic vest. He has difficulty holding his revolver and pain when restraining suspects with his left arm. His left arm is not as strong as it was prior to the work accident. The Arbitrator places significant weight on this factor.

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

Respondent shall pay Petitioner compensation that has accrued from 11/15/23 through 11/22/24, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell

DATED: December 9, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007459
Case Name	Maria Avila v. Gilster Mary-Lee
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0183
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Pieter Schmidt

DATE FILED: 4/24/2025

/s/Maria Portela,Commissioner

Signature

25IWCC0183

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA AVILA,

Petitioner,

vs. NO: 18 WC 07459

GILSTER MARY LEE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and medical expenses and being advised of the facts and law, reverses the Decision of the Arbitrator as explained below but attaches the Decision of the Arbitrator, which is made a part hereof, for the Findings of Fact.

The Arbitrator found Petitioner proved she sustained an accident on April 20, 2017, as her job involved repetitive trauma to the right elbow which arose out of and in the course of Petitioner's employment. The Arbitrator also found Petitioner's current condition of ill-being was causally related to the work injury and relied on Petitioner's testimony of repetitive work for 19 years and the medical treatment records of Dr. Kevin Koth. The Arbitrator entered a permanent partial disability award of 4% loss of use of the right arm.

The Commission views the evidence in an entirely different light than the Arbitrator and finds Petitioner failed to prove accident and causation and therefore vacates the permanency award.

The medical records indicate that Petitioner filed a prior workers' compensation claim alleging an accident date of September 25, 2015, and alleging injuries to the right hand, wrist and left thumb. (Rx3)

On January 12, 2016, Petitioner sought medical care for right shoulder pain along with

arm and hand numbness and was diagnosed with carpal and cubital tunnel syndromes at this visit. (Rx4)

On January 27, 2016, Petitioner related her pain complaints to an acute traumatic injury occurring on September 25, 2015. Petitioner was diagnosed with bilateral carpal tunnel syndrome at the time of this visit. (Rx4)

On March 4, 2016, Petitioner underwent right carpal tunnel surgery performed by Dr. Koth. On March 25, 2016, Petitioner followed up with Dr. Koth and complained of right sided epicondylar pain. (Rx4) Petitioner's workers' compensation case worker was present at this office visit and advised the doctor they were going to follow up regarding the status of the right epicondylar problem. (Rx4 and Rx5)

On July 12, 2016, Petitioner returned to Dr. Koth with a primary history of elbow pain and right elbow injury with an injury setting of "at work" and an injury mechanism of repetitive action. Petitioner was at the visit with Dr. Koth to discuss her right elbow injection on May 12, 2016 (there is no record of same in either Petitioner's or Respondent's exhibits) and presented to Dr. Koth wearing her tennis elbow brace. Dr. Koth assessed Petitioner with right elbow pain, right lateral epicondylitis, right medial epicondylitis and sent Petitioner for a right elbow MRI. (Px2 and Rx5) Petitioner underwent an MRI on July 21, 2016 wherein the impression was "medial epicondylitis and some degree of lateral epicondylitis also appears to be present." (Px2 and Rx5) Petitioner returned to Dr. Koth on August 23, 2016 complaining of right elbow pain due to a repetitive injury at work. Her workers' compensation case worker was present at the appointment and verbally approved elbow injections. (Px2 and Rx5) Petitioner settled her workers' compensation case as it pertained to the right hand/wrist and left thumb on October 29, 2016. (Rx3) It is unclear why the right elbow was a body part not included in the settlement. Additionally, the settlement terms included broad language stating that "the purpose of this contract is to effect a full, final and complete settlement for any and all injuries, whether known or unknown, resulting from the accident claimed to have occurred or manifested on or about September 25, 2015." (Rx3)

Petitioner returned to Dr. Koth on March 30, 2017, for continued treatment to her right elbow. Dr. Koth's note states that the etiology is a work-related injury and surgery was recommended. (Px2 and Rx5) Although Dr. Koth noted the etiology was a work-related injury, Dr. Koth did not provide a causation opinion. There are no additional medical records and Dr. Koth was not deposed.

The Petitioner's current Application for Adjustment of Claim alleges injury to the right elbow due to repetitive trauma with a manifestation date of April 20, 2017.

The Commission finds it noteworthy that there are no contemporaneous medical records corresponding to this alleged date of injury. (Px1) Additionally, there is no testimony as to what may have occurred on April 20, 2017, that would have made Petitioner aware that her condition was work related as of that date. Significantly, there are several medical records noting right epicondylar injuries and seeking approval for treatment from Respondent well prior to the alleged manifestation date of April 20, 2017. (Px2 and Rx5)

There is a plethora of case law regarding how to determine the manifestation date of a repetitive trauma work injury. In *Durand*, the issue was whether the claimant filed her application within the statute of limitations, which made the manifestation date vital to the determination of that issue. *Durand v. Industrial Comm'n (RLI Insurance Co.)*, 224 Ill. 2d 53, 65 (2006). The *Durand* Court set forth its reasoning as follows: Courts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 137 Ill.App.3d 880, 887 (1985), *aff'd*, 115 Ill.2s 524 (1987) (holding that determining the manifestation date is a question of fact and that "the onset of pain and the inability to perform one's job, are among the facts which may be introduced to establish the date of injury"). A formal diagnosis, of course, is not required. The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee. See *General Electric Co. v. Industrial Comm'n*, 190 Ill.App.3d 847,857 (1989). However, because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. See *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill.App.3d 607, 610 (1988).

The Petitioner did not prove manifestation date by any of the four methods used to determine same:

1. The date Petitioner actually became aware of the physical condition and its relation to work through medical consultation;
2. The date Petitioner requires medical treatment;
3. The date on which Petitioner can no longer perform work activities; or
4. When a reasonable person would have plainly recognized the injury and its relation to work.

Although the medical records corroborate that Petitioner has right-sided cubital tunnel syndrome, it is incumbent on Petitioner to prove her case. There is nothing either in Petitioner's testimony or the medical records to support a manifestation date of April 20, 2017. In fact, the preponderance of the evidence supports a manifestation date well before that time. Even at the August 23, 2016 visit with Dr. Koth, Petitioner's workers' compensation case worker was present and treatment for the elbow was requested to be approved as being work-related. (Px2 and Rx5) Any alleged manifestation date after that time simply is not credible.

As Petitioner offered no evidence to establish a causal connection between the alleged April 20, 2017 accident date and the alleged work injury, the claim is denied and the Arbitrator is reversed as to accident and causation, and the permanency award is vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed September 29, 2023, is hereby reversed and all awards vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit

for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

April 24, 2025

MEP/dmm
O: 030425
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/s/ *Maria E. Portela*
Maria E. Portela

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007459
Case Name	Maria Avila v. Gilster Mary Lee
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Pieter Schmidt

DATE FILED: 9/29/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/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

Maria Avila
Employee/Petitioner

v.

Gilster Mary Lee
Employer/Respondent

Case # **18** WC **007459**

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 **Lee**, Arbitrator of the Commission, in the city of **Herrin**, on **8/2/23**. 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. ☐ 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 **4/20/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,225.64**; the average weekly wage was $**523.37**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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

ARBITRATOR FINDS THAT PETITIONER SUFFERED AN ACCIDENT THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT CAUSING 4 % DISABILITY OF RIGHT ARM

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

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

Edward Lee_____ **SEPTEMBER 29, 2023**
Signature of Arbitrator

FINDINGS of FACT

MARIA AVILA v. GILSTER MARY LEE, IWCC 18WC007459

Petitioner testified via interpreter, Ruhanda Barrios that she had worked at Gilster Mary Lee for 19 years. She worked as an operator on Line 3 of cereal. She had to put wheat into 12 chutes and then carry 25 to 50 pounds of vitamin buckets down stairs. She then had to use a mallet to hit the chutes to clear the chutes about every 10 minutes during an eight hour shift. Petitioner started having problems with her right elbow and started seeing Dr. Kevin Koth, Orthopedic Surgeon in Harrisburg, IL. Dr. Koth diagnosed Petitioner with medial and lateral epicondylitis. Dr. Koth opined that the right elbow injury was work related. Petitioner tried conservative treatment, brace and injections. Dr. Koth recommended surgery. The surgery was not approved by the Respondent. Petitioner is still struggling with pain or discomfort in right elbow.

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

The Arbitrator finds that Petitioner's job involved repetitive trauma to her right elbow, which arose out of and in the course of Petitioner's employment

F. Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner's testimony of the repetitive work for 19 years and medical treatment records of Dr. Kevin Koth met her burden of causal connection. Respondent has no medical to dispute this.

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

The Arbitrator finds that Petitioner suffered from medial and lateral epicondylitis as stated in Dr. Kevin Koth's medical records and Petitioner was recommended surgery and testified that it was not approved and that she still suffers from discomfort.

With respect to disputed issue (L) pertaining to the issue of nature and extent, 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

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 No single enumerated factor shall be the sole determinant of disability. *Id*

With respect to Subsection (i) of Section 8.1b(b) , the Arbitrator notes that no AMA rating was offered by either party. The Arbitrator places no weight on this factor when making the permanency determination.

With respect to Subsection (ii) of the Section 8.1b(b), the Arbitrator notes that the record reveals that Petitioner was employed as an operator on Line 3 of Cereal at the time of the injury. She had returned to work for a short time. The Arbitrator places greater weight on this factor when making the permanency determination.

With respect to Subsection (iii) of the Section 8.b(b). Petitioner was 62 years old on the date of the injury. Given the age of Petitioner, the Arbitrator places greater weight on this factor when making the permanency determination.

With respect to Subsection (iv) of the Section 8.1b(b), the Arbitrator notes that the following, her work injury, Petitioner returned to her position as operator for a period of time until she was fired June 20,2017. The Arbitrator places lesser weight on this factor when making permanency determination.

With respect to Subsection (v) of the Section 8.1b(b) the Arbitrator finds that the evidence of disability is corroborated by the treating medical records. At the time of hearing Petitioner testified to issues involving her right elbow. She is concerned with pain and discomfort level.

The Arbitrator notes that the determination of permanent partial disability benefits is not a simply a calculation but an evaluation of all factors as stated in the Act in which consideration is not given to any single factor as the sole determinant. Based on the above factors and the record in its entirely, the Arbitrator concludes that Petitioner sustained permanent partial disability to the extent of 4% loss of use of right arm as provided in Section 8(d)2 of the Act.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017743
Case Name	Kim Edwards v. Taylor Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0184
Number of Pages of Decision	28
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Michael Doerries

DATE FILED: 4/24/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kim Edwards,

Petitioner,

vs. No. 22 WC 17743

Taylor Company,

Respondent.

DECISION AND OPINION ON REVIEW

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

Having carefully considered the entire record, the Commission agrees with the Arbitrator that Petitioner failed to meet her burden of proof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 29, 2024, 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 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.

April 24, 2025

SJM/sk
o-4/9/2025
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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	22WC017743
Case Name	Kim Edwards v. Taylor Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Michael Doerries

DATE FILED: 5/29/2024

/s/Gerald Napleton, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 29, 2024 5.17%

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

Kim Edwards
Employee/Petitioner

v.

Taylor Company
Employer/Respondent

Case # **22 WC 17743**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **11/28/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/4/21**, 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.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $43,992.00; the average weekly wage was $846.00.

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.

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

Respondent shall be given a credit of $00.00 for TTD, $00.00 for TPD, $00.00 for maintenance, $4,640.54 for group disability payments pursuant to Section 8(j) of the Act and $11,203.90 for medical benefits issued pursuant to its group plan for a total credit of $15,843.54.

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ORDER

The Arbitrator finds petitioner failed to establish by a preponderance of the evidence that she sustained an injury arising out of and in the course of her 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.

/s/ Gerald W. Napleton

Signature of Arbitrator

May 29, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kim Edwards v. Taylor Company

22 WC 017743

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

Testimony of Petitioner

Petitioner is currently retired as of July 1, 2022 but prior to that date worked as a "rover" assigned to the A-3 Copper Tubing Department performing various jobs but primarily running an end form machine for some 16 years. (T. 6-7) Petitioner testified that she started her shift at 6:00 a.m. on November 4, 2021 and was working at the Armaflex station processing foam rubber tubing for the insultation of copper tubing. (T. 8-9). She took copper tubing from this station to a bench by the end form machine at the other end of the department to "rebend" because someone was working the Armaflex station. (T. 9). Petitioner testified that she was taking copper tubing to be reformed when she tripped over a safety mat lacking a yellow border at a nearby Bender 1 station while carrying copper tubing that needed to be reformed over to the bender 2 station. (T. 9-10). Petitioner testified to landing on her right shoulder. (T. 11). She picked up the pieces of copper tubing with her left arm and took them to the bender 2 station. (T. 11-12).

After her fall, petitioner testified that she used her left arm to pick up the fallen copper and then she asked Chet Dominski, a co-employee assigned to the bender 2 station, for Kathie Cornford, the substitute lead person that day, to report the injury. (T. 15) Domanski was not in the area when Petitioner fell and claims he did not see her fall as he may have been delivering parts to the braser station. (T. 15). Also, Petitioner claims Cornford was not at the

lead desk some 30 feet away since doing "cycle counts for inventory." (T. 12-13). Petitioner went to the washroom and then approached Kathie Cornford at the lead desk. Petitioner completed an accident report at the nurse's station with Cornford. (T. 12,14).

Petitioner described the department where she worked as spread out with some large machines. (T. 14). She testified that the sound from machines can make conversations difficult. Id.

Petitioner sought medical care at Physician's Immediate Care (PIC) the same day as her injury stating she slipped at work landing on her right shoulder. (PX 1, p. 7). X-rays of the right shoulder showed a humeral fracture. (Id.) She was referred to the ER for ongoing care. (Id.)

Petitioner went to Beloit Memorial Hospital later that day and gave a history of tripping on a mat and landing on her right shoulder after which she went to PIC that revealed a fracture. She stated that she had breakfast around 5:00 a.m. and took Ibuprofen after the fall around 7:00 a.m. (Px6, p. 32 of 33). A CAT scan of the right shoulder showed an acute comminuted displaced fracture of the right humeral head and neck. (Id., p. 2 of 33). Petitioner's right arm was placed in a sling, she was given pain medication, and referred to Dr. Franz for follow up care. (Id., p. 15 of 33).

Petitioner sought medical care with Dr. Franz on November 8, 2021 and gave a more detailed version of the incident at work. She stated she was carrying some objects when she tripped over a mat and landed on her right arm. (PX 2, p. 46). In previous medical visits Petitioner did not describe tripping over a mat or mention carrying anything at the time of slipping and falling. Dr. Franz recommended surgery and referred petitioner to Dr. Milos. (Id. pp. 47, 48).

Dr. Milos examined petitioner on November 10, 2021 and Petitioner gave a history of tripping on a rug at work and falling on the right shoulder. (PX 3, p. 145). Dr. Milos performed an open reduction with internal fixation on November 11, 2021. (Id., pp. 178-180). Petitioner was discharged on November 12, 2021 with near anatomic alignment of the fraction fragments. (Id., p. 168).

Petitioner returned to work with restrictions on March 7, 2022 and was moved to the Armaflex station to accommodate her restrictions where she worked until her planned retirement on July 1, 2022. (T. 19-20; 8). Petitioner testified that the mat she tripped over was moved out and fixed due to the missing yellow safety border. (T. 15). She described pain with lifting, though was able to do daily chores with difficulty. She was not on any pain medication nor treating for her shoulder injury at the time of her injury. (T. 20-22). She is right hand dominant. (T. 22).

On cross-examination, petitioner testified that her shift started at 6:00 a.m. and the weather was inclement. (T. 22-23) She acknowledged she typically participates in the mandatory five-minute pre-shift group exercise session and denied skipping it. She also denied conversing with Cathie Cornford while sitting on a stool near the Bender 1 and end form machine as to why she did not participate in group exercises. (T. 23-25).

Petitioner testified that the Bender 1 station was out of service but uses the bench in that area for Armaflexing parts. (T. 24). Petitioner explained the end form machine process. The endformer is located about 10 feet from the Bender station. (T. 25). Copper and steel tubing is light weight and ranges from six inches to several feet. The tubes are processed per written order. (T. 27-29) The tubing is bundled with an order and placed on a four-wheel cart that is next to the end form machine. (T. 27). Orders describe the product, quantity, and

how it is to be formed. (T. 28) Once the tubing is formed, it is placed in a trough that is on the other side of the end form machine. (T. 28) Once the order is completed, the tubing is moved from the trough back to the cart. (T. 28). The endform machine records the quantity and tube process but is usually zeroed out after bundles. (T. 29). It takes less than five minutes to form 20 pieces of copper tubing. (T.28). The written order is placed with the bundled "end formed" product and transported to the Bender 2 station for processing. (T. 31). The end formed product goes into a rack located near the Bender 2 station operated by Chet Domanski as well as the lead work desk. (T. 31).

Petitioner confirmed that a photograph of the cart to the left side of the end form machine was an accurate depiction of the workstation. (T. 30, Rx7). Further, the photographs of the path taken to push the cart with the bundled end formed product to the rack near the lead workstation and Bender 2 station were accurate. (T. 32, RxGrp#2.). There were no mats or rugs to encounter along this path. (T. 32-33). She agreed that she would not maneuver the cart toward the Bender 1 station to deliver the formed tubing to the Bender 2 station. (T. 33-34). She agreed the photographs from the Bender 1 station looking to the lead station and from the Bender 1 station looking toward the Bender 2 station were accurate. (T. 34-36, RX 4 and 5).

In regard to the Armaflex station, petitioner explained that foam tubing or insulation is fed into the machine and cut to specification per an order. The Armaflex tubing is placed in a plastic bag or bin depending on where it is going. (T. 37-40). Once the box holding the Armaflex material is empty, it is transported to a compactor for disposal. Petitioner agreed the photographs of the Armaflex station, including the machine and box, were accurate. (T. 36-37, RX Group 6). Also, petitioner described the path taken to transport the empty

Armaflex box to the compactor for disposal. (T.41-42) She agreed that photographs of this path, which borders the A3 Department and workstations of Cathie Cornford and Chet Dominski, were accurate. (T. 41-42, Rx7). Petitioner noted that where Cornford typically sat and when filling in for lead are different. (T. 34-35).

Petitioner stated that Cathie Cornford and Chet Dominski were working in the A3-department while she was cutting Armaflex that morning. (T. 42, 43) She began working at the Armaflex station at 6:20 a.m. (T. 43). A report called an Employee Labor History Inquiry records the number of pieces cut to order and the tasks performed. (T. 42-43). When shown RX9, an Employee Labor History Inquiry, she testified that cut pieces of Armaflex and that took some 15 minutes. (T. 44-45, Rx9 and 21) Once she completed cutting the foam tubing, she moved the empty Armaflex box to the compactor along the path past Chet Dominski and Cathie Cornford's workstations. (T. 44-45) She did not take the box all the way to the compactor for disposal. (T. 44-45). She testified that after her fall she used the bathroom near where she entered the building, not the one upstairs. (T. 46-47). Thereafter, shortly after 7:00 a.m., she spoke with Cathie Cornford asking if the nurse was in and told Ms. Cornford she had tripped and hurt her shoulder. (T. 46-47). Ms. Cornford escorted her to the nurse's station. (T. 46-47). Petitioner claims the incident happened close to 7:00 a.m., and that it is possible that they arrived at the nurse's station around 7:40 a.m. but that she doesn't remember the time. (T. 47).

Petitioner denied that any set company policy existed for performing "re-do" orders. (T. 47-48). However, she agreed that written orders have specifications and "re-dos" involve cutting copper tubing. (T. 48-49) Cathie Cornford generally cuts the copper tubing. (Id.) Neither Cathie Cornford nor Chet Dominski gave petitioner a written order with

specifications to complete a re-do the morning of November 4, 2021. (T. 48-49) She claims that the "rebending" of 19, 3/8-inch, 30-inch copper tubing was done by the end former station after she completed working at the Armaflex machine. (T. 49-50) She admitted she did not have a written order to perform any "redo." (Id.)

Petitioner claims the 19, 30-inch tubes fell on the concrete floor close to Cornford and Domanski's workstations. (T. 50-51) Further, she testified she was on the floor for a couple of minutes and got up by herself. (T. 50-51) She denied seeing any co-employees while walking with the 19 pieces toward the bender 2 station. (T. 50-53). She denied calling for assistance. (T. 51). She testified that the copper tubes were close to her, that she picked them up with her left arm and held them in her left arm. (T. 52). She claims she placed the 19 copper tubes on the bench at the bender 2 station and left them with the part number written up by Cathie Cornford. (T. 53). However, she did not have any interaction with Cathie Cornford before or while carrying these 19 pieces to the bender 2 station. (T. 53-54) Also, she admitted Cathie Cornford did not hand her a written order nor did she see Ms. Cornford prepare a written order for any "redo" order. (Id.) She admitted not leaving any written order for Mr. Dominski relative to these 19 pieces of copper tubing. (T. 53-54).

On redirect examination, petitioner testified there was a record of everything she did except for "redo" orders as it could confuse inventory numbers. (T. 57-58). She acknowledged that if she needed to redo or reform parts while wrapping with Armaflex there may be no record of that. (T. 59). She acknowledged she started her day at the Armaflex machine and then took parts to the end form machine to reform them as they were incorrectly formed and needed to be reformed. (T. 59-61).

On re-cross examination, petitioner acknowledged that orders for a "redo" are sometimes written on a piece of copper which would indicate what task needed to be performed. (T. 65-66). Once "reprocessed," the product is taken to the Bender 2 station with additional instructions for the Bender 2 operator to complete the order. (Id.) Petitioner agreed she did not provide Chet Dominski, the bender 2 operator that morning with any written order regarding 19 copper tubes that she claimed were "reprocessed" that morning. (T. 66-67).

Petitioner testified that the Armaflex machine logs what work is to be performed, yet employees do not log in with cards to track their performance and co-employees in the department use the Armaflex machine. Petitioner agreed that the Employee Labor History Inquiry tracks the order number and quantity of product processed by an employee as the order is filled. (T. 69-70).

Testimony of Katie Hyndman

Ms. Hyndman, environmental health and safety manager for respondent overseeing safety and environmental issues, and investigating work injuries, testified pursuant to subpoena. (T.75). She arrived at 7:30 a.m. on November 4, 2021 and soon learned that petitioner had fallen and hurt her arm (T.74-75). Ms. Hyndman spoke with petitioner and Kathie Cornford, acting lead supervisor, in the nurse's office to gather as many details as possible (T.78-80). Petitioner stated she tripped on a pressure-sensitive mat missing yellow safety edges. (T. 80). Petitioner did not tell her what she was doing and where she was going when she tripped (T.80). Ms. Cornford stated that petitioner reported she had fallen, and she offered to escort petitioner to the nurse's station. (T. 81-82). Ms. Hyndman inspected the

area where the fall purportedly occurred, and noted missing safety edges which were later remedied. (T.80).

Days later, Ms. Hyndman learned more regarding the involvement of 19 copper tubes and investigated further by interviewing Ms. Cornford again and Mr. Dominski. (T. 81-82). Both are assigned to the A3 Copper Tubing Department working near the location of petitioner's reported fall. (T.81-82).

Ms. Cornford reported there was no written order for the processing of 19 copper tubes to be completed that morning. (T. 84-85) Further, Ms. Cornford did not have any written order for a "re-do" order. (Id.). Ms. Cornford added that she had no recollection as to why any copper tubes would need to be bent that morning or reprocessed that morning, nor were any found at the Bender 2 station that morning. (T.86). Ms. Hyndman learned that Ms. Cornford did not hear 19 copper tubes falling to the ground near the bender one station. (T. 83).

Chet Dominski denied having any interaction with petitioner that morning, which was at odds with Ms. Hyndman's investigation and a "red flag." (T.82-83). Dominski also stated he had no knowledge of petitioner's fall and did not recall receiving copper tubing at his workstation that morning (T.86-87). Instead, he was processing stainless steel tubes at the Bender 2 Station that morning. (Id.). Thus, petitioner had "no business delivering" any copper tubes to his workstation that morning, as he would have had to change the setup of the bender 2 machine in order to process the copper tubing. (Id., T. 86-88). Ms. Hyndman learned that Dominski had no order for a "re-do" of copper tubing presented to him that morning (T.88).

Thereafter, Ms. Hyndman obtained an itemization of the orders petitioner filled while working on the Armaflex machine on November 4, 2021 (Resp.Ex.9). The document indicates the petitioner completed six orders, cutting five quantities of 12 product and one quantity of 24 product. (Id.). These pieces of Armaflex were cut to length between 7:18 and 7:20 (Resp.Ex.21).

Later, Ms. Hyndman learned that petitioner had not participated in a group exercise session on the morning of November 4, 2021; but rather, was found seated between the End Form station and the Bender One station with her jacket draped over her. (T.83). The lack of participation was unusual for Petitioner and participation in group exercises is mandatory. (T. 83)

Ms. Hyndman took photographs of the End Form machine, Bender One station, the Armaflex station, the route petitioner would take to transport a cart with product from the End Form machine to the Bender 2 station, the vantage from the Bender One station looking toward the lead station as well as and Bender One station looking toward the Bender 2 station. (Rx1, Res.Grp.Ex2, Res.Ex.4,5; Res.Grp.Ex6). Ms. Hyndman also conducted a re-enactment of 19 copper tubes, 3/8ths and 30 inches long, dropping to the ground where petitioner's fall allegedly occurred (T.89-91). (Resp.Ex.19 - video**).**

Based on her investigation, Ms. Hyndman was unable to corroborate petitioner's version of a fall at work while carrying end formed copper tubing from a "redo" order. (T. 89-91).

On cross-examination, Ms. Hyndman stated she did not initially look for copper tubes because she only learned later that copper tubes were involved in the incident (T.93). She confirmed that Mr. Dominski reported no knowledge of petitioner falling, nor did he hear any

copper tubes striking the floor. (T. 93-94). She reviewed a Labor History of the tasks Mr. Dominski performed that morning, indicating the time the task was performed, the part number, the approximate time and quantity. (T. 95-97) She estimated it takes from 30 to 60 minutes to change over a Bender 2 station machine for processing stainless steel to copper tubing. (T.98-99). A "re-do" may be performed if a product is damaged, of the wrong length, or not formed properly. Notification comes from another department, and the process is supposed to begin with contacting the lead supervisor. (T.99-100). A "re-do" order could be more informal, with the written order on the copper tube and not on paper. (T.99-100).

Ms. Hyndman acknowledged that she did not have a good answer for why she did not run an inquiry for Ms. Cornford's activities on the morning of Petitioner's injury. (T. 97). His focus was on Petitioner and Mr. Domanski. Id.

On re-direct examination, Ms. Hyndman testified she was unable to find any evidence that a "re-do" order was presented to petitioner for processing on November 4, 2021. (T. 100)

Testimony of Kathie Cornford

Kathy Cornford, testifying pursuant to subpoena, stated that she was acting lead supervisor on November 4, 2021, and when not in that capacity, she works as a machine operator, at a station across from the Bender 2 Station and adjacent to the lead desk. (T. 101-104). She operates a T-drill machine, which is some five feet from the lead desk and in close proximity to the Bender 2 Station. (T. 104). The end form machine was "right in front of her." (T. 104).

In her capacity as machine operator, Ms. Cornford prints out orders that need to be run on the T-drill machine and prints off orders that need to be completed in the A3

department, including the Armaflex, End Former, and Bender 2 Stations, as well as any other stations. (T. 105-106).

Ms. Cornford testified as to the protocol for a "redo" order. A written order is generated from another department requesting a re-do of copper tubing. (T. 107). She prints out an order for the "wrong or damaged product," writes out the length for the copper to be cut and either cuts the copper on the T-drill machine or saw. (T. 107). She did not receive any written request for a copper "re-do" the morning of November 4, 2021. (Id.).

Ms. Cornford testified that group exercises are mandatory, beginning at the start of the shift around 5:00 a.m. (T. 108-109). Employees are paid during this 5 minute of stretching and bending conducted to avoid repetitive hand injuries. (T. 108-109, 113-114). She stated that petitioner did not participate in the group exercises that morning so she had a conversation with petitioner who she found sitting between the Bender 1 Station and end former where she would normally take her breaks. Ms. Cornford asked petitioner why she did not attend exercises, and petitioner stated she did not realize the time. (T. 110-111). After the group exercises, petitioner went to the Armaflex Station where she cut product. (T. 110-111).

Ms. Cornford observed petitioner several hours later at approximately 7:30 a.m. that morning walking by her workstation pushing a big empty Armaflex box. (T. 111-112). She thought petitioner went upstairs to the bathroom and recalled she came to the lead desk by the T-drill machine where they engaged in a conversation. (T. 111-112). Petitioner asked if the nurse was in, Ms. Cornford stated she was unsure, and asked if she could provide any assistance. (Id.). Petitioner stated she had fallen "by the Bender No. 1 which is kind of by the endformer" and is also near the T-drill machine and lead desk (Id.). Ms. Cornford

escorted her to the nurse's station. Ms. Cornford testified that she did not hear any pieces of copper falling on the ground and did not observe petitioner fall. (T. 112.113). Also, she did not see petitioner laying on the ground near the Bender 1 Station. (Id.).

After transporting petitioner to the nurse's station, Ms. Cornford returned to the A3 Department. She did not observe 19 pieces of formed copper tubing at the table of the Bender 2 Station. (T. 115). She conferred with Chet Dominski, and he advised he did not see petitioner fall nor did he hear any copper tubing striking the ground. (T. 115-116). Ms. Cornford confirmed the accuracy of the photograph of her workstation looking toward the Bender 1 Station. (Rx12, (T.116)

Ms. Cornford stated inventory checks are conducted with a co-employee and last for 20 minutes to a half hour. (T. 114). The check did not take her away from the A3 Department that morning. (T. 113-114). She recalls performing the inventory check right after group exercises. (T. 113-114). Also, the inventory check was completed before 6:00 a.m. (T. 115). Cornford testified that stainless steel products are not cut in the A3 Copper tubing department as only copper tubing is cut but "the cutting of copper could involve products other than those as part of a redo." (T. 117).

On cross examination, Ms. Cornford testified that she has worked the Armaflex machine, which cuts the material that goes around the copper tubing. (T. 119-120) There is never an instance where the Armaflex could not be placed over copper tubing, because if it does not fit, it is simply sliced and taped around it. (T. 119-120). In fact, if Armaflex does not fit around tubing, there needs to be an investigation, and the Armaflex has to be "redone." (T. 120). She explained that the print order would have to be altered, which is a "major thing" and "process." (T. 120).

Ms. Cornford observed petitioner's demeanor while sitting at her Bender 1 Station that morning and again when she approached her at the lead desk inquiring about the availability of the nurse. During both interactions, petitioner appeared the same and not as though she was in pain from an injury. (T. 121-122). In fact, she testified she did not know there was anything wrong with petitioner until she mentioned the need for care. (T. 122). She did observe her pushing an empty box down the aisle before the second interaction. (T. 122-123). She described Petitioner as "stoic" and "stone-faced." (T. 122).

On redirect examination, Ms. Cornford stated that petitioner would not have been assigned to perform any tasks at the Bender 1 Station since the machine was not operational. If Armaflex did not properly fit over a tube, a written report would have to be authored. (T. 124-125).

Regarding "re-dos" of copper tubing, if there was something wrong, yet the product matched the printed order, an engineer would be contacted for a re-do of the print. (T. 125). If it was human error, a recut or re-do could be performed. (Id.). There was no written report generated noting an issue with Armaflex fitting over copper tubing that day, which would have been communicated to her since acting lead supervisor that day. (T. 125).

On recross examination, Ms. Cornford explained that if the copper tubing was bent incorrectly from human error, the product would be brought to her to determine if it was processed correctly by looking at the printed order. (T. 127-128). If necessary, she would recut the copper. She did not receive any requests or reports to redo copper tubing the morning of November 4, 2021. (T. 128).

In response to the Arbitrator's inquiries, Ms. Cornford testified that she began working at 5:00 a.m.; petitioner started at 5:30 a.m.; exercises starting at 5:35 a.m. and ended

in five minutes. (T. 129-130). Petitioner asked to be taken to the nurse's station at 7:00 a.m. to 7:30 a.m. (T. 129-130). She observed petitioner cutting Armaflex after group exercises as well as pushing an empty Armaflex box before 7:00 to 7:30 a.m. (T. 129-130).

Testimony of Chet Domanski

Chet Dominski testified pursuant to subpoena stating he was hired in 2006 as currently works as a CNC Tube Bending Operator and was assigned to the A-3 Copper Tubing Department for the past six years. (T. 131-132). On November 4, 2021, he was assigned to the Bender 2 Station where he sets up and operates the bender machine that bends tubes. (T.132) The machine set up is different for stainless steel and copper products, as the former is more heavy duty, and the latter requires less pressure for processing. (T. 133-134) Once the machine is set up, the tubing material is "run." Once the run is completed, a changeover of the machine is completed to cut different types of tubing if necessary. (T. 133-134). It takes 30 to 45 minutes to complete a change over. (Id)

Mr. Dominski began working at the Bender 2 Station that morning which he believed was set up for bending stainless steel. (T. 134-136) He received a pick list or work order on November 4, 2021. (T. 134-136, Rx13). The part number circled on the pink portion of the Exhibit and the white form behind the corner describes the tubing. (T. 136-137). Per the ticket, marked as RX13, he testified that he was bending half inch stainless steel tubing with four parts to be processed that morning. (T. 137-138, Rx13). The list shows the tube required, the length of Armaflex, and the part numbers for the label. (T. 138, Id.).

Mr. Dominski observed petitioner worked that morning but did not hear of any drop of any copper tubing at the Bender 1 Station. (T. 139-140). Further, he did not see petitioner

fall or being on the floor near the Bender 1 Station for any length of time. (Id.). Also, he denied having any conversations with petitioner that morning. (Id).

Mr. Dominski explained that he would have received tubes for processing from the lead person or he would grab up the tubes from the parts rack located several feet from his workstation. (T. 144-145). If tubes were given to him by the lead person, they would be laying on his table with a written order. Mr. Dominski did not remember receiving 19 copper tubes as part of a re-do order that morning. (T. 140). Also, he did not receive any written instruction from petitioner to process copper tubing as part of a "re-do." (Id). If he had other tasks that required a changeover that shift, he would have performed them after processing the stainless-steel tubing. (T. 141-147). Per an Employee Labor History Inquiry, he processed 12 copper tubes on November 4. None of them involved a re-do. (T. 143).

Mr. Dominski testified that he did perform some copper work as RX2 demonstrated that he processed a total of 12 copper tubes that day starting at 8am, and at various times until 12:30. (T. 143). He could not tell if any of those were for a redo. Id.

On cross examination, Mr. Dominski testified that for "re-dos," the parts are placed in the parts rack. (T. 146-147). There may be writing on the copper tube because some jobs required two different sizes of copper and only one written work order. (T. 147). He attended the exercises that morning but did not notice petitioner. (T. 146-147). Regarding the Employee Labor History Inquiry, while there was nothing reported from 5:20 am to 7:57 am., he could have been forming stainless steel tubing since the tasks performed may not be reflected on the sheet since not recorded until that job is completed. (T. 147-150). Thus, the pick list processed or bent the morning of November 4, 2021 did not show up on his Labor History Inquiry. (T. 149-150).

Petitioner testified in rebuttal that she always participated in group exercises classes. (T. 151).

CONCLUSIONS OF LAW

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT WITH RESPONDENT?

The Arbitrator finds that petitioner failed to sustain her burden of proof on the issue of accident. Consequently, her claim for workers' compensation benefits is denied.

It is axiomatic that a claimant seeking compensation under the Act must establish by a preponderance of the evidence that an injury arose out of and in the course of the employment. 820ILCS305/1(d) (2013). *Buckley v. Ill. Workers' Comp Comm'n*, 2022 IL. App. (2d) 210055WCIL Preponderance of the evidence is "evidence which is of greater weight or more convincing than the evidence offered in opposition to it; evidence which as a whole show that the fact to be proved is more probable than not; that which best accords with reason and probability; something more than weight; it denotes a superiority of weight." *Black's Law Dictionary*, West Publishing Co., 5th Ed., 1983. The Commission shall weigh the evidence including any lay testimony, and will determine whether the lay testimony was credible, verifiable, or corroborated.

In order to determine whether claimant's injury arose out of the employment, the risk to the which the employee was exposed need be categorized. *Bell Telephone Co. v. Indus. Comm'n.*, 131Ill.2d 478, 546N.E.2d 603 (1989). Risks are categorized into three groups:

1. Risks distinctly associated with employment;
2. Risks personal to the employee such as idiopathic falls; and
3. Neutral risks that have no particular employment or personal characteristic.

McAllister v. Ill. Workers' Comp. Comm'n, 2020 Ill. 124 848, 181 N.E. 2d 656, (2020); *First Cash Financial Services*, 367 Ill.App.3d 102 (2006). Typically, the first step in risk analysis is to determine whether the claimant's injuries arose out of an employment-related risk—a risk distinctly associated with the claimant's employment. See, *McAllister,* 2020 IL 124848 ¶ 46. While Petitioner's trial testimony could be sufficient to find that her injuries were due to an employment related risk that arose out of and in the course of her employment, Respondent has presented clear evidence to challenge whether Petitioner's allegations are truthful. Based on the totality of the evidence in the record, Petitioner has failed to meet her burden of proof by a preponderance of the credible evidence.

The Commission is not required to award compensation merely because there is some testimony which, if stood alone and undisputed, might warrant such a finding. *Burrgess v. Indus. Comm'n.*, 169Ill.App.3d 670, 523N.E.2d 1029 (1980). Indeed, when the claimant's testimony is virtually the only evidence favoring an award and the testimony is contradicted, compensation may properly be denied. *Shell Oil v. Indus. Comm'n*, 2 Ill.2d 590, 119 N.E.2d 224 (1954); Caterpillar *v. Indus. Comm'n.*, 73Ill.App.2d 311, 383N.E.2d 220 (1978); *Luby v. Indus. Comm'n.*, 82Ill.2d 553, 412N.E.2d 439 (1988); *Banks v. Indus. Comm'n.*, 134Ill.App.3d 312, 480N.E.2d 139 (1985); *Elliott v. Indus. Comm'n.*, 303Ill.App.3d 185, 707N.E.2d 228 (1999); *Hosteny v. Ill. Workers' Comp. Comm'n*, 397 Ill.App.3d 665, 928 N.E.2d 424 (2009); and *Masters v. Ill. Workers' Comp. Comm'n*, 2023 IL. App(1st) 230984WC-U. In fact, the Commission is not required to rely on unrebutted testimony if the Commission finds it not credible. *Fickas v. Indus. Comm'n.*, 308Ill.3d 1037, 721N.E.2d 1165 (1999). Instead, it is the Commission's function to judge the credibility of witnesses, resolve conflict and assign weight

to and draw reasonable inferences from the evidence. *Beattie v. Indus. Comm'n.*, 276Ill.App.3d 446, 657N.E.2d 1196 (1995).

Determining the credibility or weight to be accorded testimony is based on more than a witness's demeanor. Rather, credibility is dependent on support and corroboration, not in isolation such as how witnesses look or sound, but rather consideration of five classical tests of the evidence:

1. Witness demeanor;
2. Interest or motivation of the witness;
3. Probability or improbability of the witness version;
4. Internal consistencies in the witness's testimony and conduct; and
5. External inconsistencies in the witness's testimony through other evidence, both direct and circumstantial.

In evaluating petitioner's claim, the Arbitrator finds guidance in the Appellate Court's prior decisions in *First Cash Financial Services v. Indus. Comm'n.*, 367Ill.App.3d 102, 853N.E.2d 799 (2006) and the Commission's decision in *Hongsermeier v. Rockford Memorial Hospital*, 210Ill.WRK.comp.Lexus 721, 10 IWCC 0680.

In *Hongsermeier*, compensation was denied for a fall at work when claimant fell while holding a cup of coffee and wearing a ten-pound messenger bag without any noticeable defect on the floor. *Hongsermeier v. Rockford Memorial Hospital*, 210Ill.WRK.comp.Lexus 721, 10 IWCC 0680. In denying compensation, the Court noted that circumstantial evidence can only support a reasonable inference, and if the evidence allows for the inference of the nonexistence of a fact to be just as probable as the existence of the fact, then the conclusion that the fact existed is mere speculation and conjecture and cannot support an award or finding of compensability, citing *First Cash.*

In this case, petitioner testified she started working at 6:00 a.m. and fell near the Bender 1 station carrying "reformed" copper tubing to the Bender 2 station. The fall was

unwitnessed because co-employees were away from the department performing tasks. Further, she testified this unwitnessed fall occurred after cutting foam insulation at the Armaflex station, and that before reporting the fall to Ms. Cornford, she used the first-floor washroom.

The First Aid Treatment Log document completed by petitioner indicates she began working at 5:30 a.m. and her injury occurred at 7:00 a.m. Her Employee Labor History Inquiry document shows she completed several orders at the Armaflex machine, cutting five quantities of 12 product and one quantity of 24, from 7:18 through 7:20 a.m. By petitioner's own assertions, her fall would have to have occurred sometime after 7:20 a.m. not 7:00 a.m.

Next, the testimony of Cathie Cornford and Chet Dominski established the workday began as petitioner represented in her Furst Aid Log, with the two employees completing the mandatory group exercises by 5:35 a.m. that petitioner did not attend. Also, Ms. Cornford testified that the inventory check that day would not have taken her away from the A-3 department. Regardless, the check was completed before 6:00 a.m. Thus, she would not have been away from A3 Department where this fall allegedly occurred. Likewise, she observed petitioner pushing an empty Armaflex box past her workstation around 7:30am and believed she then went to the washroom. Thereafter, she reported her fall. Likewise, her demeanor from that observed at the beginning of the shift and when conversing about her fall was unchanged.

This time frame is consistent with the Labor History Report showing petitioner processes Armaflex orders until 7:20am. Thus, if the fall occurred where and when as alleged, Ms. Cornford would have been present and heard the 19 pieces of 30-inch copper tubing striking the ground and observed petitioner on the ground where she claims she was for some

three minutes, and likely in pain. Equally significant, no "redo" order was presented to Ms. Cornford, who was acting lead supervisor, per company protocol, nor did she give Mr. Dominski any order for a "redo."

Additionally, Chet Dominski denies receiving any "reformed" copper tubing with written instructions on the tubing or a written order for processing a "redo" at his workstation that morning. In fact, there were not 19 formed, 30-inch copper tubes for processing at his workstation that morning. Similarly, the pick lists and Employee Labor History Inquiry tendered failed to show that Mr. Dominski processed, reformed copper tubing that petitioner had delivered to his workstation. Mr. Dominski testified to being set for stainless steel that morning and did not form any copper until after 9am and even then, it was for various pieces thoroughly the morning totaling 12 pieces. Moreover, petitioner, by her own admission, acknowledged there was no written order for a redo order that morning. Additionally, Mr. Dominski, like Ms. Cornford, did not hear 19 pieces of copper tubing striking the ground near the Bender 1 station nor did he observe petitioner on the ground where she fell and purportedly laid for some three minutes.

The Arbitrator notes that the initial medical history recorded at PIC indicates petitioner slipped at work landing on her right shoulder. There was no mention of tripping over a mat or rug nor any mention of carrying anything at the time of slipping and falling.

"[U]ncorroborated testimony will support an award for benefits only if a consideration of all the facts and circumstances supports that decision." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 888 (2nd Dist. 1990) (citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 218 (1980)). The Arbitrator considered the demeanor of the witnesses, the interests and motivation of the witnesses, the probability and improbability of the witness

version of events, the internal inconsistencies in the witness testimony, conduct and the external inconsistency in witness testimony through other evidence, direct or circumstantial, and finds petitioner has not met her burden of proof by a preponderance of the evidence. The Arbitrator notes that if the evidence supported a finding that Petitioner slipped on a mat that is missing safety borders that could be considered a compensable accident. That said, the Arbitrator finds that Petitioner's uncorroborated testimony does not support a finding that petitioner actually fell at work on November 4, 2021.

While it is possible to infer that she fell over a mat near the Bender 1 station it is equally possible to infer that it did not so occur, as credible witness testimony showed there was no sound from petitioner falling nor observation of petitioner on the ground for some three minutes at the location where the fall purportedly occurred. The Arbitrator finds it is reasonable to infer that had petitioner dropped the 19 copper tubes fell on the concrete floor it is unlikely the corresponding sound from the impact of those tubes against the concrete and each other, or their subsequent collection by petitioner, would have gone unnoticed by her co-workers. But for petitioner's testimony, there is no evidence of a pressure-sensitive mat missing edges. On cross-examination, petitioner admitted that the photographs entered into evidence were accurate and that there was no evidence of any mats or rugs along the path where she allegedly fell. (T. 32-33, RxGrp#2.). Further, petitioner's testimony regarding her activities at the time of her fall were not supported by the production documents reviewed and introduced at trial. This is not an instance where the Arbitrator is asked to deny benefits based on a claimant's exceeding his/her job duties, but rather a question of whether petitioner has established she actual was in performance of the tasks that allegedly led to her fall. If petitioner did not fall on a defective mat and did not establish that she was performing a job-

related task at the time of her fall, she has not met her burden of proof to establish that she sustained injury as a result of an employment related risk.

As noted in *First Cash Financial,* where the evidence allows for the inference of a non-existent fact to be just as probable as its existence, such an inference cannot reasonably be drawn to support an award here. The Arbitrator finds petitioner failed to sustain her burden of proof by a preponderance of the evidence that her alleged fall occurred.

There is no corroborating evidence that supports petitioner's allegation of a fall at work. Petitioner's testimony stands on its own. Respondent has presented enough evidence to call Petitioner's story into question and Petitioner's uncorroborated testimony fails to meet the burden of proof here. Benefits are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018605
Case Name	Jon Cowell v. City of East Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0185
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Patrick Jennetten
Respondent Attorney	Michael Bantz

DATE FILED: 4/25/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON COWELL,

Petitioner,

vs. NO: 21 WC 18605

CITY OF EAST PEORIA,

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 whether Petitioner's condition is causally related to his undisputed March 9, 2021 occupational exposure to COVID-19, entitlement to incurred and future medical expenses, and the nature and extent of Petitioner's permanent disability, 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.

CONCLUSIONS OF LAW

Permanent Disability

The Arbitrator concluded Petitioner sustained 10% loss of use of the person as a whole. The Commission's analysis of the §8.1b factors yields a different result.

§8.1b(b)(i) – impairment rating

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

§8.1b(b)(ii) – occupation of the injured employee

Petitioner's pre-accident occupation was water treatment plant operator. Following his occupational exposure, Petitioner returned to work in an unrestricted capacity. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(iii) – age at the time of the injury

Petitioner was 57 years old on the date of his occupational exposure. As an older individual, the impact of Petitioner's occupational disease on his remaining life expectancy is diminished. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(iv) – future earning capacity

There is no evidence that Petitioner's occupational disease resulted in an adverse impact on his future earning capacity. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner testified that since his COVID-19 infection, his breathing is significantly compromised. He is dependent upon twice-daily use of a Symbicort inhaler to manage his severe shortness of breath. T. 18. Petitioner's testimony is confirmed by the treating records, which reflect Petitioner's occupational disease caused permanent pulmonary damage. Dr. Marshall observed Petitioner's post-COVID-19 lung function tests were consistent with obstructive airway disease and airway spasticity. Dr. Marshall also documented that Petitioner now has chronic shortness of breath and "requires maintenance pulmonary medication to prevent significant impairment of his ability to function, due to his breathing problems." PX9, DepX1. The Commission finds this factor weighs heavily in favor of increased permanent disability.

Based on the above, the Commission finds Petitioner sustained 7% loss of use of the person as a whole.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 4, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,868.77 for out-of-pocket expenses, as provided in §8(a).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit of $68,170.77 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for medication management and prescription costs as recommended by Dr. Marshall, as provided in §8(a) 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 35 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 7% 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

April 25, 2025

RAW/mck

O: 3/19/25

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/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018605
Case Name	Jon Cowell v. City of East Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Patrick Jennetten
Respondent Attorney	Michael Bantz

DATE FILED: 12/4/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 28, 2023 5.24%

/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

Jon Cowell
Employee/Petitioner

v.

City of East Peoria
Employer/Respondent

Case # **21** WC **018605**

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 **Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **October 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 **Future medical**

FINDINGS

On **03/09/2021**, 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 $**79,301.56**; the average weekly wage was $**1,525.03**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**ALL** for TTD, $**0** for TPD, $**0** for maintenance, and $**68,170.77** for other benefits, for a total credit of $**68,170.77 plus all TTD paid**.

Respondent is entitled to a credit of $**All medical minus out of pocket expenses** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $1,868.77, as provided in Section 8(a) of the Act for out of pocket expenses incurred for reasonable and necessary medical treatment paid after the bills were submitted to Respondent's group health insurance subject to Section 8(j).

Respondent shall be given a credit of $68,170.77 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.

As set out fully in the Decision of Arbitrator, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of person as a whole pursuant to §8(d)(2) of the Act.

Respondent shall be responsible for future medical costs including Petitioner's prescriptions for treatment of his airway spasticity and obstructive lung disease.

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 4, 2023**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON COWELL	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. 21 WC 018605**
	)	
CITY OF EAST PEORIA,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner filed an Application for Adjustment of Claims under the Occupational Disease Act (ODA) for a COVID-19 infection at work for the Respondent. (PX #2). On June 20, 2020, the Illinois Legislature amended the ODA to provide benefits for workers who contracted COVID-19 in the workplace. That amendment created a rebuttable presumption for front-line workers employed by essential businesses and operations as defined in the Governor's Executive Order 2020-10 dated March 20, 2020. 820 ILCS 310/1(g)(2). The Governor's Executive Order 2020-10, Paragraph 9, indicated that persons could leave their residence to provide essential services to perform any work necessary to operate and maintain Essential Infrastructure, including providing water services.

The parties have stipulated that Petitioner was an employee on the date of disease, that he was exposed to an occupational disease that arose out of and in the course of employment, that Respondent was given notice, that Petitioner's average weekly wage was $1,525.03, that Petitioner was 57 years old, married with no dependents on the date of the occurrence, that Respondent has paid medical bills subject to Section 8(a) of the Act, that there are some agreed balances on medical bills owed in the amount of $657.84 and prescriptions in the amount of $87.42, and that Respondent has satisfied all temporary total disability (TTD) benefits under the Act.

The disputed issues in the case include whether Petitioner's prescriptions for inhalers in the amount of $1,109.66 are causally connected to the occupational disease and the out-of-pocket expenses for those prescriptions, whether the Petitioner's current condition of ill-being is causally connection to the injury or exposure, the nature and extent of the injury, and whether the ongoing need of the inhalers is causally connected to the occupational disease.

Petitioner testified that he worked for the Respondent as a water maintenance worker. He was exposed to COVID-19 at work. Many of his co-workers contracted COVID-19 immediately before he did, and they left work on leave for COVID-19 before he did. Respondent is not contesting the exposure at work or the resulting COVID-19 infection by Petitioner as stemming from the work exposure. Thus, it is agreed that the exposure was arising out of and in the course and scope of work with Respondent pursuant to the 820 ILCS 310/1(g), with the exposure and

resulting COVID-19 infection occurring between March 9, 2020, and before June 30, 2021, and therefore falling under the purview of the ODA. 820 ILCS 310/1(g)(4).

Petitioner testified that as a result of his COVID-19 infection, he was admitted to Unity Point Methodist Hospital around March 24, 2021. (Tr. p. 13) Petitioner was treated by hospital staff and his family doctor, Dr. Marshall, in the hospital for his COVID-19 infection until his discharge on March 29, 2021. *Id*. Petitioner testified he received treatment including Remdesivir, antibiotics, steroids, and oxygen treatment while he was in the hospital. (Tr. p. 14)

Petitioner does not specifically remember telling Dr. Marshall about breathing problems prior to his COVID-19 infection but testified he really only had problems going up stairs. (Tr. p. 15). Since his COVID infection, Petitioner testified his breathing is not good and he has shortness of breath with almost anything he does. (Tr. p. 16) Petitioner testified that he uses Symbicort to help with his breathing issues and it works very well to treat his condition. *Id*. Petitioner testified he takes Symbicort to treat his breathing condition twice per day, and if he misses a dose, he does not breathe well with exertion. (Tr. p. 18) Petitioner testified that over the past 4-5 years he has lost forty (40) pounds, but despite the weight loss, he is still having problems breathing. (Tr. pp. 20-1)

Pre-Accident Medical Treatment

Douglas Marshall, M.D., was Petitioner's family medicine doctor prior to his COVID-19 infection. On August 12, 2019, Dr. Marshall listened to Petitioner's lungs and noted that they were normal with no distress, wheezing, rales, coughing, tightness, or shortness of breath. Petitioner reported shortness of breath with exertion but felt that was due to inactivity and obesity. (PX #5) Visits on October 15, 2019, January 28, 2020, June 10, 2020, and November 3, 2020, similarly showed normal pulmonary exams with no shortness of breath. *Id*. Petitioner had coughing and wheezing from a lower respiratory infection on March 14, 2021. *Id*. Despite the respiratory infection, Petitioner told his family doctor that he did not have shortness of breath on March 19, 2021. *Id*.

Medical Treatment

Petitioner saw his family doctor on March 19, 2021, with a three-week history of coughing and feeling plugged up. Petitioner had developed a fever the day before. He had gone to express care five days earlier and received treatment including prednisone, azithromycin, and benzonatate. Dr. Marshall instructed Petitioner to go to the ER if his condition worsened over the weekend. (PX #5)

Petitioner went to the clinic to the express clinic on March 20, 2021, where he saw Hollie N. Hangartner, N.P. Petitioner reported a loss of taste and smell and continuing to feel bad. Petitioner was diagnosed with COVID-19 based upon testing. Petitioner was told to go to the ER if his condition worsened. (PX #5)

Petitioner was treated with monoclonal antibody therapy for COVID-19 on March 22, 2021, with an infusion provided of Bamlanivimab. (PX #4) He presented to the emergency room

at Methodist on March 24, 2021, for shortness of breath, cough, fever, myalgias, and malaise associated with a COVID-19 infection. Petitioner was noted as having lowered SaO2 at 83%, with treatment including Levaquin and a steroid. (PX #4) A CT scan showed COVID pneumonia-related bilateral infiltrates and findings suggestive of bronchitis. *Id*. Clinical impression was pneumonia due to COVID-19 virus and hypoxemia. *Id*. His care was discussed with Petitioner's primary care physician, Dr. Marshall, and it was agreed that Petitioner should be admitted to the hospital for additional evaluation and treatment. *Id*. Petitioner was admitted to the hospital at Methodist for evaluation and treatment of his COVID-19 infection due to the resulting pneumonia and hypoxemia. Dr. Marshall examined Petitioner on March 25, 2021, noting he was doing okay and was receiving oxygen. Dr. Marshall assessed Petitioner with hypoxic respiratory failure due to COVID pneumonia. Petitioner was started on Decadron and Remdesivir. (PX #4)

He was treated with remdesivir, dexamethasone, and supplemental oxygen treatment due to the COVID-19 infection. Petitioner was discharged on March 29, 2021. It was noted that Petitioner had obtained an ambulatory pulse oxygenation greater than 90%. (PX #4) He was discharged with over-the-counter medications as well as inhalers. His discharge diagnoses from the COVID-19 infection included (a) COVID pneumonia, (b) COVID-19; and (c) hypoxic respiratory failure secondary to the COVID pneumonia. *Id.*

Petitioner saw Dr. Marshall on April 1, 2021, following his COVID-19 hospitalization. Petitioner was doing well following his hospitalization, with no real complaints and all but one of his home pulse oximeter readings above 90%. (PX #5) On the July 6, 2021, Dr. Marshall ordered a pulmonary function test with a DLCO and methacholine challenge to evaluate Petitioner's post-COVID pneumonia dyspnea on exertion. *Id*.

Petitioner underwent pulmonary testing at the hospital on July 29, 2021. The pulmonary testing showed a moderately severe airway obstruction with positive bronchodilator responses. The DLCO which was normalized when corrected for alveolar volume suggested the cause as morbid obesity. The findings were also findings suggestive of chronic bronchitis or bronchial asthma. (PX #5)

Petitioner followed up with Dr. Marshall on August 31, 2021. Dr. Marshall noted that his pulmonary function showed changes consistent with reactive airway disease as well as a restrictive component likely related to his obesity. Petitioner had been started on Symbicort which helped his breaching markedly with significant improvement. Petitioner reported his breathing was back to baseline with the Symbicort. (PX #5)

Petitioner returned to Dr. Marshall on November 30, 2021, where he was noted to have increased difficulty in breathing. Dr. Marshall noted that Petitioner's increased difficulty in breathing was due to reactive airway disease and restrictive lung disease secondary to his prior COVID-19 infection and obesity. (PX #5)

Petitioner had a CT of the chest performed on April 1, 2022, that was compared to the CT performed on March 24, 2021. The radiologist read the films to show that the evidence of acute pneumonia was no longer present, with no evidence of any fibrosis or scarring suggestive of

sequelae of a previous COVID pneumonia. The radiologist did see evidence of bronchitis with mild centrilobular/paraseptal emphysema. (PX #6)

Petitioner returned to Dr. Marshall on August 3, 2022. Dr. Marshall noted Petitioner had ongoing lung disease and his recent chest CT showed Petitioner's prior findings were resolved other than benign cysts. Petitioner reported he was shorter of breath than in the past, potentially due to hot and humid weather, and was using his Symbicort more than twice per day. (PX #5)

Petitioner followed up with Dr. Marshall on December 5, 2022. Dr. Marshall noted the Petitioner's breathing was about the same, and he continued to be short of breath with exertion. Hot or cold weather caused a worsening of his breathing condition. (PX #5)

Petitioner saw Dr. Marshall on April 17, 2023, and the doctor noted Petitioner was doing well with his medications. Dr. Marshall indicated that he would write a letter stating that Petitioner had no indication of pulmonary disease prior to contracting COVID-19. (PX #5)

Testimony of Douglas Marshall, M.D.

Dr. Marshall testified that he is an internal medicine physician located in Morton, Illinois, with an active internal medicine practice with Carle Health. (PX #9 p. 4) Dr. Marshall testified as the treating internal medicine physician on behalf of Petitioner. (PX #9 p. 5) Dr. Marshall is board-certified in internal medicine, and he actively treats patients including patients with a variety of acute and chronic medical issues. (PX #9 p. 6) Dr. Marshall actively treats patients with pulmonary issues, almost daily, with both active treatment and referrals to pulmonologists if necessary. (PX #9 p. 7)

Dr. Marshall had access to electronic records from 2018 through the present. (PX #9 p. 9) Dr. Marshall reviewed his office note from August 19, 2019, where Petitioner complained of shortness of breath which he attributed to being obese and not very active. (PX #9 pp. 9, 11-12) Dr. Marshall listened to Petitioner's heart and lungs on that date, and based on Petitioner's pulmonary function he did not see the need for any additional testing or referrals for his Pulmonary condition. (PX #9 p. 13) Dr. Marshall opined that Petitioner's shortness of breath was a relatively minor complaint at that time. (PX #9 p. 14) Dr. Marshall testified that Petitioner returned on October 15, 2019, and Petitioner had lost some weight and was no longer complaining of shortness of breath. (PX #9 pp. 14-15) Petitioner returned for a follow-up visit on June 10, 2020, and complained of shortness of breath again which Dr. Marshall attributed to Petitioner's weight, as he was not having any symptoms at rest. (PX #9 pp. 16-7)

Dr. Marshall testified that Petitioner developed a COVID infection in March of 2021 which ultimately resulted in a hospital admission for hypoxic respiratory failure secondary to COVID pneumonia. (PX #9 pp. 21-27) Dr. Marshall had hospital privileges as a family doctor which allowed him to treat his patients in the hospital. (PX #9 pp. 9-10) Dr. Marshall evaluated and treated Petitioner in the hospital for his COVID-19 infection and resulting pneumonia. (PX #9 pp. 27-8)

Dr. Marshall testified that Petitioner was markedly short of breath when he developed COVID pneumonia that never really resolved. (PX #9 p. 29) Dr. Marshall prescribed Symbicort for Petitioner's lung condition starting on August 31, 2021. (PX #9 p. 30) The Symbicort was used to treat Petitioner's lung condition following a spirometry test and pulmonary function test that showed a diminished capacity for breathing. (PX #9 pp. 30-1) Dr. Marshall diagnosed the Petitioner with reactive airway disease as well as restrictive lung disease secondary to COVID-19. (PX #9 p. 31)

Dr. Marshall testified that he believed Petitioner's lung condition was caused or aggravated by his COVID pneumonia, specifically his airway spasticity and his obstructive lung disease. (PX #9 p. 35) Dr. Marshall testified that Petitioner's treatment for these conditions in the form of Symbicort had been helpful for his condition (PX #9 pp. 35-6) He anticipated that Petitioner would need to use Symbicort indefinitely throughout his lifetime. (PX #9 pp. 35-6) Dr. Marshall testified that Petitioner's lung condition is well managed by the Symbicort. (PX #9 p. 48)

Testimony of Dr. David Fletcher

David Fletcher, M.D., is a medical doctor licensed to practice in Illinois, practicing in the field of occupational medicine. (PX #8 p. 4) Dr. Fletcher started seeing occupational exposures to COVID starting in 2020. He treated patients with COVID, ordered diagnostic testing, and made appropriate referrals for COVID when necessary. (PX #8 p. 8) Dr. Fletcher testified as an IME physician on behalf of Petitioner. (PX #8 pp. 8-9) Dr. Fletcher took a history from Petitioner, physically examined him, reviewed diagnostic studies, reviewed Petitioner's treatment records, and came to opinions and conclusions regarding Petitioner's condition and its relation to his COVID exposure at work. (PX # 8, pp. 10-12).

Dr. Fletcher opined that Petitioner had an acute respiratory illness from his COVID-19 infection stemming from his COVID pneumonia. (PX #8 p. 14) Dr. Fletcher acknowledged that Petitioner had pre-existing conditions in his lungs including his status as an ex-smoker, pre-diabetic, obesity, and asymptomatic early manifestation of chronic obstructive pulmonary disease (COPD) which all made Petitioner more susceptible to a serious COVID infection. (PX #8 pp. 14-15)

Dr. Fletcher testified that Petitioner suffered from COVID pneumonia which is a presentation of respiratory illness with cough, fever, and opacities in the lungs that are present on x-rays due to infection. (PX #8 p. 19) Dr. Fletcher testified that the CT scan from March 24, 2021, showed COVID pneumonia as well as findings consistent with an inflammatory process in the bronchial tree, which Dr. Fletcher opined was asymptomatic COPD that had become aggravated by the COVID infection. (PX #8 p. 21)

Dr. Fletcher reviewed the treatment notes for Petitioner following his release from the hospital for his COVID-19 infection; Dr. Fletcher opined that the post-infection treatment showed Petitioner had a chronic bronchial condition. (PX #8 p. 23) Dr. Fletcher testified that a lot of people who were infected with COVID had permanent aggravations of underlying lung conditions including asthma or reactive airway disease. (PX #8 pp. 23-4) Based upon Petitioner's underlying

lung disease, he was prescribed bronchodilators by his family doctor in the form of Symbicort to treat his lung condition. (PX #8 p. 25)

Dr. Fletcher testified that as a result of the Petitioner's COVID-19 infection, he had ongoing residual issues including some brain fog and fatigue as well as an aggravation of a preexisting condition of his bronchospastic diseases. (PX #8 p. 28) Petitioner was being treated for his lung condition following his COVID-19 infection with Symbicort. *Id*.

Based upon Petitioner's subjective complaints both before and after his COVID-19 infection, Dr. Fletcher was of the opinion that Petitioner suffered a permanent aggravation of his underlying lung disease as a result of his COVID-19 infection. (PX #8 pp. 29-34) Dr. Fletcher reviewed Petitioner's family doctor records prior to his COVID-19 infection and found the Petitioner did not suffer from any significant pulmonary or breathing condition prior to his COVID-19 infection. (PX #8 pp. 34-35) In Dr. Fletcher's opinion, the permanent aggravation of the lung condition was evidenced by the prior treatment records, the pulmonary function testing done post-COVID-19 infection and Petitioner's positive reaction to treatment with the bronchodilator. (PX #8 pp. 34-6)

Testimony of Dr. David Diamond

Dr. David Diamond testified on behalf of the Respondent. Dr. Diamond testified that he is a board-certified pulmonary medicine physician. (RX #1 p. 5) Dr. Diamond testified he has treated patients with COVID-19 as part of his medical practice, treating over 100 patients suffering from post-COVID pulmonary conditions. (RX #1 pp. 5-6)

Dr. Diamond performed an IME on behalf of Respondent, and as part of the IME, he reviewed medical records, pulmonary function tests, x-rays, took a history from Petitioner, and performed his own pulmonary function test resulting in his opinions regarding Petitioner. (RX #1 pp. 6-9)

Dr. Diamond testified that Petitioner really had no subjective complaints when he was evaluated on April 26, 2022, and his diagnosis for Petitioner was COPD. (RX #1 pp. 10-11) Dr. Diamond opined that Petitioner's COVID-19 infection might have affected Petitioner for a very short time, but within weeks of the exposure, Petitioner was asymptomatic. (RX #1 p. 11)

Dr. Diamond testified that Petitioner, in his opinion, did not permanently aggravate his COPD condition. (RX #1 p. 12) Dr. Diamond testified that Petitioner did not suffer from any permanent symptoms from his COVID infection. *Id*. Dr. Diamond testified that Petitioner had COPD from his history of smoking. (RX #1 p. 14), and that his COPD existed prior to his COVID infection as evidenced by his treatment records with Dr. Marshall showing his shortness of breath. (RX #1 p. 15)

Dr. Diamond testified he was not surprised that Petitioner's family doctor, Dr. Marshall, failed to diagnose Petitioner with COPD prior to Petitioner's COVID infection because it is a "big common problem" for family doctors to fail to identify COPD at an early stage. (RX #1 p. 16)

Dr. Diamond was of the opinion that Petitioner's family doctor should have diagnosed Petitioner with COPD prior to the COVID-19 infection. (Rx. 1, p. 23).

CONCLUSIONS OF LAW

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

The Arbitrator incorporates by reference the Findings of Fact set forth in the foregoing paragraphs. The Arbitrator finds that the Petitioner suffered a COVID-19 infection resulting from an exposure at work, and as stipulated by the parties, the exposure occurred on or about March 9, 2021. The only dispute is whether there is a causal connection between Petitioner's current breathing problems and his COVID-19 infection.

Respondent presented Dr. Diamond as an expert witness who opined that Petitioner had symptomatic COPD prior to his COVID-19 infection. (RX #1 pp. 14-5) Dr. Diamond found that the COVID-19 infection did not aggravate Petitioner's COPD or cause it to become symptomatic; rather, Dr. Diamond's opined that Petitioner's symptoms are attributable to his previously undiagnosed COPD which was present prior to Petitioner's COVID infection. (RX #1 pp. 16, 23)

Petitioner offered opinion evidence regarding Petitioner's conditions from his IME doctor Dr. David Fletcher, and treating physician, Dr. Douglas Marshall. Dr. Fletcher opined that Petitioner's underlying lung condition was permanently aggravated by his COVID-19 infection. (PX #8 pp. 29-34) The Arbitrator finds Dr. Fletcher's opinion persuasive. Dr. Marshall testified that Petitioner was "markedly more short of breath when he developed COVID pneumonia and that never really resolved". (PX #8 p. 29) Dr. Marshall diagnosed Petitioner with reactive airway disease as well as restrictive lung disease secondary to COVID-19, which resulted in him prescribing Petitioner Symbicort to help with his breathing. (PX #9 pp. 31-2)

Contrary to the opinions of Dr. Diamond, the Arbitrator finds that Petitioner's treating physician testified competently regarding his treatment and care of Petitioner's lung condition. Dr. Marshall testified that Petitioner's COVID infection and resulting COVID pneumonia "caused or certainly exacerbated" Petitioner's airway spasticity and probably exacerbated Petitioner's obstructive lung disease. Dr. Marshall testified Petitioner was "clearly more short of breath after he had COVID". (PX #9 p. 48) The Arbitrator finds the opinions of Dr. Marshall persuasive and cannot ignore the temporal relationship as well as the clear opinions of Dr. Marshall regarding the obvious worsening of the lung condition following his COVID-19 infection.

Petitioner's testimony was consistent with the records and treatment provided by Dr. Marshall. Petitioner testified that he experienced shortness of breath going up stairs prior to his COVID infection (Tr. p. 15), but now he has problems with shortness of breath with almost all activities. (Tr. p. 16) The Arbitrator notes that Petitioner testified that he has lost forty (40) pounds over the past four to five years and is still having significant problems with his breathing after his COVID infection. (Tr. pp. 20-1) Wherefore, based upon the persuasive testimony on Drs. Fletcher and Marshall and the record as a whole, the Arbitrator finds and concludes that Petitioner has sustained his burden of proving his current condition of ill-being is causally related to his COVID-19 infection.

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 incorporates by reference the Findings of Fact and Conclusions of Law set forth above. The parties stipulated that Respondent has paid all reasonable and necessary medical and hospital charges under a group health insurance plan subject to Section 8(j) of the Act, for which the Respondent claims a credit. The only remaining issue regarding the medical bills would are the out-of-pocket expenses owed to the providers after payments by group health insurance.

Petitioner submitted medical bills and expenses for medical, hospital, and prescription charges totaling $1,868.77. (PX #3) The Arbitrator finds that the medical bills correlate to the treatment records and dates submitted by Petitioner. These charges reflect treatment that was reasonable and necessary to treat Petitioner's condition stemming from his COVID infection. Respondent shall pay the out-of-pocket medical expenses in the amount of $1,868.77 consistent with the Workers' Compensation Fee Schedule.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as stated in the foregoing paragraphs.

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 water technician at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner has retired from his work with Respondent. Because of Petitioner's retirement and full duty work release, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 57 years old at the time of the accident. Because Petitioner has voluntarily retired as of the time of trial, the Arbitrator gives little weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner is retired from work with Respondent. Because of the Petitioner's retirement, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner has breathing difficulties and uses medication twice daily for his breathing condition. Petitioner followed up with Dr. Marshall on December 5, 2022. Dr. Marshall noted Petitioner's breathing was about the same, and he continued to be short of breath with exertion. Hot or cold weather caused a worsening of his breathing condition.

(PX #5) Because of the permanent and daily condition, 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 10% loss of use of person as a whole pursuant to §8(d)(2) of the Act.

Issue (O): Other: Future Medical Treatment

The Arbitrator finds that Petitioner's ongoing use of Symbicort, as testified competently to by the treating Dr. Marshall, is reasonable and necessary to treat his airway spasticity and obstructive lung disease. Therefore, the Arbitrator awards the prospective medical treatment sought and Respondent shall remain liable for Petitioner's continued use of Symbicort to treat his ongoing lung condition.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032132
Case Name	Maricela Zamudio-Rubio v. Allstaff
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0186
Number of Pages of Decision	19
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Adam Rosner, James McHargue
Respondent Attorney	Jason Stellmach

DATE FILED: 4/25/2025

/s/Raychel Wesley,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 accident, causal connection, medical, prospective medical, TTD	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARICELA ZAMUDIO-RUBIO,

Petitioner,

vs. NO: 22 WC 32132

ALLSTAFF,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, and temporary disability, and being advised of the facts and law, reverses 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).

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

I. Accident

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 Commission*, 79 Ill. 2d 249, 253 (1980). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Commission*, 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 Commission*, 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 Commission*, 207 Ill. 2d 193, 203 (2003). An injury is accidental when the claimant shows it is traceable to a definite time, place, and work-related cause. *Majercin & Industrial Commission,* 167 Ill. App. 3d 894, 900 (3rd Dist. 1988).

Initially, we note that while we do find Petitioner has proven by a preponderance of the evidence that she suffered a work-related accidental injury, we find that such has been proven as a result of an acute trauma rather than a repetitive trauma. Prior to the accident date, there is no evidence that Petitioner displayed any right upper extremity symptoms. However, while working on said date, Petitioner noticed pain, a pulling sensation, and swelling in her right upper extremity. This acute onset of symptoms is more typical of a single acute trauma rather than repetitive trauma. In addition, we note that, although Petitioner had been placed by Respondent with an employer named Visual Pak since 2018, the date of accident was her first day working a new position for Visual Pak on the assembly line, which came with different duties and physical movements. We find that a single day of work is too short of a time span to suffer a repetitive trauma injury. Therefore, we conclude that it is more probable than not that Petitioner suffered her injuries as a result of a single acute trauma rather than from repetitive activities.

The Commission finds that Petitioner proved by the preponderance of the evidence that she sustained an accidental injury arising out of and in the course of her employment with Respondent on the date in question. Petitioner testified that she had been assigned new job duties, specifically using her right arm to push three 1,000ml bottles of shampoo at a time off of the assembly line. This weight was more than what Petitioner was used to working with. To push the bottles off, Petitioner raised her elbow at a 90 degree angle with her palm facing outward. Her arm was in this position the entire time she worked this shift. She would turn her palm inward and flex her arm towards her body to push the bottles off of the assembly line. While performing these duties, Petitioner noticed pain and a pulling sensation in her right upper extremity. She developed right hand swelling and eventually was unable to continue pushing off the bottles. Based on the above, the Commission finds Petitioner's injury was caused by a specific task she performed on the date in question, rather than a repetitive trauma injury.

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 preexisting 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 ¶26.

In the present matter, the Commission views the evidence differently than the Arbitrator, and finds that Petitioner has proven by a preponderance of the evidence that her current right upper extremity condition is causally related to the instant work accident. While both treating physician Dr. Freedberg and Respondent's Dr. Birman agree that it is unlikely Petitioner's work duties *caused* her partial rotator cuff tear, Dr. Freedberg did opine that Petitioner's work duties aggravated or accelerated her shoulder condition.

Petitioner provided unrebutted testimony that she had no right arm difficulties leading up to the accident date, and was able to perform her job duties without issue. There is also no evidence that Petitioner was treating for her right upper extremity leading up to this date. On the date in question, Petitioner was tasked with new duties on the assembly line which led to her keeping her arm at an awkward angle for an extended period of time while pushing multiple shampoo bottles off of an assembly line. However, while performing this task, Petitioner developed pain, a pulling sensation, and swelling in her right upper extremity.

Post-accident, Petitioner was immediately treated conservatively with medication, a splint, topical ointment, a shoulder injection, physical therapy, a home exercise program, and was placed on restricted duty. As symptoms persisted, Petitioner was eventually taken off of work completely, and a December 29, 2022 MRI revealed a high-grade supraspinatus tear, arthropathy, and bursitis. In January of 2023, treating physician Dr. Howard Freedberg recommended an arthroscopic rotator cuff repair, subacromial decompression, biceps tenotomy, with possible open distal clavicle excision, and patch augmentation of the partial supraspinatus tear.

Dr. Freedberg was aware of Petitioner's job duties, and opined that they were enough to aggravate, exacerbate, or accelerate her shoulder condition. Moreover, although Respondent's Section 12 examiner Dr. Michael V. Birman opined Petitioner's work duties were insufficient to cause significant strain on the shoulder, he did admit that there was some shoulder force used in moving the bottles from the assembly line to a table, and that it was plausible that the supraspinatus

was engaged with this movement. Dr. Birman admitted such even though no overhead activity was involved.

Petitioner's symptoms remain ongoing. At trial, she still complained of difficulty performing activities of daily living such as cleaning, bathing herself, and was only able to lie down on her left side. She takes Tylenol for pain and still suffers from swelling. Dr. Freedberg did not believe Petitioner to be a malingerer, testifying that she simply has poor pain tolerance.

Based on Petitioner's unrebutted testimony, the medical records, the opinion of Dr. Freedberg, and the admissions by Respondent's Dr. Birman, we find the record as a whole supports a finding that Petitioner's accident resulted in ongoing and consistent pain—and eventually an off-work restriction and surgical recommendation. This is a deterioration of her pre-accident right upper extremity condition.

Medical evidence, however, is not essential to support a finding that a causal relationship exists between an employee's work duties and his or her condition of ill-being. *International Harvester v. Industrial Commission*, 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.

Quite simply, Petitioner was working full duty with no medical treatment to her right upper extremity leading up to the accident date. Subsequent to the accident, Petitioner consistently complained of pain in the area which radiated down her arm, along with swelling. She was placed on restricted duty and prescribed medication, topical ointment, a splint, and injection, and physical therapy. Eventually, as her symptoms persisted, she was taken off work entirely, and has never had a full resolution of her symptoms. She was eventually recommended for surgery. Based on the above, the Commission reverses the Decision of the Arbitrator, and finds that Petitioner's current right upper extremity condition is causally connected to the instant accident.

III. Medical Expenses

§8 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 reversals of accident and causation above, the Commission finds that all expenses related to Petitioner's right shoulder condition were reasonable and necessary to cure or relieve the effects of the injury. Respondent is liable for the medical expenses listed for PromptMed Urgent Care (PX 1, p.33), Illinois Orthopedic Network (PX 2, p.71), La Clinica (PX 3, p.1-2), Preferred Imaging (PX 4, p.2), and Suburban Orthopaedics (PX 5, p.2-11).

IV. Prospective Medical Care

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Industrial Commission*, 294 Ill. App. 3d 705, 711-12 (2d Dist. 1997). Accordingly, having reversed accident and causation, we conclude that Petitioner's current right shoulder condition is causally related to her accident. In keeping with theses reversals, we also award the arthroscopic right shoulder surgery recommended by Dr. Freedberg.

V. Temporary Total Disability

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 Commission*, 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, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990).

Here, Petitioner was taken off work on December 7, 2022. She provided unrebutted testimony that she has not worked since. This is corroborated by the medical records of Dr. Krishna Chunduri and Dr. Freedberg, who kept Petitioner off of work. As of the date of trial, Petitioner was still awaiting approval to undergo shoulder surgery, thus she has not yet stabilized.

Accordingly, based on the totality of evidence, the Commission reverses the Arbitrator's denial of TTD benefits, and awards TTD benefits to Petitioner from December 7, 2022 through May 22, 2024 (76 & 1/7ths weeks at $354.67).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 30, 2024, is hereby reversed for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner has met her burden of proving she sustained a compensable accident on the date in question.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current right upper extremity condition is causally related to said accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay medical expenses for treatment provided by PromptMed Urgent Care *(Petitioner's Exhibit 1)*, Illinois

Orthopedic Network *(Petitioner's Exhibit 2)*, La Clinica *(Petitioner's Exhibit 3)*, Preferred Imaging *(Petitioner's Exhibit 4)*, and Suburban Orthopaedics *(Petitioner's Exhibit 5)*.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the right upper extremity surgery recommended by Dr. Freedberg, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $354.67 per week for a period of 76 & 1/7ths weeks, representing December 7, 2022 through May 22, 2024, 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 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $52,200.00. 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.

April 25, 2025

/s/ *Raychel A. Wesley*

RAW/wde

O: 3/5/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032132
Case Name	Maricela Zamudio-Rubio v. Allstaff
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	James McHargue, Adam Rosner
Respondent Attorney	Jason Stellmach

DATE FILED: 7/30/2024

/s/Michael Glaub, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 30, 2024 4.93%

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Maricela Zamudio-Rubio
Employee/Petitioner

v.

AllStaff
Employer/Respondent

Case # **22** WC **032132**

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 **Michael Glaub**, Arbitrator of the Commission, in the city of **Waukegan**, on **5/22/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **10/5/22**, 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.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**27,664.00**; the average weekly wage was $**532.00**.

On the date of accident, Petitioner was **52** 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 $**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

As petitioner failed to prove by a preponderance of the evidence that she sustained an accident arising out of and in the course of her employment with respondent on October 5, 2022 and further failed to prove by a preponderance of the evidence that her condition of ill being is causally connected to any accidental injury occurring on October 5, 2022, petitioner's claim for compensation is hereby 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.

Michael Glaub
Signature of Arbitrator

July 30, 2024

STATEMENT OF FACTS

Ms. Maricela Zamudio-Rubio (hereinafter referred to as "petitioner") alleges to have injured her right upper extremity on October 5, 2022, while working for AllStaff (hereinafter referred to as "respondent"). Petitioner is 52 years old and right-hand dominant.

Petitioner has been employed by the respondent, a staffing agency, and working at Visual Pak since 2018. (T.8). Petitioner worked on an assembly line handling creams and shampoos. (T.9).

On October 5, 2022, petitioner was handling bottles traveling down the assembly line. (T.20). Specifically, petitioner testified that she would stop bottles with her right hand, then push the bottles to prepare them to be packaged in a package of three. (T.20-21). Petitioner described the position of her hand as raised at a 90-degree angle with the palm facing outwards. (T.23). The bottles weighed 1,000 milligrams, and the tasks were performed slightly higher than petitioner's waistline around belly button level. (T.22). When pushing the bottles down the line, petitioner testified that she would turn her palm inwards and then flex her arm towards and across her body. (T.24).

Petitioner testified that while performing said tasks, she felt a pulling sensation in her right upper arm just below the bicep. (T.25). Petitioner performed these described tasks for three or four hours on October 5, 2022. (T.27). She had not worked this part of the line prior to October 5, 2022. (T. 25). October 5, 2022, was her first day doing this new position. (T. 25).

Petitioner testified that her job duties from October 6, 2022, until October 11, 2022 consisted of grabbing the bottles using both hands, three at a time, and placing them on a table to be packaged. (T.29-30).

Petitioner testified that she did not have any problems with her right arm prior to October 5, 2022. (T.42). When asked to estimate the weight of the shampoo bottles she was handling on October 5, 2022, petitioner was unable to estimate the weight but did state that they were "very heavy." (T.44-45). On October 6, 2022, when placing the bottles from the belt to the table, the table was at belly button height. (T.48-49).

On October 11, 2022, petitioner presented to Prompt Med Urgent Care in Waukegan. (PX1). It was noted that on October 6, 2022, petitioner was packing and pushing bottles down a line with fast repetitive motion for eight hours per day. Petitioner was diagnosed with a strain of the muscle, fascia and tendon of other parts of bicep of the right arm. Petitioner was restricted to left-handed duty only and was to return for a follow-up visit on October 18. Petitioner returned to Prompt Med Urgent Care on October 18> She complained of right shoulder, right forearm, and right hand pain. The restriction of left-handed duty only was extended, and petitioner was to return for a follow up on October 23. Petitioner returned on October 25 and October 31, and physical therapy was recommended.

Petitioner was last seen at Prompt Med Urgent Care on November 17, 2022. (PX1). Petitioner reported right-sided shooting pain down the right arm, forearm and hand, with swelling, numbness and tingling. Petitioner was diagnosed with a strain of the muscle, fascia and tendon of

other parts of the bicep of the right arm, and an unspecified injury of the right elbow, petitioner was to continue physical therapy and return for a follow-up visit on December 15, 2022.

On December 7, 2022, petitioner attended an initial evaluation with Dr. Chunduri of Illinois Orthopedic Network. (PX2). A history was recorded as petitioner had sustained a work-related injury on October 4, 2022, involving the right shoulder, right forearm and right hand. Petitioner worked at a factory, and two days into her new position at a new station, was required to hold bottles for them to be filled and wrapped. Petitioner stated that the bottles weighed a significant amount and that she had to perform her tasks repeatedly throughout her entire shift. Petitioner reported that she reported the incident to her employer on October 5, 2022, and drove herself to Prompt Med Urgent Care on October 6, 2022. Petitioner was noted to have been given a Medrol DosePak and muscle relaxers and was placed on one-hand duty restrictions. Petitioner reported intermittent neck pain without any radiating symptoms to her upper extremities, with right lateral shoulder pain that radiated into her axilla and down her forearm. Petitioner also reported numbness and tingling along the dorsal aspect of her right hand with pain which she rated at a level of 7/10. Petitioner denied any prior injury to her right upper extremity.

Dr. Chunduri diagnosed a right biceps tendon strain, right forearm pain, and right hand pain. (PX2, p4). Dr. Chunduri attributed petitioner's diagnoses to a repetitive overuse work-related injury which occurred on October 4, 2022. Dr. Chunduri ordered an MRI of the right shoulder and recommended formal physical therapy. Petitioner was also provided Lidocaine ointment and was taken off all work.

On December 20, 2022, petitioner attended an initial session at La Clinica. (PX3). It was noted that petitioner's pain in the right shoulder, elbow, wrist/hand, and right upper extremity began on October 4, 2022, while working at a factory and repetitively using her right arm to hold bottles which "weighed heavy." (P.5). It was noted that petitioner was performing said tasks for an entire shift. Diagnosed with right elbow, wrist, and shoulder pain, petitioner was to receive physical medicine treatment consisting of active therapeutic exercises, passive physical medicine modalities, and manual therapy treatment at a frequency of three times per week for four weeks.

Petitioner attended 11 sessions at La Clinica from December 12, 2022, through her last session on January 13, 2023. (PX3). During her session on January 13, 2023, it was noted that therapy was put on hold until further notified by a specialist. (p.19).

On December 9, 2022, petitioner attended an independent medical evaluation with Dr. Michael Birman of Hand to Shoulder Associates. Dr. Birman summarized his findings in a report dated December 13, 2022. (RX1). Petitioner reported to Dr. Birman that on October 4, 2022, she was assigned to a new position on the line which consisted of grabbing bottles of shampoo, 1,000 milliliters each, three at a time. Petitioner described that she would first stop the bottles with her right hand, and then grab three bottles and move them to a table. Petitioner further reported that the following day, on October 5, 2022, she reported her right upper extremity symptoms and sought medical attention at that point. Petitioner's Quick-Dash disability was 100.0. Dr. Birman noted there was some discrepancy as to which hand petitioner used to lift the shampoo bottles, but regardless, Dr. Birman opined that petitioner's complaints of right shoulder, elbow and hand pain were not causally related to the alleged work injury of October 5, 2022. Dr. Birman noted that petitioner's multi-focal complaints of pain and tenderness throughout the extremity was inconsistent with the mechanical type injury that he would attribute to the

occupational activities that she described performing on October 4 or October 5. Whether she lifted the shampoo bottles with the right hand or used the right hand to block the progress of the bottles in order to control their movement down the conveyor, there was no apparent traumatic event, and unlimited exposure to such activity could not reconcile with petitioner's current presentation of right upper extremity pain that extended from the neck to the hand. In terms of petitioner's complaints of tenderness over multiple sites, Dr. Birman noted there were no objective findings nor diagnosis that could be assigned to reconcile her symptoms and multi-focal pain/ tenderness throughout the right upper extremity. Dr. Birman further opined that no further treatment was needed with respect to the October 5, 2022, alleged work injury. Moreover, he was unable to make any treatment recommendations in the absence of a more specific diagnosis for the right upper extremity. Dr. Birman noted no specific mechanical condition that would warrant restrictions, and opined that petitioner was capable of resuming her full work duties as a warehouse associate. Finally, Dr. Birman noted that no occupational condition was identified for which maximum medical improvement could be assigned.

On December 29, 2022, petitioner underwent an MRI of the right shoulder at Preferred Imaging. (PX2, p.7). The interpreting radiologist, Dr. Gregory Goldstein, noted a high grade partial tear at the far anterior supraspinatus insertion, and acromioclavicular joint arthropathy and mild subacromial/subdeltoid bursitis.

On January 12, 2023, petitioner attended an initial evaluation with Dr. Howard Freedberg of Suburban Orthopedics. (PX2, p.9). When asked on cross examination how she came to be seen by Dr. Freedberg, petitioner initially responded, "I was sent there." (T.49). When asked by whom she was sent there, petitioner responded "I don't remember." (T.49). Petitioner presented for an evaluation of her right shoulder, forearm and hand. (PX2, p.9). It was noted that petitioner worked at a factory and was two days into a new position which required her to hold bottles for them to be filled and wrapped. Petitioner stated that the bottles weighed "a significant amount" and that she had to repeatedly perform these tasks throughout her entire shift. At the time of the January 12, 2023, evaluation, petitioner reported right shoulder pain that radiated down the right arm, with numbness and tingling in the right hand. Petitioner reported a pain level of 7/10. The December 29 MRI and its impressions were noted. Dr. Freedberg diagnosed right shoulder bicipital tenosynovitis and right rotator cuff tear and administered an injection with local anesthetic and 80 milligrams of Triamcinolone to the right shoulder. Dr. Freedberg also kept petitioner off all work, and recommended a follow-up visit in three weeks.

When petitioner presented for a follow-up evaluation on January 26, 2023, it was noted that petitioner had experienced one week relief following the injection, but otherwise, her symptoms remained the same. (PX2, p.14). Dr. Freedberg discussed with the petitioner both surgical and non-surgical options, and petitioner elected to proceed with surgery consisting of a right shoulder arthroscopic rotator cuff repair, subacromial decompression, biceps tenotomy versus tenodesis, and possible open distal clavicle excision and possible patch augmentation of supraspinatus partial thickness tear. Petitioner was referred back to ION for cervical spine radicular symptoms and was to remain off all work.

Petitioner attended a follow-up visit with Dr. Freedberg on February 23, 2023. (PX2, p.22). It was noted that petitioner presented for follow up of her right shoulder, and also reported pain radiating to the bicep, swelling of the right arm, limited range of motion, and numbness and tingling in all of her right arm. Dr. Freedberg reviewed Dr. Birman's report and respectfully

disagreed with his findings. Dr. Freedberg noted that although petitioner had more pain than expected, it could be due to her poor pain tolerance. Dr. Freedberg maintained his surgical recommendation.

Dr. Birman authored an addendum report dated March 31, 2023. (RX2). It was noted that Dr. Birman had been provided additional medical records including the MRI dated December 29, 2022. Dr. Birman reviewed the MRI images and noted that although the resolution of the study was relatively poor, there may be a partial thickness tear of the rotator cuff. Otherwise, there was no remarkable pathology on the MRI. Dr. Birman noted that his opinions were generally unchanged from that expressed in his previous report dated December 13, 2022. Dr. Birman was still unable to reconcile the extent of the complaints that petitioner expressed when evaluated in December 2022 with an isolated diagnosis of a partial thickness rotator cuff tear. In regard to causation, he noted there was no specific traumatic event that would have caused a partial thickness rotator cuff tear. A partial thickness rotator cuff tear could be aggravated if there was a combination of force, frequency, and positioning that would put additional stress through the rotator cuff. In reviewing the activities that petitioner had described, those would not be the manner of activities that would aggravate a partial thickness rotator cuff tear. Dr. Birman further noted that although it is possible that at times there may have been an increase in force as she worked in that line, her exposure was quite limited, having been assigned to that line for just two days. Additionally, the rotator cuff would be under increased stress with work at or above shoulder level, but it was not clear that this was the case based on petitioner's description of her activities. Dr. Birman noted that he would welcome additional materials if his understanding of the characterization of her work was not accurate, but based upon his understanding, the manner of work activities that she was doing at that time would not have caused nor aggravated a right shoulder partial thickness rotator cuff tear.

With respect to medical treatment, Dr. Birman was unable to reconcile how isolated treatment for the right shoulder partial thickness rotator cuff tear would predictably address the extent of her right upper extremity complaints. (RX2). Dr. Birman opined that surgical intervention would not be predictable in this case, as it did not reconcile with her symptoms through the right upper extremity nor the initial presentation. Dr. Birman noted that petitioner's symptoms had been quite diffuse through the right upper extremity. He further noted that while there is limited objective evidence to suggest there may be a right shoulder partial thickness rotator cuff tear, surgery in the absence of well-localized symptoms is certainly unpredictable and not recommended. Regardless, even if surgery was pursued, Dr. Birman maintained that it would not be causally related to petitioner's work activities on October 5, 2022.

With respect to petitioner's ability to work, Dr. Birman noted that a diagnosis of a partial thickness rotator cuff tear did not require off-work restrictions. (RX2). Regardless of causation, if petitioner's physical examination was consistent with a symptomatic partial thickness rotator cuff tear, Dr. Birman felt it was reasonable to restrict lifting/pushing/pulling to 10 pounds and to restrict overhead use. He again noted that any restrictions would not be causally related to an October 5, 2022, injury, however.

Petitioner continued to follow up with Dr. Freedberg on a regular basis. During a follow-up visit on June 15, 2023, on physical examination, petitioner's range of motion was described as "abysmal." (PX2, p. 40). It was extremely difficult to get petitioner to move her right arm. It was noted that Dr. Freedberg had a long talk through the interpreter that petitioner was allowing

the pain to overwhelm her and that her range of motion was not returning. Dr. Freedberg informed petitioner that she must regain her range of motion and work through the pain but noted that petitioner was "absolutely not doing it." It was further noted that like every other patient that he had seen with this issue, petitioner makes excuses; however, he informed her there were no excuses to be made, as she needs to get the job done and get the range of motion back. Petitioner was kept off all work.

Petitioner continued to follow up with Dr. Freedberg with the most recent evaluation taking place on April 4, 2024. (PX2, p.67). Petitioner reported a pain level of 8/10 which was noted to be unchanged since her last visit. Dr. Freedberg again recommended surgery, and kept petitioner off all work.

The parties deposed Dr. Freedberg on August 10, 2023. (PX6). When asked whether he had reviewed the December 29, 2022, MRI report or the imaging, Dr. Freedberg responded that he certainly reviewed the report and if petitioner had brought in the images he would have reviewed them as well, but acknowledged that he did not dictate in his note that he had reviewed the images. (p.14). When asked to describe petitioner's physical findings, specifically during a July 13, 2023, visit, Dr. Freedberg noted that when he moved petitioner's arm, she was crying in pain, and that obviously her pain tolerance was sub-optimal. (p.21). When asked whether petitioner's subjective complaints correlated both with the physical examination findings and the MRI findings, Dr. Freedberg responded as follows:

> A. You know, she has positive - - you know, she has a lot of complaints. She has a positive physical examination. She does have findings on - - on the MRI, to me. Even though her pain tolerance is suboptimal, you know, she's not doing well. She says she can't go back to work. That's the next step. I'm following the medicine, is all that I'm doing in this particular case. (p. 22-23).

In addressing whether there is possible secondary gain, Dr. Freedberg testified that any patient in litigation has secondary gain, but he did not know to what extent. (p. 23).

When asked whether the mechanism of injury that was described to him by petitioner, whether that was sufficient to cause, aggravate, exacerbate, or accelerate her right shoulder condition, Dr. Freedberg responded as follows:

> A. Well, it can be. And it can be, from the standpoint that it produced inflammation that just won't die itself down. But, you know, it's not a long course. It's only a couple of days doing it. But again, in a couple of days, you know, with doing something that's repetitive, as well as with heavy lifting, you know, that can produce inflammation and pain that, for whatever reason, we can't calm it down.
>
> Can we not calm it down because psychologically she won't let it happen? I don't know that. I'm just telling you, at face value, how I treat a patient. I treat them as they're being honest, and they're telling me the truth, and everything it above board. (p. 23-24)

When asked for his prognosis for petitioner if she were to undergo the surgery that he was recommending, Dr. Freedberg responded that petitioner does not deal with pain well and there is a little guarded prognosis. (p.25).

On cross-examination, Dr. Freedberg testified that petitioner was referred to his office by Illinois Orthopedic Network (ION), and that she was not the first patient to be referred to his office by ION. (p.27). He further noted that there is a flow of patients that he does see from them, and that they are a referral source. (p.27). In regard to petitioner's representation that the bottles weighed a "significant" amount, Dr. Freedberg did not have an idea as to how much the bottles weighed. (p.28). When asked whether it is important to know the weight of the bottles when rendering a causation opinion, Dr. Freedberg testified that it is important to know the history and someone to be honest and accurate, and that the exact weight is not as important, though generally it can play a part in the decision. (p.29). Dr. Freedberg further testified that if the bottle weighs a couple of ounces as opposed to 30 pounds, that is a big difference; if petitioner is saying a significant weight, then it can be a competent cause. (p. 29-30). If he were provided further information that disputes her classification, or makes her statement null and void, then his opinion may change. (p.29-30). Dr. Freedberg felt that the activities that petitioner was performing were performed at waist to shoulder height. (p.30). When asked hypothetically with someone that had MRI findings and complaints such that petitioner had, if they had been performing these activities that she has described at waist level, would he believe the condition to be causally related to those activities, Dr. Freedberg responded as follows:

> A. Based off of her history, what she says. Would I think it's extremely common, if the ergonomics of what they are asking her to do are correct? I would say it's not common. But it can be a culpable cause. I would - - I would say, if the ergonomics are correct, it would be uncommon. But nothing is impossible. (p. 31).

Dr. Freedberg acknowledged that a Quick-Score of 100 is a "pretty high number." (p.33). Dr. Freedberg was not surprised, based upon his evaluation and experience with petitioner, that Dr. Birman had recorded a 100 Quick-Score for petitioner. (p.33). When asked if petitioner's pain level was lower than she was describing, whether that would impact his recommendation for surgery, Dr. Freedberg responded that if her pain level was lower, he would have at least returned her back to work to see if she could tolerate it. (p.33-34). Dr. Freedberg testified that petitioner was capable of performing left arm duty only. (p.34). When asked as to why he had not released petitioner to return to work to attempt to perform left arm duty, Dr. Freedberg responded that he asked petitioner each and every visit whether she could attempt to go back to light duty work, and she responded that she could not tolerate it. (p.34). Dr. Freedberg acknowledged that sometimes returning to work can benefit a patient, but if the patient is telling him they cannot do it, he is going to back off. (p.35).

On November 7, 2023, the parties deposed respondent's Section 12 examiner, Dr. Michael Birman. During his initial physical examination in December 2022, there were a lot of areas in petitioner's right upper extremity that he pushed that seemed to cause pain, all the way from the shoulder to the elbow to the wrist, and petitioner also had various areas in the upper extremity where she reported limitations of range of motion. (p.12). Dr. Birman testified there was nothing obvious in terms of swelling, malalignment, or anything like that, that was apparent from assessing the upper extremity visually. (p.13). Dr. Birman explained that Quick-Score has been developed to assess a patient's perceived ability to use the upper extremities for some routine

tasks, and the petitioner scored 100 out of 100, which is pretty infrequent. (p.13-14). Dr. Birman explained that during his initial evaluation, he rendered a diagnosis of right upper extremity pain, and based that diagnosis on his physical examination during which petitioner reported pain and tenderness in multiple sites, and nothing based on X-rays or the physical examination or history that led him to assign a specific mechanical condition or diagnosis. (p.15). Dr. Birman explained that his finding of no causal relationship between petitioner's condition and her described work activities was that there was no correlation with a specific diagnosis in the description of petitioner's work activities consisting of the handling of shampoo bottles for several hours. (p.16-17).

Dr. Birman also testified as to the addendum report he prepared in March of 2023. (p.19). Dr. Birman reviewed the MRI, which he noted was a relatively low quality study, and noted what appeared to be a partial thickness tear of the supraspinatus and slight arthritis at the chromium clavicular joint. (p.20). Based upon his review of the MRI, Dr. Birman diagnosed a right shoulder partial thickness rotator cuff tear and maintained that said diagnosis was unrelated to a work injury. (p.20-21). In reaching said conclusion, Dr. Birman considered the specific work activities petitioner had been performing in relation to the shampoo bottles. (p.21). Dr. Birman opined that the manner of work which petitioner described would not be consistent with causing or aggravating a partial ligament rotator cuff tear, essentially if you consider things like force, frequency and positioning. (p.21). He noted that the work activities themselves were not particularly forceful, and although there was some repetition, it was really quite limited to just a few hours, with no description of any significant overhead use. (p.21). Dr. Birman explained that he disagreed with Dr. Freedberg's surgical recommendation, and explained that the outcome would be unpredictable, as petitioner's pattern of symptoms involving the shoulder, elbow and wrist did not seem consistent with an isolated partial thickness rotator cuff tear. (p.23). When asked what are typical events that would cause partial thickness tears, Dr. Birman responded that they can be traumatic, for example a fall or a car accident, or repetitive when certain criteria is met in terms of force, frequency and positioning. (p.24-25). Dr. Birman testified that strain on a shoulder with force is oftentimes a result of forceful overhead work with significant repetition over the course of months or thousands of times per day over many weeks to months. (p.25). In the case of petitioner, the petitioner had been performing the tasks for a few hours when she started noticing pain and therefore, the exposure was very limited. (p.26). Moreover, there were no overhead activities. (p.26). Activities that are performed at waist level put very little strain on the shoulder. (p.27). Dr. Birman noted that petitioner was handling shampoo bottles which weighed 1,000 milliliters with a relatively limited force for a relatively brief period of time. (p.28).

On cross-examination, Dr. Birman reiterated that he could not reconcile that the several hours moving shampoo bottles was causing or aggravating a partial thickness rotator cuff tear, nor did it seem that her presentation was consistent with an isolated tear of the rotator cuff, nor could Dr. Birman account for pain that went from the neck down to the hand with numbness and tingling. (p.41). Dr. Birman testified that plenty of people walk around with rotator cuff tears, and people can live for years with partial rotator cuff tears and not know it. (p.45).

Louis Gomez is an on-site specialist at All Staff, who testified during the May 22, 2024, hearing. (T.54-55). Mr. Gomez has been an on-site specialist for four years, whose job responsibilities include accident investigations. (T.55-56). Mr. Gomez learned that petitioner was claiming a work injury on October 6, 2022. (T.56). In the course of investigating petitioner's claimed injury, Mr. Gomez spoke to petitioner in Spanish, which he speaks fluently. (T.57).

Petitioner reported to Mr. Gomez that she experienced discomfort in her shoulder while working on Line 19. (T.58). Mr. Gomez is familiar with Line 19 and explained that the tasks petitioner was performing involved holding the bottles so that they could be grouped in three and go in through a sealing packaging machine. (T.60). The bottles that run through Line 19 consist of 32 or 34-ounce Dr. Teal Bubblebath liquid. (T.61). Employees performing on Line 19 do so in a standing position at waist level. (T.62). Mr. Gomez testified that Line 19 is a fast-running line. (T.64). Mr. Gomez prepared an investigation report on October 6, 2022, which was submitted as Respondent's Exhibit 4.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, petitioner must show by a preponderance of the evidence that she sustained a disabling injury that arose out of and in the course of her employment. Moreover, petitioner bears the burden of showing by a preponderance of credible evidence that her current condition of ill-being is causally related to a workplace injury. In this case, petitioner contends that on October 5, 2022, she was handling shampoo bottles which were traveling down an assembly line when she injured her right upper extremity, including the right shoulder, right elbow, right forearm, and right hand. Specifically, petitioner testified that she would stop bottles with her right hand, then push those same bottles to prepare them to be packaged in a package of three. It was while performing these tasks that petitioner felt a pulling sensation in her right upper arm below the biceps.

The following facts are uncontroverted: (1) October 5, 2022, was petitioner's first day performing on this part of the line, (2) she did so for no more than four hours, (3) these tasks were performed at waist to bellybutton level, and (4) the shampoo bottles she was handling were 1000 milliliters.

Petitioner's treating physician, Dr. Freedberg, causally related petitioner's right shoulder condition to her described work activities on October 5, 2022. The Arbitrator finds Dr. Freedberg's deposition testimony equivocal, however. The Arbitrator finds it compelling that petitioner had advised Dr. Freedberg that the bottles weighed a significant amount, and that Dr. Freedberg acknowledged during his deposition that he did not have an idea as to how much the bottles actually weighed. As to the height at which the tasks were performed, Dr. Freedberg felt they were performed at waist to shoulder height. Dr. Freedberg acknowledged that if the tasks were performed at waist level and were ergonomically correct, it would be uncommon for petitioner's condition to be causally related to said activities. Dr. Freedberg also described petitioner's pain tolerance as suboptimal, and noted the possibility of secondary gain, though did not believe she was malingering. In addition, although he felt petitioner was capable of performing left arm duty only, petitioner maintained that she could not and he therefore had kept her off all work.

The Arbitrator finds the opinions of Dr. Birman, respondent's Section 12 examiner, more persuasive than those of Dr. Freedberg. Dr. Birman noted a partial thickness tear of the supraspinatus on the MRI, and concluded that said findings were unrelated to petitioner's work activities. In so finding, Dr. Birman explained that the manner of work which petitioner described would not be consistent with causing or aggravating a partial ligament rotator cuff tear, especially

given the force, frequency and positioning involved. Dr. Birman noted that the work activities themselves were not particularly forceful, they were limited to a few hours, and involved no significant overhead use. Dr. Birman further noted that the activities were performed at waist level which generally puts very little strain on the shoulder. Dr. Birman, unlike Dr. Freedberg, was also aware of the weight of the shampoo bottles – 1,000 milliliters – which he noted petitioner handled with relatively limited force for a relatively brief period of time. Dr. Birman was also unable to reconcile the extent of petitioner's pain complaints which extended from the neck through the entire arm to the hand with reported numbness and tingling.

Based on the totality of the credible evidence, and the record as a whole, the Arbitrator finds that petitioner has failed to prove by a preponderance of the evidence that she sustained accidental injuries arising out of and in the course of her employment with respondent on October 5, 2022, and further, that her current right upper extremity condition is causally related to a workplace injury.

In support of the Arbitrator's decision with respect to (J) Medical, (K) Prospective Medical, and (L) Temporary Total Disability, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to accident and causal connection, the further issues of medical, prospective medical, and temporary total disability are moot.

Petitioner's claim for compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002099
Case Name	German Fonseca v. FCA US LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0187
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Brian Hindman

DATE FILED: 4/25/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

German Fonseca,

Petitioner,

vs. NO. 21WC002099

FCA US LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 21, 2024, is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 25, 2025

SJM/sj
o-4/9/2025
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	21WC002099
Case Name	German Fonseca v. FCA US LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Michael Doerries

DATE FILED: 6/21/2024

/s/Michael Glaub, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 18, 2024 5.15%

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

German Fonseca de La Torres
Employee/Petitioner

v.

FCA US LLC
Employer/Respondent

Case # **21WC002099**

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 **Michael Glaub**, Arbitrator of the Commission, in the city of **Rockford**, on **March 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 **8/5/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $50,411.40; the average weekly wage was $**969.45**.

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

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

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**2,633.40** for medical benefits, for a total credit of $**2,633.40**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

- Petitioner's claim for TTD benefits is denied.

- The Arbitrator finds respondent shall pay petitioner permanent partial disability benefits of $581.67 for 37.5 weeks because the injury sustained caused a disability of 7.5% loss of use of the person as a whole, as provided in Section 8(d)2.

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.

Michael Glaub
Signature of Arbitrator

June 21, 2024

STATEMENT OF FACTS

1. Petitioner

Petitioner, a full-time assembly line worker, began working for Respondent on May 2, 2017. (Tr. 14). He had sustained a number of work injuries to the neck and low back before this date of hire with a claims history at the IWCC as follows:

88 WC 057546
Tote Cart Co., Inc.
D/A: 12/13/88, multiple parts.
Disposition: Settlement, 1/7/92, 10% person as a whole.
94 WC 036586

Rock River Pantry
D/A: 6/5/92, whole body.
Disposition: Settlement, 2/15/96, 2% person as a whole.
09 WC 027270

Arvin Meritor
D/A: 4/30/09, lower extremities.
Disposition: Settlement, 4/9/13, 5% person as a whole, 4% left leg.
12 WC 02322

Arvin Meritor
D/A: 10/28/11, multiple parts.
Disposition: 5/6/16, 7.5% person as a whole.
12 WC 016843

Arvin Meritor
D/A: 2/23/12, multiple parts.
Disposition: See 12 WC 02322.
18 WC 15565

Android Industries
D/A: 9/26/16, cervical and lumbar spine.
Disposition: 8/31/28, 1% person as a whole.
88 WC 57547

Tote Cart Co. Inc.
D/A: 6/9/88, multiple parts.
Disposition: 1/7/92, 20% left index finger.

91 WC 022881

Tote Cart Co. Inc.
D/A: 1/3/90, right knee.
Disposition: 1/31/82, 5% right leg.
94 WC 036585

Rock River Pantry
D/A: 6/11/92, whole body.
Disposition, 6/4/21, dismissed.
94 WC 036838

Rock River Pantry
D/A: 6/11/91, back.
Disposition: 6/2/01, dismissed.

Respondent Group Exhibit No. 1 for identification; (T. 39-46).

In regard to the September 26, 2016, work injury, Petitioner sought medical care at OrthoIllinois from October 14, 2016 through January 6, 2017. On that prior day, he gave a history of pulling a cart and went to hook a 1,000-lb. cart to another, when he missed the hookup and was pinched/crushed between the two carts resulting in neck pain radiating down the left arm and low back, quantified as a seven out of ten with activity. (PX 3, p. 53). He was diagnosed with cervicalgia and low back pain, and given cold compresses for the neck and back, anti-inflammatory medication and a prescription for physical therapy. (Id., p. 54). Petitioner attended physical therapy two to three times a week, and was limited in his lifting, pushing and pulling. (Id., pp. 52, 31). As of January 6, 2017, he complained of intermittent neck and back pain while standing, lifting or walking, and continued taking over the counter medication. (Id., p. 22). Petitioner was found to have a degenerative condition in his cervical and lumbar spine. He was deemed at maximum medical improvement and released to return to work without restrictions. (Id., p. 23).

Petitioner testified that the injuries of December 13, 1998, and October 28, 2011, involved his neck and lower back, and that of February 23, 2012, involved his neck necessitating an MRI scan. (T. 39, 41, 44, 45).

While working on the assembly line for Respondent, Petitioner was assigned to the second shift, 4:00 p.m. to 6:00 a.m., beginning some two years before his August 5, 2020, work injury. (T. 14, 48, 49). Petitioner described positions he occupied up to two hours each shift. (T. 50). He worked the flare installation position, placing the two-to-three-lb. parts on the side of a car body on top of the trim within 45 seconds. (T. 49-50). After two hours, he would go to the beginning of the line and install plastic bumpers that weigh some 30 to 35 lbs. (T. 52). Petitioner explained that the bumper is taken off a carrier, twisted around and installed on the back of the car by striking it hard with your arm. (T. 52-53). After two hours, he would go to rear lights installation. He explained that he grabs a 10-lb. light and a gun as well as two screws to secure the light. (T. 54). Then, after two hours, he would go to the box installation. He explained that he fastens a five-lb. box with four screws on the top of the pedal of the car near the bottom of the steering wheel by twisting his body. (T. 55). After another two hours, he would go to plastic wheel part installation. He explained that he would "push a lot" of buttons to secure a three-to-five-lb. plastic part on top of a wheel. (T. 56). After another two hours, he would go to plastic flipper installation. He explained he would install three lb. plastic flippers on the front of the vehicle. (T. 57).

2. The Injury

Petitioner was putting mounts on vehicles and training employees on the assembly line on August 5, 2020. At the start of his shift at 4:00 p.m., the assembly line had slowed down and was getting behind. (T. 15, 58). He was attempting to rush to place a mount on the vehicle within the 45 seconds allotted when the carrier cart transporting the vehicle struck him on the right elbow and twisted him, causing him to land on his left side. (T. 15-16). He recalls his elbow swelling while he tried to keep pace with the next vehicle. (T. 18). He did not describe any direct trauma to the neck or low back. After 20 to 30 minutes, his symptoms worsened and radiated to his neck. (T. 19). He went to the restroom and observed swelling where he was struck on the elbow and noticed low back pain

while returning to the line. (T. 20). He resumed working and completed his ten-hour shift, that is, until 6:00 a.m. (T. 20, 59). He did not seek medical care at the conclusion of his shift. (T. 59) The following day, Petitioner worked his ten-hour shift performing all of his installation tasks on the assembly line. (T. 59). He did not seek medical care at the conclusion of this shift as well. (T. 60).

While Petitioner continued working full time, performing all of his assembly line tasks, he sought treatment at Respondent's plant medical from August 7 to October 27, 2020. (PX 2). At the time of that initial exam, he declined any cold packs for his complaints of right back, shoulder and elbow pain. (Id., p. 17). He was released to return to work regular duty. As of August 18, 2020, he was diagnosed with back contusion, upper back pain, right low back pain and right elbow pain. (Id., p. 16). He was given an elbow support, NSAIDs to be taken three times a day, home exercises and an order for physical therapy. (Id.)

Petitioner attended physical therapy for the neck, left shoulder and low back from September 15, 2020, through October 21, 2020, at CORA. (PX 4).

Petitioner reported a 92 to 95% improvement to his symptoms from physical therapy to plant medical on October 27, 2020. (PX 2, p. 7). He noted an occasional twitch of pain in his back but was able to function with no new complaints. He was told to continue with home stretching exercises as necessary, take analgesics, and continue working regular duty. (Id.)

Petitioner sought treatment with his primary care physician, Dr. Villacorta of Swedish American Five Points, on November 16, 2020, undergoing X-rays of the cervical and lumbar spine. There was no evidence of fracture or compression deformity in the cervical spine. (PX 5, p. 113). X-rays of the lumbar spine showed mild degeneration and facet arthropathy. (Id.) He began treatment for elevated blood pressure. Following a January 15, 2021, exam, Dr. Villacorta encouraged Petitioner to continue working full time, but with a 20 lb. lifting restriction. (Id., p. 110). Petitioner testified that he was able to perform the demands of his regular job because he was not required to lift more 20 lbs.

(T. 26). He was also told to continue with physical therapy and undergo a cervical MRI.

Petitioner began treating for high blood pressure on February 1, 2021, reporting that he was doing better relative to his neck and lumbar complaints. (Id., p. 108). An MRI scan of the cervical spine performed on February 15, 2021, showed mild disc bulges, mild canal stenosis and mild foraminal narrowing. (PX 7, p. 218).

Petitioner returned to Dr. Villacorta on March 1, 2021, stating he had low back pain, but no radicular symptoms or numbness, and was, in fact, "slightly better," though his pain persisted. (PX 5, p. 105). Examination of the upper extremities was unremarkable, and there were no neurological or sensory deficits. Dr. Villacorta assessed Petitioner with hypertension and lumbar pain. (Id.). He prescribed Meloxicam, told Petitioner to continue with physical therapy and ordered an MRI scan of the lumbar spine.

Petitioner underwent a neuro consultation with Dr. Sonti for neck and low back pain quantified as a five on March 15, 2021. (PX 8, pp. 237-230). He recommended continued medication, physical therapy for strengthening exercises and a reexam after reviewing lumbar MRI scan. (Id., p. 234).

While seeking treatment with Drs. Villacorta and Sonti, Petitioner performed all his assigned assembly line tasks on a full-time basis at his regular rate of pay until a companywide plant layoff on March 29, 2021. (T. 27, 61). Petitioner applied for and received unemployment benefits equal to 66% of his average weekly wage during the next 9 to 12 months. (T. 65).

Dr. Sonti reexamined Petitioner on April 5, 2021, reviewing the results of a lumbar MRI scan that showed chronic degenerative joint disease at multiple levels. (PX 8, p. 227). There was reference to a small right far lateral foraminal disc herniation. (Id., p. 228). He recommended a brace, told Petitioner to avoid repetitive motions and imposed a 10-lb. weight restriction for six months. Further, he could consider a lumbar facet injection. (Id.)

Petitioner underwent a Section 12 exam with Dr. Weiss, an orthopedic surgeon, at Respondent's request on June 1, 2021. He told the doctor all of his complaints, stating he "no longer had any shoulder problems" and his neck pain bothers him only at night or when doing heavy lifting. (RX 6, p. 3). He had persistent pain in the right elbow, and fairly constant low back pain, worsened by certain activities. (Id.). Dr. Weiss reviewed medical records describing treatment rendered through April 5, 2021, including the cervical and lumbar MRI scans. He diagnosed Petitioner with pre-existing cervical and lumbar degenerative disc disease and contusion of the right shoulder, the latter "resolved." (Id., p. 6). He opined the work injury caused a mild traumatic right lateral epicondylitis and some ongoing symptoms with neck and back complaints representing manifestations of an underlying degenerative condition neither "caused nor progressed" by the work injury. (Id., p. 7). Moreover, the injury caused a shoulder contusion which has since resolved. (Id.). He found a tennis elbow band medically necessary. However, no work restrictions were needed. (Id., p. 7).

While receiving unemployment at the TTD rate, Petitioner, like other laid off employees, was offered a job at Respondent's plant in Toledo, Ohio, reduced to writing dated September 17, 2021. (T. 66, 68). Petitioner agreed this written job offer was pursuant to the agreement Respondent entered into with his Union, and the Union had represented his interests with Respondent since his date of hire. (T. 47). The job offers extended to laid off employees was for a full-time position at Respondent's plant in Toledo, Ohio. (Rx4). Petitioner's seniority at Respondent's facility in Belvidere, Illinois would be transferred to the new location, and he would be eligible for a relocation allowance pursuant to Respondent's agreement with his Union. The "basic relocation" was for $6,000.00 with a right to apply and return to the home plant after six months of transfer. (Id.). Alternatively, Petitioner could elect an "enhanced relocation" and receive an allowance of up to $30,000.00, $8,000.00 up front, $16,000.00 after relocation to the new facility, and $6,000.00 after one year of employment at the new facility. Petitioner would give up his right to return to the home plant. (Id.). Finally, Petitioner could elect a

"modified enhanced relocation" and receive up to $30,000.00, $6,000.00 up front, $4,000.00 after relocation, and $20,000.00 after one year at the new facility with a right to recall and return to the home plant after six months. (Id.). Petitioner refused the job offer, and accepted a buyout, in a lump sum payment of $24,000.00 based on his years of seniority. (Rx 5, T. 68). Per the terms of the buyout, Petitioner agreed to waive and discharge Respondent from any charges, claims, agreements, demands, and cause of action under any local, State or Federal statute or common law, including but not limited to the Federal Age Discrimination and Employment Act as amended from the older Workers' Benefits Protection Act. (RX 5, p. 3). He declined this position, in part, because of his pain and having to leave his family, as his wife works for the School District and his son is an engineer who lives across the street from him. (T. 75). He agreed that the primary reason he did not accept the job offer was that he would have to leave his wife and son behind, though he believed he would not be able to do his job with pain pills. (T. 76).

Petitioner underwent a neurosurgical consultation with Dr. Asner on October 28, 2021. Dr. Asner found no evidence of radiculopathy, fracture, dislocation, or other conditions in the neck, or low back, and cubital tunnel that could be addressed neurosurgically. (PX 9, p. 243). He suggested physical therapy and continued the work restrictions. (Id., p. 246).

Petitioner underwent an orthopedic consultation with Dr. Painter on November 18, 2021. Following a review of diagnostic studies and an examination of the cervical and lumbar spine, Dr. Painter found no ulnar nerve deficits or complaints consistent with entrapment syndrome, no significant central or foraminal stenosis in the cervical region but rather complaints consistent with degenerative pain and no active radiculopathy. (Pet. Ex. 10, p. 261). In regard to the lumbar region, there was no severe foraminal stenosis, no radicular symptoms, nor did his exam reflect radiculopathy. (Id.). He did not recommend a referral to the pain clinic for injections, as Petitioner's complaints were primarily mechanical, without any current radicular element. (PX 10, p. 261). Also, he did not

recommend an EMG, but encouraged work conditioning to pursue a return to full duty work. Petitioner declined and elected to pursue an FCE. (Id.).

Petitioner underwent an FCE on December 20, 2021, exhibiting "equivocal efforts," "indistinctly" repeated during multiple measures. (Pet. Ex. 11, p. 264). The evaluation produced equivocal results in regard to test behaviors, with Petitioner exhibiting high scores for subjective pain reports and behaviors. (Id., p. 267). He was also inconsistent with efforts to measure uninvolved parts of the body, and failed 7/7 validity criteria per the XRTS hand strength assessment. (Id., p. 268). Further, Petitioner exhibited extreme overt pain behaviors, including grimacing and groaning during the testing, and the pain questionnaire was high for subjective pain reports and behaviors. (268). In regard to lifting factors for material handling, it was noted the reproducibility between repeated measures was equivocal so the subjective reports may or may not be credible. (Id., pg. 274). Petitioner was found able to lift up to 13 lbs. occasionally, waist to overhead six lbs. occasionally, bilaterally push and pull 20 lbs. of force occasionally, unilateral lift and carry up to six lbs. occasionally, bilateral carry up to six lbs. on an occasional basis and sit for 30 minutes. Because of his "equivocal effort" during the FCE, medical correlation was required. (Id., 269). The therapist was not provided with a job description from Respondent. (Id. 271).

Dr. Painter released Petitioner to return to work within the parameters of the FCE. However, he did so without conducting an updated exam. (PX 10, p. 263).

Petitioner underwent a Section 12 exam with Dr. Xia of Integrated Pain Management at his attorney's request on June 27, 2023. His activities over the past two years involve primarily taking care of his wife and son. (PX 11, p. 280). Dr. Xia attributed Petitioner's neck and right shoulder pain and right upper extremity sensory loss to a probable thoracic outlet syndrome (TOS) and lateral epicondylitis, and his back complaints to sacroiliac joint dysfunction. (Id., p. 283). He could undergo an MRI scan of the shoulder, a nerve block for TOS as well as an EMG, a repeat lumbar MRI scan,

and X-rays of both hips. (Id.).

Petitioner did not attend physical therapy or work conditioning in 2022, 2023 or 2024. (T. 71). He did not receive any treatment to his neck, low back or right elbow in 2022, 2023 or 2024. (T. 71, 72). He has no scheduled medical visits for any treatment to these regions. (T. 72).

Petitioner stated he takes Meloxicam for pain and high blood pressure medication. He experiences pain in his neck, low back and sometimes right arm at night, with his right fifth finger locking up. (T. 31, 32). Some evenings he cannot sleep because of low back pain which worsens with activity. (T. 33, 34). He was uncertain as to whether he could meet the demands of his job. (T. 35).

Petitioner has not looked for or applied for work since rejecting Respondent's job offer of September 17, 2021. (T. 72).

CONCLUSIONS OF LAW

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY? THE ARBITRATOR FINDS THE FOLLOWING FACTS:

It is axiomatic that a claimant with a pre-existing condition must establish by a preponderance of the evidence that the work injury aggravated or accelerated the pre-existing condition such that the current condition of ill-being can be said to have been causally connected to the work injury and not simply the result of the normal degenerative process associated with the pre-existing condition. *Sisbro v. Industrial Commission*, 207 Ill.2d 193, 797 N.E. 665 (203). Consideration is given to the credibility of witnesses and the reasonable inferences drawn from the evidence to determine the weight to give the testimony and resolve conflicts in the evidence, particularly medical evidence. *Rambert v. Industrial Comm'n*, 133 Ill App. 3d 895, 477 N.E.2d 1364 (1985).

In this case, the Arbitrator finds that the work injury caused cervical and lumbar complaints without any aggravation, acceleration, or exacerbation of the pre-existing conditions in the cervical or lumbar region. The Arbitrator notes the X-ray and MRI of the cervical and lumbar region, the

diagnoses of Drs. Asner and Painter, and that of Dr. Weiss in making this finding. Further, diagnostic results show mild degenerative joint disease in both the cervical and lumbar region consistent with Petitioner's age. Further, the Arbitrator finds the work injury caused a contusion to the right shoulder, which had resolved, and lateral epicondylitis of the right elbow necessitating an elbow brace or tennis elbow band.

The Arbitrator finds that Petitioner does not suffer from thoracic outlet syndrome nor right sacroiliac joint dysfunction as suggested by Dr. Xia given the results of the diagnostic studies and findings and opinions of the treating physicians as well as Dr. Weiss.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE, TTD? THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that Petitioner failed to establish by a preponderance of the evidence, that he was temporarily and totally disabled from March 29, 2021, through January 7, 2022.

It is axiomatic that a claimant seeking TTD benefits must show temporary total incapacitation from the time of injury until such time as he is as far restored or recovered as the permanent nature of the injury will permit, i.e., the condition has stabilized. *Interstate Scaffolding Inc., v. Ill. Workers' Comp. Comm.,* 236 Ill.2d 132 (2010). A claimant has the burden of showing not only that he is not working but also unable to work. *Gallentine v. Industrial Commission*, 201 Ill.App.3d 880, 559 N.E.2d 526 (1990). The dispositive issue is whether a claimant's condition has stabilized to the extent that they are able to reenter the workforce. Thus, TTD benefits may terminate though a claimant has not fully recovered from work injuries when no longer unable to work. *Lukasik v. Industrial Commission*, 124 Ill.App.3d 609, 465 N.E.2d 528 (1984).

As an incentive for an injured employee to strive toward recovery and return to gainful employment, TTD benefits may be suspended or terminated if the employee 1) refuses to submit to medical, surgical, or hospital treatment essential to his recovery, 2) fails to cooperate in good faith

with rehabilitation efforts, or 3) refuses work within the physical restrictions. *Interstate Scaffolding, Inc., surpa.* Consequently, TTD benefits have been terminated when a claimant leaves a modified duty work assignment to take a disability pension when there is no evidence of an inability to perform the modified duty. *Granite City v. Industrial Commission*, 279 Ill.App.3rd 1087, 666 N.E.2d 827 (1996). Similarly, voluntarily declining a bona fide job offer precluded an award of TTD benefits in *Sharwarko v. Illinois Workers' Compensation Commission*, 215 Ill.App. (1st) 131733WC; 28 N.E.3d 946, 215 Ill.App. Lexis 128 (2015). There, TTD benefits were denied when claimant voluntarily retired, modified duty was available post-retirement, and made no attempt to find gainful employment. The court, in denying TTD benefits, noted the purpose of the Illinois Workers' Compensation Act, to compensate injured workers for lost earnings, is not fulfilled when work within medical restrictions is available, and the employee does not avail himself of such work. 28 N.E.2d at 954.

Likewise, in *Holocker v. Illinois Workers' Comp. Comm.*, 2017 Ill. App. (3rd) 160363WC, 82 N.E.3d 658, 2017 Ill.App. Lexis 390 (2017), TTD benefits were denied when a claimant was terminated for cause while work restrictions were being accommodated and not at MMI, since not limited from reentering the labor market for which work was readily available. There, the court stressed MMI was not dispositive as claimant was working full duty in his job classification until termination, and his condition stabilized to the extent he was able to reenter the workforce and had no adverse impact on his employment. 82 N.E.2d at 667. Additionally, there was no evidence the work injury diminished claimant's ability to work.

In this case, Petitioner was not off work nor unable to work, because of the effects or the extent of any condition of ill-being resulting from the work injury. Instead, he continued performing the demands of his job as an assembler on a full-time basis from the date of the August 5, 2020, work injury up until the date of a plantwide layoff of March 29, 2021. That is, he remained in the work force for over 33 weeks at full time gainful employment. Petitioner even acknowledged that the demands

of his job fell within the parameters of his work restrictions. Thus, there was no work-related condition impacting Petitioner's employment or precluding him from remaining in the work force. Similarly stated, the work injury did not diminish his ability to work or limit him from remaining in the labor market. The Arbitrator notes the diagnostic studies taken of the cervical and lumbar region, in proximity of the plant wide layoff, failed to reveal any condition of ill-being in the cervical or lumbar region that described Petitioner's ability to work as an assembler. Similarly, the Arbitrator notes that Dr. Weiss found Petitioner capable of working without restrictions as of May 24, 2021.

Next, the Arbitrator notes that in conjunction with the plant wide layoff, Petitioner applied for and received unemployment benefits at essentially his TTD rate for nine to twelve months from the layoff. It is axiomatic that to receive such unemployment benefits, an applicant must be able to work and be available to work. ILS 820 §405.500(c). Petitioner's representations to receive unemployment benefits are inconsistent with his claim that he was off work and unable to work after the plant wide layoff. Indeed, there is no objective evidence of a worsening of Petitioner's condition to render him unable to work. Consequently, TTD benefits are not properly payable given Petitioner's receipt of unemployment benefits. *See Spychalski v. Harmon Contract Glazing*, 95 IIC 0842 (TTD benefits denied after claimant's receipt of unemployment compensation and given the absence of medical evidence of an inability to return to work); *Colborn v. Walmart*, 01 IIC 0787. (TTD benefits denied during period claimant received unemployment benefits, though authorized off work and under medical care). The Arbitrator also notes petitioner's testimony that he never looked for or applied for work anywhere following the plant shutdown on March 29, 2021.

Additionally, the Arbitrator finds that Petitioner rejected a bona fide job offer on September 17, 2021, that afforded him the opportunity to return to work as an assembler, the position he occupied when injured, on a full-time basis. The written offer was tendered pursuant to a contract entered into between Respondent and Petitioner's agent, his union. The offer contained all necessary

terms for a bona fide job offer. Petitioner offered no evidence that the demands of the proffered job exceeded those which he performed up until the time of his layoff of March 29, 2021. Also, there is no evidence of any change in his physical condition from that which existed at the time of the plant wide layoff of May 29, and the date of this job offer. Further, in rejecting the job offer, he accepted a lump sum payment of $24,000.00.

Based on these facts, the Arbitrator finds Petitioner failed to sustain his burden of proof that he was temporarily totally disabled and entitled to TTD benefits after March 29, 2021.

L WHAT IS THE NATURE AND EXTENT OF THE INJURY? THE ARBITRATOR FINDS THE FOLLOWING FACTS:

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party tendered an AMA Impairment rating. Therefore, the Arbitrator gives no weight to this factor

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner testified that he was employed as an assembler at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator also notes Petitioner testified that his job duties on the date of the accident until the date of the plany shutdown involved light assembly work. Petitioner testified that he had performed assembly work when he first started for the respondent that involved heavier lifting. Petitioner's job duties did require him to be on his feet all day. Based on the nature of the petitioner's job duties, the Arbitrator finds that this factor weighs in favor of increased permanency.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 56 years old at the time of the accident and 60 years old at the time of hearing. The petitioner is nearing the end of his natural work life expectancy. The Arbitrator finds that this factor weighs in favor of decreased permanency.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner was capable of performing the demands of an assembler up until the time of the plant wide layoff of March 29, 2021, or over 33 weeks of full time and regular duty employment. Before the layoff, Dr. Villacorta, Petitioner's PCP, had imposed work restrictions of 20 lbs. and Petitioner testified the demands of his job fell within the parameters of this release. Petitioner represented that he was able to work when applying for and receiving unemployment benefits at two-thirds of his average weekly wage, beginning with the plant wide layoff of March 29, 2021, and continuing for a period of some nine to twelve months. Dr. Weiss found Petitioner capable of working without restrictions following a May 24, 2021, Section 12 exam. Diagnostic studies of the cervical and lumbar spine, that is, MRI and X-rays, revealed degenerative disc disease consistent with Petitioner's stated age supporting this employability assessment. Dr. Asner did not recommend any invasive care after an October 28, 2021, exam. Dr. Painter only suggested work conditioning as of November 18, 2021. The FCE of December 20, 2021, showed less than maximal effort, giving pause to question whether a true measure of Petitioner's capabilities. The Arbitrator finds that Petitioner's continued full time and regular duty employment for over 33 weeks post injury until a plant wide layoff, the clinical findings of the treating physicians, the results of diagnostic studies, and employability assessment of Dr. Weiss show Petitioner is able to perform the regular demands of his position on the assembly line. Because of this finding and opinion, the Arbitrator the Arbitrator finds that this factor weighs in favor of decreased permanency.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner had suffered seven earlier injuries to his neck or low back receiving PPD assessments pursuant to Section 8(d)2 for loss of use of person as a whole totaling 25.5% loss of use of the person. Medical records relative to the September 26, 2016, date of loss show Petitioner suffered from degenerative conditions in both the cervical and lumbar spine. Diagnostic studies of the cervical and lumbar spine, following the August 5, 2020, work injury, showed no evidence of fracture or vertebral deformity in the cervical spine and only mild degeneration with facet arthroscopy in the lumbar spine. MRI scan of the cervical spine and lumbar spine showed cervical and lumbar changes consistent with Petitioner's age. Petitioner was diagnosed with upper back pain, lumbar contusion, and right elbow tendinitis. Neither Dr. Sonti, nor Dr. Asner, a neurologist or neurosurgeon, respectively, found any evidence of radiculopathy or other conditions in the neck, low back, or right cubital tunnel region that could be addressed surgically. Instead, conservative measures were prescribed. Moreover, Dr. Painter, an orthopedic surgeon, found no significant stenosis in the cervical region, but rather subjective complaints consistent with degeneration and no active radiculopathy. As to the lumbar region, Dr. Painter found no severe foraminal stenosis or radiculopathy. Consequently, he concluded Petitioner's complaints were primarily mechanical without any radicular element, not necessitating an injection, pain management or an EMG. Instead, he suggested work conditioning to pursue a return to full duty work, which Petitioner declined. The Arbitrator notes Petitioner takes medication for pain, and experiences pain in the neck and low back and sometimes right arm with intermittent sleep disruption because of low back pain that is worse with activities. The Arbitrator finds that this factor weighs in favor of decreased permanency.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017061
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0188
Number of Pages of Decision	12
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 4/28/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cheryl Harris,
Petitioner,

vs. NO: 21 WC 17061

Citgo Petroleum,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, permanent disability, temporary disability and evidentiary rulings regarding medical exhibits, PPD, TTD and medical in dispute and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 22, 2024, is hereby affirmed and adopted.

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

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

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.

April 28, 2025

o: 4/9/25
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	21WC017061
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	23WC003516; 24WC005541; 24WC005546;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 5/22/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cheryl Harris
Employee/Petitioner
v.
Citgo Petroleum
Employer/Respondent

Case # **21** WC **017061**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **February 28, 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 **June 5, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**89,232.00**; the average weekly wage was $**1,716.00**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **0** dependent children.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,144.00 per week for 31-5/7 weeks, commencing June 7, 2021, through August 12, 2021, and from August 26, 2021, through January 27, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services from Dr. Patel, DuPage Medical Group, Edwards Occupational Health, and Edwards Elmhurst Hospital, 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 $871.73 per week for 23.75 weeks, because the injuries sustained caused the 12.5% loss of the right hand, as provided in Section 8(e)(9) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $871.73 per week for 37.95 weeks, because the injuries sustained caused the 15% loss of the right arm, as provided in Section 8(e)(10) 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

May 22, 2024

FINDINGS OF FACT

This matter was heard on February 28, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were accident, causation, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 1 (AX1).

This case, 21WC017061, is consolidated with 23WC003516, 24WC005451 and 24WC005546. This case deals with Petitioner's claimed injuries of right carpal tunnel syndrome and right cubital tunnel syndrome.

Job Duties

Petitioner started working for Respondent in 2002. (T. 11) For the last 17 years of her employment with Respondent, Petitioner has worked as a picker, forklift driver and loader. (T. 11-13)

As a picker, Petitioner would go to the office and get an order from a customer then pick the items listed on that order. (T. 12, 19) On average, she would pick about 500 items per day, for an average of 10-12 hours per day including Saturdays and load them onto pallets. (T. 12-14) Those items weighed anywhere from 1 pound up to 120 pounds. (T. 12-13) The 120-pound item was an oil keg which Petitioner had to physically maneuver off one pallet onto another. (T. 13) Everything else she picked during the day required her to physically lift with her hands. *Id.* Petitioner would also have to load cartons, up to 10 at a time, which could weigh up to 30 pounds each and stack them on a pallet. (T. 15) The pallet was on the floor so she would lift the cartons, sometimes over her head, to stack them on the pallet. *Id.* Petitioner would drive a forklift all day. (T. 11-12, 18) As a loader, Petitioner would load trucks with pallets. (T. 13) It was a fast-paced job, requiring her to drive in tight spaces, constantly turning the steering wheel with the controls in order to back up, go forward, left, and right. *Id.* Driving the forklift involved constant maneuvering down narrow corridors of the warehouse, requiring a lot of hand work, back and forth, shoulders up and down. (T. 13, 17) Petitioner would steer with one hand and shift with the other. (T. 17)

International loads required more strenuous work. (T. 13) After loading the truck, Petitioner had to take 2 large pieces of plywood up the ramp and onto the truck to secure the load, so it did not shift. *Id.* After the last 2 pallets were loaded, Petitioner would get a two-by-four and nail it to the ground to also secure the load. (T. 14)

Prior Medical Condition

Prior to the Spring of 2021, Petitioner did not experience any physical difficulties performing any of her job duties. (T. 19) She did not have any pain, numbness or tingling in her right arm or right hand. (T. 21) Petitioner did not sustain any injury to or seek any medical treatment for her right hand, right arm or right elbow before the Spring of 2021. *Id.*

Accident

Beginning in the Spring of 2021, Petitioner noticed that she was experiencing difficulties in picking things up or gripping them with her right hand and right arm. (T. 19) She started to feel numbness, tingling and pain in her right hand and right elbow. *Id.* Petitioner felt pain in her right elbow while lifting items. *Id.* June 5, 2021, was the last day Petitioner worked for Respondent before beginning treatment for the pain in her right hand and right elbow. (T. 22-23)

After noticing the pain in her right hand, right arm and right elbow in the spring of 2021, Petitioner went to see her primary care physician, Dr. Meher Bala Medavaram, at Naperbrook Medical Center. (T. 20) During that visit, Dr. Medavaram took Petitioner off work and ordered a nerve test. *Id.*

Summary of Medical Records

On April 20, 2021, Petitioner had an EMG/ Nerve Conduction study that revealed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally, the right was moderate in nature and the left is mild in nature. (PX7)

Petitioner went to see her primary care physician, Dr. Medavaram at Naperbrook Medical Center on June 7, 2021. (PX1) Petitioner complained of tingling, numbness and pain in her hand and wrists that went up her arms and was not improving. Dr. Medavaram diagnosed Petitioner as having bilateral carpal tunnel syndrome.

On June 9, 2021, Petitioner saw Dr. Michael Cohen at DuPage Medical Group. (PX2) Petitioner complained of tingling and numbness in her fingers and pain in her right elbow. Petitioner indicated that she had pain doing just about anything with her hands, including opening jars. Petitioner also reported that she had some paresthesia in the right hand with some night awakenings which occurred about once a week. Petitioner reported that she did a lot of lifting at work. Dr. Cohen reviewed the EMG and diagnosed Petitioner as having right carpal tunnel syndrome and medial epicondylitis of the right elbow. Dr. Cohen provided Petitioner with a wrist brace, ordered physical therapy, prescribed anti-inflammatory medication, and took Petitioner off work. Petitioner underwent physical therapy at DuPage Medical Group from June 9, 2021, through July 13, 2021. On June 24, 2021, Petitioner returned to Dr. Cohen still complaining of numbness and tingling in her right arm. Dr. Cohen had her continue physical therapy for another 4 weeks and returned her to work with a 5-pound lifting restriction. Respondent did not accommodate her restrictions, so she remained off work. (T. 25)

On July 20, 2021, Dr. Cohen ordered an MRI and continued Petitioner's prior work restrictions. (PX2) Petitioner underwent the MRI of her right elbow on July 28, 2021, the results of which were normal. On August 5, 2021, Dr. Cohen advised Petitioner that the MRI of her right elbow was normal, and she did not have any evidence of carpal tunnel based on her exam or subjective symptomatology. Dr. Cohen released Petitioner to return to work without restrictions on August 13, 2021.

Petitioner returned to work on August 13, 2021, and felt terrible pain throughout the day, worse than what she had experienced before. (T. 27) Petitioner returned Dr. Medavaram again on August 26, 2021, seeking a referral for a second opinion regarding the pain in her right hand and arm. (PX1) Dr. Medavaram diagnosed Petitioner with right and left arm pain and bilateral carpal tunnel syndrome, and referred her to Dr. Kush Patel for a second opinion.

On August 31, 2021, Petitioner saw Dr. Patel and complained of ongoing pain in her wrists and arms. (PX3) Dr. Patel diagnosed Petitioner with bilateral carpal tunnel and cubital tunnel syndrome. He found that her symptoms were clinically consistent with carpal tunnel and cubital tunnel syndrome and that there is EMG/NCV evidence to support both diagnoses. Dr. Patel determined Petitioner's work had likely contributed to the development of carpal tunnel syndrome bilaterally. Dr. Patel recommended that Petitioner have both a right carpal tunnel and right cubital tunnel release and released her to return to work with 5-pound lifting, pushing, pulling, and carrying restrictions with bilateral hands. She was allowed to drive a forklift. Respondent did not accommodate her restrictions. (T. 30)

On October 13, 2021, Dr. Patel performed a right endoscopic carpal tunnel release and right cubital tunnel release. (PX3, PX8) Petitioner continued to follow up with Dr. Patel during her recovery. (PX3) Petitioner underwent post-operative physical therapy from October 26, 2021, through December 16, 2021, at Edwards Occupational Health. (PX5)

On November 30, 2021, Petitioner reported that she had a complete resolution of her numbness and tingling and had full recovery of sensation. (PX3) On January 11, 2022, Petitioner reported that she did not have any more numbness or tingling and wanted to return to work. Dr. Patel released Petitioner to return to work on January 27, 2022, and indicated that he would proceed with left sided carpal tunnel and left sided cubital tunnel releases whenever Petitioner was ready.

Due to a planned vacation, Petitioner did not return to work until February 1, 2022. (T. 32-33)

After returning to work Petitioner had a few flare ups of pain in her right wrist and right arm but was able to perform her regular duties at work. (T. 34) She did return to see Dr. Patel on several occasions after returning to work on March 11, 2022, May 9, 2022, and the last on June 7, 2022. (T. 34, PX3) On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions. He also wanted to continue monitoring her left sided symptoms which were very mild at the time. (PX3)

On August 23, 2022, Dr. Patel opined that Petitioner developed right carpal tunnel syndrome and cubital tunnel syndrome, as well as left carpal tunnel syndrome and cubital tunnel syndrome, secondary to her job which required heavy repetitive lifting.

Petitioner returned to Dr. Patel on January 26, 2023, complaining of right hand and arm pain that began more than a month earlier, as well as pain in the base of her thumb. Dr. Patel took Petitioner off work. Petitioner continued to follow up with Dr. Patel with continued right thumb and right shoulder pain complaints. On February 27, 2023, Dr. Patel referred Petitioner to Dr. Zahab Ahsan regarding her right shoulder and administered a corticosteroid injection to Petitioner's right thumb.

On February 20, 2023, Petitioner underwent a Section 12 examination (IME) with Dr. Michael Birman at Respondent's request. (RX1) Dr. Birman issued his report on February 27, 2023. Petitioner reported ongoing pain in the right wrist and thumb with radiation into the forearm. Petitioner indicated that her symptoms are worse at night and that she has difficulty opening doors and squeezing. Petitioner also complained of pain in the right elbow and right shoulder. Dr. Birman examined Petitioner and reviewed her medical records. Dr. Birman also noted Petitioner's job duties. Dr. Birman diagnosed Petitioner as having right cubital tunnel syndrome, status post cubital tunnel release, and right elbow medial epicondylitis which had resolved. Dr. Birman opined that Petitioner's right cubital tunnel syndrome was not caused, aggravated or accelerated by her job duties. Dr. Birman further opined that Petitioner's work activities could have been a factor in causing or aggravating her medial epicondylitis. Dr. Birman found that Petitioner's treatment had been reasonable and necessary. Dr. Birman determined that Petitioner did not require any more treatment, nor did she require work restrictions.

Petitioner saw Dr. Ahsan on March 6, 2023. (PX4) Petitioner complained of right shoulder pain that radiated down her arm from time to time and described her work activities. Dr. Ahsan diagnosed Petitioner as having adhesive capsulitis, acute right shoulder pain, and bicep tendonitis. Dr. Ahsan administered a corticosteroid and Ketorolac injection and Petitioner reported immediate relief. Dr. Ahsan ordered physical therapy and took Petitioner off work. Petitioner underwent physical therapy from April 4, 2023, through May 18, 2023, at Athletico Physical Therapy. (PX6) On April 27, 2023, Petitioner returned to Dr. Patel determined that the injection to Petitioner's thumb did not work. (PX3) Dr. Patel felt Petitioner might be a surgical

candidate and kept Petitioner off work. On June 7, 2023, Petitioner saw Dr. Ahsan and reported temporary improvement in her right shoulder pain following the injection. (PX4) Dr. Ahsan ordered a right shoulder MRI and restricted Petitioner from using her right arm. Dr. Ahsan determined that Petitioner's right shoulder problems were related to her work. On June 22, 2023, Dr. Patel found that Petitioner's right carpal tunnel and cubital tunnel were stable, but kept Petitioner off work due to continued right arm problems.

Petitioner underwent the right shoulder MRI on June 24, 2023, the result of which showed marked tendinopathy of infraspinatus tendon extending anteriorly to involve conjoined rotator cuff tendon and posterior fibers of the supraspinatus with associated reactive edema in the adjacent posterior aspect of the greater tuberosity and also intramuscular edema, and mild amount of fluid in the subdeltoid and subacromial bursa. There were no tears or retraction, and biceps tendon was intact. On July 7, 2023, Dr. Ahsan reviewed the MRI and diagnosed Petitioner as having tendinopathy and subacromial impingement of the right rotator cuff and recommended arthroscopic surgery with subacromial decompression and debridement. Dr. Ahsan restricted Petitioner to sedentary duty. Petitioner decided to not undergo surgery and did not return to Dr. Ahsan. (T. 43)

On September 11, 2023, Petitioner underwent a second IME with Dr. Birman at Respondent's request. (RX2) Dr. Birman issued his report on September 18, 2023. Dr. Birman again examined Petitioner and reviewed her medical records (but her right shoulder treatment records were not provided to Dr. Birman). Dr. Birman diagnosed Petitioner as having right shoulder pain, bilateral thumb base pain with mild right thumb carpometacarpal joint arthritis, and left-hand numbness and tingling. Dr. Birman deferred any opinions or recommendations regarding the right shoulder and found that Petitioner had reached maximum medical improvement (MMI) regarding the right elbow medial epicondylitis and right cubital tunnel syndrome, per his prior report. As to Petitioner's right carpal tunnel syndrome, Dr. Birman found that work activities could be a factor, but that, regardless of causation, Petitioner's carpal tunnel syndrome had been treated and she was at MMI for her right carpal tunnel syndrome. Regarding Petitioner's bilateral thumb pain, Dr. Birman noted arthritis, which is common for someone Petitioner's age. Dr. Birman explained that unless Petitioner was utilizing forces through her thumbs excessively and consistently in a forceful manner throughout the workday to the point that it would accelerate her arthritis, Petitioner's pain is a natural progression of her thumb base arthritis. Dr. Birman recommended an injection to treat the pain. Dr. Birman could not provide any opinion regarding work restrictions without additional medical and work information.

On September 14, 2023, Petitioner returned to Dr. Patel complaining of ongoing pain in her thumbs and bilateral carpal tunnel and cubital tunnel syndrome symptoms. Dr. Patel told Petitioner to continue to use her thumb braces and ordered an EMG.

Petitioner's Current Condition

Petitioner was able to perform her regular work activities through the end of 2022. (T. 34-35) Petitioner did not return to work after January 26, 2023, and retired on January 1, 2024. (T. 44-45)

Petitioner still experiences pain in her right wrist and elbow. Her fingers still have numbness. (T. 46) She has difficulty sleeping at night because of her pain and experiences pain and discomfort when turning jars and unscrewing things. *Id.* She experiences pain daily in her right wrist, elbow and hand. *Id.* On average, her pain level for her right wrist is 7 out of 10. (T. 46-47)

Petitioner also continues to experience pain and discomfort in her left hand, wrist and elbow. (T. 48-50) Dr. Patel gave her a brace which she was wearing. *Id.* It is not every day but when she does have pain, the pain level is 4 out of 10. *Id.*

Petitioner experiences pain every day in her right thumb. (T. 47) The ball of her thumb is tender, and she feels pain when trying to grip something. *Id.* Her pain level is 5 out of 10. *Id.*

Petitioner's right shoulder is very painful, and her pain level is about 9 out of 10. (T. 48) She feels this pain every day. *Id.* She has pain when sleeping or when lifting up a bag or milk. *Id.* She experiences pain with and without activities. *Id.*

CONCLUSIONS OF LAW

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

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner, worked for the Respondent for 22 years. For the last 17 years of her employment with Respondent, she worked as a picker, forklift Driver and loader. The job was hand intensive and required lifting items from 1 to 120 pounds, as well as cartons, and constant maneuvering of the forklift. Petitioner did not have any problems with her right arm, hand and elbow until the spring of 2021.

In regard to repetitive traumas, the court in *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 879 (1999), stated that "[a]n employee who suffers a gradual injury due to a repetitive trauma is eligible for benefits under the Act, but he must meet the same standard of proof as a petitioner alleging a single, definable accident. Proof that the relationship of employer and employee existed at the time of the accident is one of the elements of an award under the Act. The date of the accidental injury in a repetitive trauma case is the date on which the injury 'manifests itself.'" Furthermore, "[t]here must be a showing that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987).

The Arbitrator notes that Dr. Patel opined that Petitioner's work likely contributed to the Petitioner's development of carpal tunnel syndrome and that Petitioner developed carpal tunnel syndrome and cubital tunnel syndrome secondary to her job which required heavy repetitive lifting. The Arbitrator notes that while Dr. Birman found that Petitioner's cubital tunnel syndrome was not causally related to Petitioner's job, and Dr. Cohen did not find that Petitioner had carpal tunnel syndrome and that the MRI of her elbow was normal, the EMG/NCV study revealed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally, the right was moderate in nature and the left is mild in nature, contradicting Dr. Cohen's and Dr. Birman's findings. As such, the Arbitrator finds the findings and opinions of Dr. Patel more persuasive than those of Dr. Cohen and Dr. Birman.

Based on the above, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent on June 5, 2021.

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 prior to the Spring of 2021, Petitioner did not experience any physical difficulties performing any of her job duties. She did not have any pain, numbness or tingling in either her right arm or right hand. Petitioner did not seek any medical treatment for her right hand, right arm or right elbow

before the Spring of 2021. On April 20, 2021, Petitioner had an EMG/ NCV study which showed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally. Further, Dr. Patel opined that Petitioner's work likely contributed to the Petitioner's development of carpal tunnel syndrome and that Petitioner developed carpal tunnel syndrome and cubital tunnel syndrome secondary to her job which required heavy repetitive lifting. Dr. Patel performed a right endoscopic carpal tunnel release and right cubital tunnel release on October 13, 2021, after which Petitioner made a full recovery and her symptoms resolved. Petitioner returned to full duty work following the surgery. On January 11, 2022, Dr. Patel noted that Petitioner's carpal tunnel and cubital tunnel syndrome symptoms had resolved and released Petitioner to return to work, without restrictions, starting June 27, 2022. On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her symptom flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions.

Based on the above, the Arbitrator finds that Petitioner's right carpal tunnel syndrome and right cubital tunnel syndrome were causally related to the June 5, 2021, work accident through January 27, 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:

The Arbitrator notes her findings regarding accident and causal connection above. The Arbitrator further notes that Petitioner's symptoms resolved following her treatment and was released to return to full duty work on January 27, 2022. On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her symptom flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions.

Based on the above, the Arbitrator finds that Petitioner's treatment through June 7, 2022, was reasonable and necessary. Respondent shall pay for outstanding medical expenses from Dr. Patel, DuPage Medical Group, Edwards Occupational Health and Edwards Elmhurst Hospital through June 7, 2022, pursuant to Sections 8(a) and 8.2 of the Act.

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:

The Arbitrator notes her findings regarding accident and causal connection above. The Arbitrator further notes that Petitioner was off work from June 7, 2021, through August 12, 2021 (per AX1) and August 26, 2021 (per AX1), through January 27, 2022, when Dr. Patel released Petitioner to return to work.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from June 7, 2021, through August 12, 2021 (9-4/7 weeks), and from August 26, 2021, through January 27, 2022 (22-1/7 weeks).

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 picker, forklift driver and loader 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 substantial weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 58 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 no evidence was presented regarding any impact on Petitioner's future earnings as a result of this accident and Petitioner retired. The Arbitrator gives this factor no 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 right carpal tunnel and cubital tunnel releases which resolved her symptoms. Petitioner returned to work, full duty. On June 22, 2023, Dr. Patel found that Petitioner's right carpal tunnel and cubital tunnel were stable. The Arbitrator gives this factor considerable 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 12.5% loss of use of the right hand, pursuant to Section 8(e)(9) of the Act and 15% loss of use of the right arm pursuant to Section 8(e)(10) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010529
Case Name	Salvador Larios v. Hayes Mechanical/PMC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0189
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Clune

DATE FILED: 4/28/2025

/s/Raychel Wesley,Commissioner

Signature

25IWCC0189

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

SALVADOR LARIOS,

Petitioner,

vs. NO: 19 WC 10529

HAYES MECHANICAL,

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 accident, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 26, 2024, is hereby affirmed and adopted. Pursuant to the stipulation of the parties, the sole issue of dispute at trial was accident. All other issues were reserved. Accordingly, no findings as to Petitioner's entitlement to benefits were made.

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.

The bond requirement in §19(f)(2) of the Act is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(2). Since no award of compensation was entered herein, no bond is required. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 28, 2025

/s/ *Raychel A. Wesley*

RAW/wde

O: 3/19/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010529
Case Name	Salvador Larios v. Hayes Mechanical/PMC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Clune

DATE FILED: 1/26/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 23, 2024 5.02%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Salvador Larios
Employee/Petitioner

v.

Hayes Mechanical/PMC
Employer/Respondent

Case # **19** WC **010529**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **12/11/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ 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, **3/26/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***issue reserved*** causally related to the accident, pursuant to the stipulation of the parties.

In the year preceding the injury, Petitioner earned $**79,123.20**; the average weekly wage was $**1,521.60.**

On the date of accident, Petitioner was **43** years of age, ***married*** with **0** dependent children.

Respondent ***issue reserved*** paid all reasonable and necessary charges for all reasonable and necessary medical services, pursuant to the stipulation of the parties.

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

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

ORDER

Based on the record as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 3/26/19. Pursuant to the stipulation of the parties that the sole issue in dispute is accident and all other issues are reserved, the Arbitrator makes no findings as to Petitioner's entitlement to benefits.

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.

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 26, 2024**

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

SALVADOR LARIOS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-010529
	)	
HAYES MECHANICAL/PMC,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACTS

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 11, 2023, pursuant to Section 19(b) of the Act. On 4/8/19, Petitioner filed an Application for Adjustment of Claim alleging he sustained accidental injuries to his left knee, left shoulder, left arm pit/chest, and left big toe as a result of stepping on a pallet to put wrenches away on 3/26/19. (AX2) The parties stipulated that the sole issue in dispute for the purpose of the Section 19(b) hearing is accident. All other disputed issues are reserved.

TESTIMONY

Petitioner was 43 years old, married, with no dependent children at the time of the alleged accident. Petitioner testified that he lives in the State of Washington and was employed by Respondent in March 2019. He is a boilermaker. Petitioner testified that he sustained a work-related injury to his right shoulder in 2016 and was actively treating for that injury in March 2019. Respondent was accommodating Petitioner's light duty restrictions related to his right shoulder in March 2019. Petitioner testified that while working light duty he picked tool orders in Respondent's shop that were needed at the power plant. Petitioner worked in the shop with his supervisor Danny Wood. He testified that he picked light weight tools, such as wrenches and electrical cords, with his left hand due to his right arm/shoulder restrictions.

Petitioner testified that he worked for Respondent approximately 3 to 4 months before he was injured on 3/26/19. He was filling a bucket with wrenches of various sizes and when he went to retrieve another wrench, he stepped on a pallet that broke. His foot went inside the pallet, and he twisted and fell. He stated there were pallets and junk everywhere and he could not move them because of his right arm restrictions. Petitioner testified that when he fell the wrenches in

his left hand flew everywhere. He stated that Mr. Wood was approximately 10 feet away from where he fell in the shop. Petitioner testified that he landed on his left side when he fell.

Petitioner identified a photograph of the shop. (PX1, Ex. 1) He stated the photograph depicted the area where he was working when he fell. He took the photograph when he returned from the doctor the day of his accident. He stated the photograph accurately depicted the pallet that he stepped on and broke. Petitioner testified that the pallet had been there for 5 to 6 days or longer. He was retrieving the wrenches from the wall behind the pallet. The wrenches on top of the black bucket where the wrenches he was holding in his left hand when he fell. Petitioner testified that as he was falling, he tried to land on his left side to avoid hitting the bucket with his head.

Petitioner testified that after he fell he had pain in the left side of his chest, left shoulder, left knee, and left big toe. He testified that Mr. Wood came to his aid right away and asked if he needed to see a doctor. Petitioner told him that he did, and Mr. Wood left to tell his supervisor about the accident. Petitioner testified that Mr. Wood or another employee drove him to the doctor. Petitioner returned to Respondent's facility after receiving treatment. He stated the accident occurred around 2:00 p.m. and it was late when he returned from the doctor so he went home.

Petitioner testified that he took photograph No. 2 the day of the accident. (PX1, Ex. 2) He took photograph No. 3 the day after his accident after the pallet was moved. The parties stipulated that photographs 4 and 5 accurately depict the condition of Respondent's premises. Petitioner testified that he filled out the accident report identified as PX1, Ex. 6.

Petitioner testified that he went to the emergency room a few days after his accident because he still had left shoulder and knee pain. He stated that his big toe was a little sore, but the pain calmed down. Petitioner testified that Respondent approved a left shoulder MRI, but not a follow up visit with his doctor. Petitioner's treating physician for his right shoulder is in the State of Washington. He tried to treat with that doctor for his left shoulder, but the treatment was not approved by Respondent. His doctor recommended a left shoulder surgery to repair two tears. Petitioner has undergone three right shoulder surgeries since 2019 and two of them were after his alleged work accident of 3/26/19.

Petitioner testified that he has constant pain in his left shoulder that affects his sleep. He cannot drive longer than 10 to 15 minutes and takes Tylenol for his symptoms. Petitioner admitted he has the same issues with his right shoulder. Petitioner testified that his left knee pain has persisted since the accident. He has not received treatment for his left knee. He told his shoulder surgeon about his knee and was told there was nothing they could do until his treatment was approved and they needed to fix his left shoulder first.

Petitioner testified that he met with Respondent's safety person one or two days after his accident. The safety person came to the shop and yelled at him. Petitioner testified that the safety person returned the next day to make sure the shop was cleaned up. Petitioner testified that he had to spray paint and organize the toolboxes after his accident. Petitioner testified that the pallet was gone when the safety person came to the shop.

On cross-examination, Petitioner testified that photograph No. 1 shows the pallet as it was positioned at the time of his accident. He testified that he stood next to the white bucket and retrieved wrenches from the wall depicted in the top right of the photo. He turned and stepped onto the pallet with his right foot. He took another step with his left foot and the pallet broke. He intended to place the wrenches in the black bucket depicted in the bottom right of the photo. He testified that the four wrenches laying across the black bucket were the four wrenches he retrieved from the wall before he fell. He estimated the pallet was positioned 4 to 5 feet from the tool wall. Petitioner testified that Mr. Wood came to his aid within 4 to 5 seconds of his fall and helped him off the floor. He testified that he placed the wrenches across the black bucket so he could take a photograph of them.

Petitioner testified that after he fell he went to a sink and washed the sawdust off his pants, elbow, and hand. He was wearing a short-sleeve shirt that day. He stated that his left forearm and left knee hit the floor. He was taken to a medical clinic chosen by Respondent. He testified that he told the doctor he had pain in his shoulder, knee, chest, and big toe. Petitioner agreed he did not complain about elbow pain. He did not notice bruising to his knee, elbow, or wrist, but they were painful like a truck hit him. He noticed a little marking on his wrist.

Petitioner stated that Mr. Wood was not present when he took the photographs, and he did not ask permission to take them. Petitioner returned to work the next day and sat in a chair the entire workday. He testified that he also took pictures on 3/27/19 of the pallet that was gone and other pallets that were in the area. He stated he took about 30 pictures. Petitioner believes the safety person he met with on 3/28/19 was Mr. Clardy. He described the accident to Mr. Clardy and showed him what he was doing when the accident occurred. Petitioner could not recall if the broken pallet was still there when he met with Mr. Clardy. He believed the pallet was still there on 3/27/19. Petitioner testified that he personally picked up the tools that he dropped when he fell. He denied telling Mr. Clardy and Mr. Wood that he wanted to go home to Washington. He believed that Mr. Clardy was angry with him and did not believe him. He spent approximately 10 minutes with Mr. Clardy on 3/28/19 explaining his accident.

Petitioner testified that he treated with Dr. Paletta for his right shoulder. He went to the emergency room at Belleville Memorial Hospital for his left shoulder after the accident. He was given medication and told to return if his symptoms worsened. He never returned to Belleville Memorial Hospital or the medical clinic Respondent took him to on the date of accident. Petitioner testified that after his accident he worked light duty for Respondent until he underwent a right shoulder surgery by Dr. Paletta on 4/2/19. He was placed off work and returned to Washington to undergo physical therapy. His light work duties from 3/27/19 through 4/1/19 consisted of sitting in a chair and filling tool orders. Petitioner testified that he was already scheduled for right shoulder surgery at the time of his 3/26/19 accident.

John Clardy testified by way of deposition on 11/13/23. (RX1) Mr. Clardy left employment with Respondent on 1/12/23. He first became aware of Petitioner in 2016 when Petitioner filed a workers' compensation claim. Mr. Clardy was Respondent's corporate safety director. He handled workers' compensation claims, general liability, auditing, vehicles, wrecks,

and property damage. He wrote and updated policies and procedures throughout the country. He previously served as an OSHA instructor.

Mr. Clardy learned of Petitioner's 3/26/19 claim when he received a phone call from Senior Vice President Larry Grief. Mr. Clardy also received a phone call from the treating physician at Midwest Occupational Medicine (MOM) where Petitioner was taken after the alleged accident. Mr. Clardy spoke directly with the doctor on 3/26/19 about Petitioner's accident. Mr. Clardy also reviewed the medical record of MOM dated 3/26/19.

Mr. Clardy investigated Petitioner's alleged accident of 3/26/19. He met with Petitioner and the warehouse manager, Daniel Wood, on 3/28/19. Mr. Clardy completed an Incident Investigation Report on 3/28/19. (RX1, Ex. A) He testified that the handwritten documents identified as RX1, Ex. B were prepared by Mr. Wood and Petitioner. He testified that he took the photographs identified as RX1, Ex. C. Mr. Clardy testified that Petitioner reenacted the accident for him, and Mr. Wood placed the pallet where it was located at the time of the accident. He testified that he took photograph No. 1 before Petitioner asked Mr. Wood to move the pallet. He stated the pallet was moved even with the blue bucket depicted on the left side of the photo. Petitioner had Mr. Clardy walk through the steps of his accident. He was facing the white tool board in the direction of the arrows, reached up to retrieve wrenches, spun to his right, and faced in the direction where Petitioner's shoe is depicted in the bottom right side of the photograph. Mr. Clardy stated that his right foot did not touch the pallet when he turned away from the tool board. Mr. Wood moved the pallet further back and they reenacted the accident a second time. Mr. Clardy stood at the center of the tool board, retrieved a wrench with his right hand, and turned to his right. He testified that neither of his feet touched the pallet during this reenactment.

Mr. Clardy stated the pallet was used to transfer tools that got strapped down. He testified that the pallet depicted in the photograph was upside down. He stated that the pallet depicted at the top of the photograph was in a proper stored position. He testified that based on both reenactments he was not able to place his foot on the broken pallet slat the way Petitioner claims he did. Mr. Clardy stated Petitioner raised his voice and said, "Dan, you saw me, you saw me fall." Mr. Wood stated several times that he did not see Petitioner fall. Mr. Clardy testified that Mr. Wood was operating a machine at the time of Petitioner's fall, which was 29 feet away. He testified that Mr. Wood heard tools fall to the ground. Mr. Wood shut down the machine he was operating, which took 10 to 12 seconds to fully stop, and walked 29 feet to where Petitioner was. Mr. Clardy testified that Mr. Wood told him Petitioner was standing and wiping his hands with a paper towel when he came to find out what happened. Mr. Clardy testified that Petitioner told him that Mr. Wood picked up the tools from the floor. Mr. Clardy testified that Mr. Wood told him he did not see any tools on the floor and denied picking any tools up off the floor. He testified that after questioning Petitioner a second time, Petitioner admitted that he picked up the tools. Mr. Clardy concluded the meeting and told Petitioner to return to his light duty work. He did not speak to Petitioner again after that date. Mr. Clardy returned to Respondent's facility on 3/29/19 regarding unrelated matters. Mr. Clardy testified that Petitioner told him he did not want to perform light duty work and wanted to return to Washington.

On cross-examination, Mr. Clardy testified he was not aware Petitioner was scheduled for a right shoulder surgery a week or two after the accident. He testified that the pallet was there

when he arrived to investigate. He did not know who placed the pallet there and Mr. Wood told him the pallet had been there for a couple of months. Mr. Wood told Mr. Clardy that he moved the pallet but could not recall exactly when. Mr. Clardy testified that he did not know who moved the pallet, but in his years of experience the pallets are not there for months because the tool orders are shipped out. It was his understanding that the pallet had not been moved just prior to Petitioner's alleged accident.

Mr. Clardy testified that they were filling an order and the pallet was being loaded. He then testified that Mr. Wood told him he was unloading the pallet with buckets because the items were too heavy for Petitioner to unload, and he asked Petitioner to get him some wrenches. Mr. Clardy testified that no pallet is supposed to be walked on as it is a trip hazard. He testified that the pallet should have been where it is depicted in the photographs because they were filling a tool order.

Mr. Clardy testified that the doctor at MOM did not see any indication of injury to Petitioner's left leg. He agreed that Mr. Wood told him that Petitioner pulled up his pant leg and he saw a mark on Petitioner's left leg between the tuberosity and the tibia. Mr. Wood also saw a mark on the fatty part of Petitioner's left hand. Mr. Clardy was not aware that Petitioner cleaned his clothes off after the accident and he did not ask Petitioner. He testified that he spoke to the Senior Vice President Larry Grief, Petitioner's treating physician at MOM, and a representative of Travelers before he spoke to Petitioner about his accident.

Mr. Clardy testified that he was hired by Respondent on 3/3/17. He agreed that Mr. Wood indicated in his written report that Petitioner tried to catch himself with his left arm, but Mr. Clardy did not indicate that in his written report. Mr. Clardy testified that although Mr. Wood indicated in his written report that he was 20 feet away from Petitioner when he allegedly fell, it was actually 29 feet when they measured it during the investigation.

On re-direct examination, Mr. Clardy testified that during the reenactment Petitioner never told him that the pallet that was on the floor was not the pallet that he injured himself on.

Daniel Wood testified by way of deposition on 12/6/23. (RX3) Mr. Wood has been employed by Respondent for 17 years and was the warehouse manager at the time of Petitioner's alleged accident. He stated that Petitioner worked in the warehouse while Respondent accommodated his light duty restrictions related to a right shoulder injury. Mr. Wood testified that on 3/26/19 he was rolling welding leads on a rolling machine and could not see Petitioner from his vantage point at the machine. Petitioner was working behind him about 30 feet away. Mr. Wood heard wrenches "bouncing off the ground". He stopped the machine which took 10 to 15 seconds and went to the area Petitioner was working. He saw Petitioner picking up wrenches off the floor and placing them in a bucket. He noticed Petitioner wiping his arm off and holding his left arm. Mr. Wood asked him if he wanted medical treatment and to fill out an accident report. Petitioner initially declined and stated he wanted to go home. Mr. Wood notified his supervisor and decided to take Petitioner to a medical clinic in Wood River, Illinois, which was 50 minutes to an hour from Respondent's facility.

Mr. Wood testified that he did not have any conversations with Petitioner about how he fell or how he was injured. He stated he did not recall talking to Petitioner much at all. Mr. Wood testified that Petitioner's accident occurred approximately an hour after they returned from lunch at 12:30 p.m. Petitioner was not taken to the doctor until after 2:00 p.m. Mr. Wood drove Petitioner to the medical clinic where they waited 45 minutes to an hour before Petitioner was seen by a doctor. Mr. Wood waited in the lobby while Petitioner was examined which took 15 to 20 minutes. Mr. Wood testified that the doctor wanted to speak to him about Petitioner and Mr. Wood refused and directed him to speak to Mr. Clardy. The doctor was on the phone for 15 to 20 minutes with Mr. Clardy before they left the facility. Mr. Wood testified that the gate was locked at the back of the warehouse when they returned to the facility, so he dropped Petitioner off at the front of Respondent's facility and went home. He estimated they arrived back at the facility between 4:45 and 5:00 p.m. Mr. Wood's shift normally ended at 3:30 p.m. Mr. Wood testified that he had a key to the gate, but Petitioner did possess a key to unlock the gate. He testified that Petitioner normally parked in the lot in front of the facility and walked through the building to the warehouse.

Mr. Wood testified that the only time he saw Petitioner taking pictures was after Mr. Clardy was at the facility on 3/28/19. He admitted that Petitioner had opportunities to take photographs prior to 3/28/19, including immediately after he fell when Petitioner was not in his presence. He did not know when Petitioner took the photographs identified as PX1, Ex. 1-5. He did not recall if Petitioner worked on 3/27/19. Mr. Wood testified that he moved the pallet on 3/28/19 at Mr. Clardy's request, after the photographs were taken. He was present on 3/28/19 when Mr. Clardy was reenacting the accident with Petitioner. He testified that the pallet and wrenches were in the same condition on 3/28/19 as they were on 3/26/19. He testified that on 3/28/19 Petitioner said he [Mr. Wood] saw him fall and that Mr. Wood picked up the tools. Mr. Wood replied that he did not see Petitioner fall and he did not pick up the tools. Mr. Wood testified that Petitioner then agreed that he [Mr. Wood] did not pick up the tools. Mr. Wood agreed that his investigation report and the photos of the pallet and the tools on top of the bucket were accurate. Mr. Wood testified that the accident was reenacted several times in different ways on 3/28/19. The reenactment involved moving the pallet to different locations.

On cross-examination, Mr. Wood testified that he filled out the Incident Investigation Report within ten minutes of Petitioner's accident and before he drove him to the doctor. (RX1, Ex. B) He testified that the time of accident he indicated on the report of 1:51 p.m. was accurate. Mr. Wood testified that after he spoke to Petitioner, he went to the office to retrieve an investigation report from his supervisor. They left the facility to go to the doctor around 2:15 p.m. He testified that Mr. Clardy asked him to move the pallet on 3/28/19 so it could not get walked on. Mr. Wood disagreed that the floor of the warehouse was a mess or had things that should not have been there. Mr. Wood agreed that the pallet should not have been on the floor in the first place.

Mr. Wood testified that he did not know what pages 2 or 4 were that were missing from the investigation packet identified as RX1, Ex B. He testified that the incident forms were blank before he filled them out and the forms contained in RX1, Ex. B were the only forms he was provided.

Mr. Wood testified that Mr. Clardy was his supervisor in terms of safety. He agreed that Respondent has an interest in making the facility safe to avoid injuries. He understood that Petitioner went to the restroom to wash himself off after the accident, which was located in the warehouse. He testified that Petitioner never complained of pain or injuries to his left arm prior to 3/26/19.

INCIDENT REPORTS/PHOTOGRAPHS

Petitioner completed an Injured/Involved Employee Statement on 3/26/19. (RX1, Ex. B, p. 9) He indicated the accident occurred at 1:51 p.m. He stated, "I was doing on order of wrenches at the shop. I grab a few wrenches and cross over the wood pallet to put them on the bucket and went back and grab some more wrenches and this time when I step on the pallet to put the wrenches on the bucket the pallet broke and my foot twisted as I was trying to cross over to reach the bucket I fell on my left side. After I fell I got up and my knee and my big toe and my left shoulder on top and under my arm pit towards my chest wore in pain. Danny Woods was behind me rolling welding lead when I scream he came right away to make sure I was ok."

Daniel Wood completed an Incident Investigation Report. (RX1, Ex. B, p. 6) Mr. Wood testified that he completed the report within ten minutes after Petitioner's accident. He indicated the accident occurred at 1:51 p.m. The direct cause of Petitioner's fall/trip was "Derby on floor" and contributing causes were "Pallet on floor". Petitioner did not refuse medical treatment and was taken to off-site medical at Midwest Occupational Medical. Mr. Wood stated, "Sal explained to me he was gathering combination wrenches for a tool list when he stepped onto a pallet, after stepping on said pallet the wooden board broke under his left foot sending his front of shoe under a board on said pallet causing Sal to trip while holding said wrenches upon falling Sal said he went to catch himself with left arm." No witnesses were listed.

Mr. Wood completed a Witness Statement indicating he did not actually witness Petitioner's accident. (RX1, Ex. B, p. 7) He stated he was in the second aisle in the warehouse with his back to the alleged accident location. He was approximately 20 feet from the area rolling welding lead. He noted Petitioner reported no complaints or injuries prior to the event.

Mr. Wood completed an Injured/Involved Employee Statement. (RX1, Ex. B, p. 8) Mr. Wood stated, "I, Daniel Wood, was in second isle from the rear of the shop, rolling welding lead once complete I heard wrenches bouncing off the floor I went over to the area of where the allege incident occurred, which was in middle of warehouse four sections from rear of warehouse where Hayes combination wrenches are stored. When I arrived to said area Sal was on his feet holding his left hand. There appeared to be no open wounds or visible injuries. While rolling welding lead my back was to the alleged incident area. Therefore I did not see the incident nor did I see Sal on the floor only standing next to the combination wrenches".

Mr. John Clardy completed an Incident Investigation Report on 3/28/19. (RX1, Ex. B, pp. 1-5) Mr. Clardy indicated the following: Safety Equipment: Required – Not Used; Incident Type: Fall on same level; Nature of Injury: No apparent injury; Body Parts Affected: Upper arm; Direct Causes: Questionable; Contributing Causes: Housekeeping. He indicated there were questionable circumstances. Mr. Clardy noted, "Employee indicates that he was facing East to obtain a wrench from the far left middle row (see pictures), when he turned to the South he stepped on the

pallet with his left foot causing the pallet to break and his left toe to go under the board causing him to fall on his left side". He stated that the area was set up exactly the way Petitioner directed, and the pallet was placed exactly where Petitioner directed. Mr. Clardy reenacted the "exact movement under the direction of Mr. Larios and in the presence of Warehouse Manager Daniel Woods". Mr. Clardy indicated there was a violation of safety rules. He stated, "(1) Employee was collecting wrenches for an order; (2) Employee indicates that he was filling an order which included wrenches that were stored between isle 2 and 3 (a walk way), employee indicates that he turned to the right (North) and placed his left foot on a wooden pallet, employees body weight caused a board on the pallet to break which allowed for his left foot to slip in between another board causing employee to fall forward; (3) (L) shoulder (L) forearm (L) chest (L) knee (L) big toe.

Mr. Clardy indicated "There is no direct cause" to both Direct Causes and Contributing Causes. He noted that housekeeping can be improved upon. He indicated that immediate corrective action included "housekeeping can be improved upon and a pre-apprentice would be hired to help Mr. Wood organize the warehouse". Permanent Corrective Action included "housekeeping/organization and Salvador Larios BM was removed from Warehouse and relocated to the lunch room".

An Involved Employee Statement was completed and included in Mr. Clardy's investigation packet. (RX1, Ex. B, p. 3) The statement was not signed and indicated, "In reference to Jovin Vincent Travelers Investigation: 'Pallet was located in the area for a few months'…Daniel indicates located in area for awhile…Daniel indicates that he (Daniel) has moved the pallet but cannot be definitive as to a date. Daniel indicates that he (Daniel) unloaded the pallet with buckets because the items were to heavy for Larios to unload. Dan ask Larios to obtain a set of combination wrenches ¾ to 1.5 inches in size. Daniel indicates he did not see the incident take place (Daniel was on the West Side of the building in row #2). Larios was in between row 2 & 3 (walk way). Daniel had no clear view of the alleged incident only heard tools dropping. Daniel was operating a Ridged Pipe Threader around 15 ft. away and had to stop the equipment (Daniel showed me the machine, started the machine, and stopped the machine-it took 10-12 secs for the machine to stop). Daniel indicated when he arrived at the area Salvador Larios was standing holding his left wrist and ask employee if he was okay? I (John Clardy) ask Daniel what happened to the tools that were dropped to the ground? Daniel indicated that Mr. Larios cleaned up the area and placed tools in the bucket. According to Daniel employee indicated that, he (Larios) indicated that he was alright and did not want to file a report, he just wanted to go home to Washington State and he did not want to be here anymore. Daniel indicates that he saw a white mark on the (L) fatty part of hand (abductor digiti minimi muscle). In addition, Larios pulled up his (L) pant leg indicating a mark on his (L) leg between the tuberosity and Tibia. Daniel indicates Mr. Larios informed him (Daniel) that, he (Larios) caught himself with his (L) hand extended. Daniel indicated that, Larios had a piece of paper towel and was attempting to clean himself off'.

Mr. Clardy completed an Investigation Final Report on 3/28/19. (RX1, Ex. B, p. 4) He stated, "Upon reviewing provided investigation reports and statement of the alleged injured employee, Daniel Woods Warehouse Manager, re-inacting the alleged injury incident it is my Professional and Personal belief that this incident did not occur and the incident was staged.

Based on the following: (1) Hayes Corporate Safety Director re-inacted the alleged accident/incident reported by employee Salvador Larios in the presence of Daniel Woods and under the direction of Salvador Larios himself on 03.28.19 at the Belleville Illinois Office-Warehouse where the alleged incident took place. I, John Clardy, had Warehouse Manager Daniel Woods set the incident area up exactly the way it was reported in the statements and pictures. I then instructed employee Salvador Larios to utilize my body as if it were his own and walk me through the events as they took place. Mr. Larios had me face the wrench pegs, utilizing my left hand Mr. Larios directed me to remove a small wrench from the left middle row, upon obtaining the wrench Mr. Larios directed me to turn to my right facing him (Mr. Larios) and with my right leg stepping up onto the pallet just as he had allegedly done causing his alleged injury. At this point Mr. Larios became irritated and stated, "The pallet is in the wrong place, the pallet is in the wrong place". I stopped and had Daniel Woods configure the pallet exactly the way Mr. Larios indicated in this case Mr. Larios indicated in this case Mr. Larios requested that the pallet be pushed further back. Upon completing this, I started over and had Mr. Larios direct my movements and, the outcome was still the same each time I (John Clardy) turned in the manner that Mr. Larios directed my right foot contacted the pallet not the left foot as Mr. Salvador Larios wrote in his statement and informed Occupational Medical Doctors. In addition to the above I (John Clardy) recorded the entire investigation. I (John Clardy) ask Mr. Daniel Woods of his location at the time of the alleged injury. Mr. Woods walked me over to isle 2 to a Ridged Pipe Threading Machine with an attachment to roll up electrical cords, this machine is located 15 to 20 feet from the incident area. Mr. Woods back was to the incident as he was facing true West, contrary to Salvador Larios statement indicating that Daniel Woods observed the entire event. I (John Clardy) ask Mr. Woods what all he saw? Mr. Woods indicated that he (Daniel Woods) did not see anything, he (Daniel Woods) only heard tools hit the floor. I (John Clardy) ask Mr. Woods what happened next? Mr. Woods indicated that he (Woods) stopped the machine and went to see what was going on. At this point I (John Clardy) ask Mr. Woods about how long did he take? Mr. Larios interjected and stated, "show him-turn the machine on". Mr. Woods turned the machine on and off to show me how long it took to stop (10-12 secs). I (J. Clardy) ask Mr. Woods what happened next? Mr. Woods stated I went to check on Larios and when I saw him he was standing holding his left wrist. At this point Mr. Larios interrupted stating, "No-Dan you remember you saw me fall, you remember-you remember". Mr. Woods stated, "No-I did not see you fall (video support)" Mr. Larios stated, "You remember-you remember!" Mr. Woods stated, "Sal, I didn't see you fall!". At this point I (J. Clardy) interrupted and stated, "We have a conflict here. Sal, Daniel is clearly saying to you he did not see you fall, and you are saying to Daniel you remember". Daniel stated, "when I came around the corner you were standing holding your left wrist." Mr. Larios stated, "No-I was on the ground with tools in my hand". Daniel stated, "no-you were standing holding your left wrist". At this point I (J. Clardy) changed direction and ask what happened to the tools that hit the ground that Daniel you said you heard. I noticed there were no tools on the ground in the picture? Mr. Larios stated, "Dan you picked them up…" Mr. Woods immediately stated, "No-I didn't pick anything up you (Larios) picked them up". At this point it became quiet. I (J. Clardy) stated, "hello what happened to the tools that were on the ground?" Mr. Larios stated, "I picked them up." I (J. Clardy) stated, "Thank you". It was at this point that I (J. Clardy) noticed Mr. Larios had pulled out his phone and attempted to press the video record button on his gold back Apple I-phone. I thanked both men and advised Mr. Larios to return to his seated area".

Nine photographs of the alleged accident area were admitted into evidence. (RX1, Ex. C) Mr. Clardy testified that he took the photographs on 3/28/19. Five photographs of the alleged accident area taken by Petitioner were admitted into evidence. (PX1, Ex. 1-5) Photographs of Petitioner's cell phone were admitted into evidence that show Petitioner took various photos on 3/26/19 at 2:03 p.m. (PX7) The parties stipulated that the cell phone pictures depicted in PX7 reflect Pacific Standard Time (PST) as Petitioner lives in the State of Washington and his phone is programmed to PST. The parties stipulated that the photographs were actually taken at 2:03 p.m. on 3/26/19, which is two hours after the time depicted on Petitioner's phone.

MEDICAL HISTORY

On 3/26/19, Petitioner was examined by Dr. Panayiotis Ellinas at Wood River Clinic-Midwest Occupational Medicine. (PX1, RX 1, Ex. D) Petitioner complained of left shoulder pain, left lateral chest wall pain, left knee contusion, and left big toe contusion. Petitioner reported that he fell earlier that day. He was packing wrenches when he stepped on a pallet and part of it broke and he fell on his left side. He stated that he caught his fall with his left outstretched forearm and his left knee struck the ground. He did not know if his fall was witnessed by anyone.

Dr. Ellinas noted that Petitioner had been working light duty for several years due to a right shoulder injury. Petitioner reported he was in severe pain. He denied any prior injuries to his shoulder, rib cage, knee, or foot on the left side. Dr. Ellinas stated she examined Petitioner's clothes and his left coat sleeve did not show any dirt or signs of having been in contact with the floor. Dr. Ellinas also noticed that Petitioner's left pant leg did not show any signs of contact with the floor. Petitioner advised that he cleaned his clothes prior to leaving Respondent's facility.

Examination of Petitioner's left shoulder showed limited range of motion by subjective complaints of severe pain. Petitioner stated he was unable to place his left hand on his right shoulder for examination of impingement. His pain prevented Hawkins testing and Petitioner had severe pain with O'Brien's testing. Petitioner could not reach behind his back with his left arm. He complained of pain throughout his entire shoulder, proximal left humerus, pectoralis major insertion, and left upper chest wall. Dr. Ellinas noted no swelling or bruising to Petitioner's left shoulder, chest, or left forearm. Petitioner had no complaints regarding his left forearm or elbow to palpation. Examination of Petitioner's left knee and big toe was normal with no visible abnormalities, swelling, bruising, or contusions. He had minor discomfort in his big toe with passive movement.

Dr. Ellinas noted that Petitioner removed his trousers, boots, and socks without difficulty and without signs of discomfort. Petitioner "rapidly" dressed himself without discomfort or complaint. Dr. Ellinas noted that Petitioner had no discomfort or complaints taking his shirt on and off. X-rays of Petitioner's left shoulder and left rib cage were ordered. Dr. Ellinas diagnosed shoulder pain, left lateral chest wall pain, left knee contusion, and left big toe contusion. Dr. Ellinas stated that Petitioner's subjective complaints of pain did not correlate with objective findings on examination or observation. Dr. Ellinas ordered Petitioner to continue light duty

work as before and to take over-the-counter Advil, Aleve, or Tylenol as needed. Petitioner was scheduled to return to the clinic on 4/1/19.

On 3/29/19, Petitioner presented to the emergency room at Belleville Memorial Hospital. (PX3) Petitioner complained of left shoulder, left lateral rib, and left knee pain after tripping and falling three days ago. He was noted to have full range of motion and walked with a normal gait. He had mild aching that waxed and waned. X-rays of his left ribs, knee, and shoulder revealed no fractures. Mild osteoarthritis of the AC joint of the left shoulder was noted. He was diagnosed with contusions to the left knee, left front wall of the thorax, and left shoulder. He was prescribed Cyclobenzaprine and Ibuprofen and instructed to follow up with a primary care physician. It was noted that Petitioner did not have a primary care physician.

On 11/7/19, Petitioner presented to Dr. Gene Griffiths at Orthopedics Northwest for follow up of a right shoulder injury on 3/12/16. (PX5) It was noted that Petitioner underwent a right rotator cuff repair on 7/28/17 and a revision rotator cuff repair by Dr. Paletta on 4/2/19. Petitioner reported he was doing great in physical therapy, but they had him lifting weights that caused a lot of pain in his neck and the back of his shoulder area. Petitioner also complained of increasing left shoulder pain for which he filed a claim. He stated he was told to ask about his left shoulder. Examination of the left shoulder revealed pain and weakness with supraspinatus testing. A left shoulder MRI was ordered.

On 4/29/20, Petitioner returned to Dr. Griffiths for follow up of his right shoulder. Petitioner reported increasing pain in his left shoulder, and he believed a claim would be filed in the near future. The Arbitrator notes that Petitioner signed an Application for Adjustment of Claim on 4/1/19 which was filed with the Illinois Workers' Compensation Commission on 4/8/19. Examination of Petitioner's left shoulder revealed normal strength testing with external rotation and supraspinatus. No diagnosis or recommendations were made with respect to Petitioner's left shoulder.

On 6/25/20, Dr. Griffiths noted Petitioner had chronic left shoulder pain and he was in the process of getting a claim for the injury. Dr. Griffiths did not examine Petitioner's left shoulder.

On 4/21/23, Petitioner underwent a left shoulder MRI that revealed rotator cuff tendinopathy with partial intrasubstance tears without retraction, a ganglion cyst, subacromial-subdeltoid bursitis, AC joint degenerative changes impinging on the rotator cuff, and a tear of the superior glenoid labrum. (PX4) The report indicated a history of left shoulder pain, and the study was ordered by Dr. Griffiths.

On 6/7/23, Dr. Giffiths noted that Petitioner was returning for a left shoulder follow up with an onset of symptoms of 3/26/19. Petitioner rated his pain 6/10 and was aggravated by lifting, movement, and reaching. His symptoms were mildly improved with Tylenol. Petitioner had difficulty initiating sleep and had nocturnal awakening and pain. Dr. Griffiths noted that Petitioner complained of chronic severe and now quite incapacitating left shoulder pain. He had work related injuries to both shoulders and performed heavy labor activities. Dr. Griffiths noted Petitioner was an unemployed boilermaker. Dr. Griffiths reviewed the MRI and interpreted a

large left full-thickness rotator cuff tear of the anterior supraspinatus. He assessed a complete tear of the left rotator cuff, unspecified whether traumatic, and performed a left arthroscopic rotator cuff repair that day. Petitioner was placed on light duty restrictions. Petitioner informed Dr. Giffiths' office on 7/26/23 that Respondent was denying his workers' compensation claim with regard to his left shoulder.

CONCLUSIONS OF LAW

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 797 N.E.2d 665, 671 (2003). "In the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id.* That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment.

An injury "arises out of" one's employment if its origin is in a risk connected with or incidental to the employment. *Id.* A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work *or* that he or she is exposed to the risk of injury to a greater degree than the general public. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Illinois courts recognize the following three categories of risks: "1) risks distinctly associated with the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics." *Id.* A risk is distinctly associated with the employment if the employee was "performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.*

It is undisputed that Petitioner was performing light duty work in Respondent's warehouse on 3/26/19 due to a work-related right shoulder injury in 2016. He was scheduled for a revision rotator cuff repair by Dr. Paletta on 4/2/19 which he underwent. It is undisputed that Petitioner was filling a tool order on 3/26/19 and was taking wrenches off a peg board and placing them in a bucket. He faced the tool board next to the white bucket, retrieved wrenches with his left hand, turned to his right, stepped up on a wooden pallet with his right foot, took another step with his left foot and the pallet broke. (PX1, Ex. 1) His left foot went inside the pallet, and he twisted and fell. He testified that he fell to the floor on his left side to avoid hitting his head on the black bucket.

Petitioner testified that the wrenches flew out of his hand when he fell. Mr. Wood was working on a machine 29 feet away and heard the wrenches hit the floor over the sound of the machine he was operating. Although Mr. Wood initially reported he was 15 or 20 feet away from where Petitioner fell, the distance was measured at 29 feet during the post-accident investigation. Petitioner reported and testified that Mr. Wood witnessed his fall; however, the evidence

suggests otherwise. The Arbitrator finds Mr. Wood's testimony credible that he was in the second aisle of the warehouse operating a rolling welding lead with his back toward Petitioner. Mr. Clardy also reported that a video supported Mr. Wood's testimony that he did not see Petitioner fall. Specifically, Mr. Clardy noted, "Mr. Woods stated, 'No-I did not see you fall (video support)'" There were no security videos admitted into evidence of Petitioner's accident or the warehouse, or the video Mr. Clardy admitted he took of the accident reenactment on 3/28/19.

Mr. Wood testified that when he arrived at the scene Petitioner was picking up tools off the floor; however, he also stated Petitioner was wiping his arm off and holding his left arm. Mr. Wood asked Petitioner if he needed medical treatment and if he wanted to fill out an accident report. Mr. Wood went to his supervisor and obtained accident reports that were filled out within ten minutes of the accident. They left the facility within 20 to 25 minutes of the accident to take Petitioner to the doctor.

Mr. Wood drove Petitioner to Wood River Clinic-Midwest Occupational Medicine MOM) which was 50 minutes to one hour from Respondent's facility. Mr. Wood testified that he really did not speak to Petitioner much after his accident and he did not speak to him about the accident. Mr. Wood testified that he stayed in the waiting room at MOM while Petitioner was being examined, which took 15 to 20 minutes. Dr. Ellinas attempted to talk to Mr. Wood immediately after examining Petitioner, but he declined and told Dr. Ellinas to speak to Mr. Clardy. Mr. Wood testified that Mr. Clardy spoke directly with Dr. Ellinas on the phone for approximately 15 to 20 minutes before they left the clinic. Mr. Clardy admitted that he received a phone call from Dr. Ellinas on 3/26/19 and spoke to the doctor about Petitioner's alleged accident. There was no evidence that Petitioner was involved in or overheard the conversation between Dr. Ellinas and Mr. Clardy, and no evidence that Petitioner gave them permission to speak to each other about his treatment.

Dr. Ellinas noted that Petitioner complained of left shoulder pain, left lateral chest wall pain, left knee contusion, and left big toe contusion. Petitioner reported a consistent history of accident. He reported that he fell on his left side and hit his left outstretched forearm and his knee struck the ground. Dr. Ellinas reported that she examined Petitioner's clothes, and his left coat sleeve did not show any dirt or signs of having been in contact with the floor. Petitioner testified that he was wearing a short-sleeve shirt when he fell; therefore, there would not be any markings on his coat sleeve. Dr. Ellinas also noted there were no signs of contact with the floor on Petitioner's left pant leg; however, she diagnosed him with a left knee contusion. Mr. Clardy testified that Mr. Wood observed marks on Petitioner's left leg between the tuberosity and tibia when Petitioner pulled his pant leg up. Mr. Wood also observed a mark on the fatty part of Petitioner's left hand. Dr. Ellinas found all of Petitioner's complaints to be subjective and that he was able to "rapidly" dress and undress himself without signs of discomfort. Nevertheless, she diagnosed shoulder pain, left lateral chest wall pain, left knee contusion, and left big toe contusion. Petitioner was instructed to return to the clinic on 4/1/19; however, he did not return and underwent a prescheduled right shoulder surgery on 4/2/19.

Petitioner completed an Injured/Involved Employee Statement, within ten minutes of the accident. (RX1, Ex. B, p. 9) His testimony was consistent with the report. Daniel Wood

completed an Incident Investigation Report. (RX1, Ex. B, p. 6) Mr. Wood reported that the direct cause of Petitioner's fall/trip was "Derby on floor" and contributing causes were "Pallet on floor". He reported, "Sal explained to me he was gathering combination wrenches for a tool list when he stepped onto a pallet, after stepping on said pallet the wooden board broke under his left foot sending his front of shoe under a board on said pallet causing Sal to trip while holding said wrenches upon falling Sal said he went to catch himself with left arm." Mr. Wood also completed a Witness Statement stating he did not actually witness Petitioner's accident because he was in the second aisle in the warehouse with his back to Petitioner. He was approximately 20 feet from the area rolling welding lead. He noted Petitioner reported no complaints or injuries prior to the event. (RX1, Ex. B, p. 7)

Mr. Wood also completed an Injured/Involved Employee Statement on 3/26/19. (RX1, Ex. B, p. 8) He reported he heard wrenches bouncing off the floor. When he arrived at the scene Petitioner was on his feet holding his left hand. He reported that he did not see Petitioner on the floor only standing next to the combination wrenches. The Arbitrator notes that within ten minutes of Petitioner's alleged accident, Mr. Wood made it abundantly clear that he did not see Petitioner lying on the floor and that Petitioner was standing when he arrived at the scene. Petitioner testified that he believed Mr. Wood came to his aid within 4 to 5 seconds after he fell. Mr. Wood denied arriving that quickly as it took at minimum of 10 seconds to completely shut down the machine he was operating and then walk approximately 30 feet to Petitioner's work area. Although Petitioner did not testify how long he was on the floor, Mr. Wood's testimony that he did not see Petitioner laying on the floor is reasonable assuming he waited for the machine to completely shut down and then walk 30 feet to Petitioner's area.

There was extensive testimony as to when or if the subject pallet was moved after Petitioner's alleged accident. However, there is no dispute that Petitioner took photographs 1 and 2 on 3/26/19 and the photographs accurately depict the scene at the time of accident. (PX1, Ex. 1 and 2) The photographs were taken with Petitioner's cell phone and the parties stipulated they were taken on 3/26/19 at 2:03 p.m. CST. (PX7) Petitioner testified that photograph 1 depicted the pallet in the same position it was in at the time of his accident, and it was taken twelve minutes after his accident. Mr. Wood testified that although he did not see Petitioner take any photographs until 3/28/19, he would not dispute that he did because he went to the main office to speak to his supervisor immediately after Petitioner's accident. Mr. Wood also testified that the photos where accurate representations of the pallet and tools on 3/26/19.

Mr. Clardy personally performed multiple reenactments of Petitioner's accident and moved the pallet in various positions. He testified that during every reenactment his toes did not touch the pallet when he turned away from the peg board. He reported that during one reenactment his right foot touched the pallet when he turned away from the peg board. Petitioner testified that the pallet was 4 to 5 feet from the peg board when he fell. There is no evidence that Mr. Clardy measured the distance between the peg board and the pallet in any position. The Arbitrator notes that Petitioner never testified that he immediately stepped onto the pallet when he turned away from the peg board. He was never asked if he had to take steps before stepping onto the pallet. Petitioner would clearly have to take a step or two on the floor before reaching the pallet if it were positioned 4 to 5 feet away from the peg board. Mr. Clardy did not report or testify as to what distance the pallet was from the peg board during each reenactment.

Mr. Wood testified that the pallet should not have been on the floor in the first place. He testified that Mr. Clardy asked him to move the pallet on 3/28/19 so it could not get walked on. Mr. Clardy, as the Safety Director, testified that the pallet should have been where it is depicted in the photographs because they were filling a tool order. He testified that no pallet is supposed to be walked on as it is a trip hazard. The photographs show that the pallet and tool buckets cover the entire walkway forcing a person to step on the pallet to get through. (RX1, Ex. C, photograph 1, PX1, Ex. 1) The photographs also show a broken slat on the pallet, which is where Mr. Clardy indicated on the photograph that Petitioner's foot went through. (RX1, Ex. C, photographs 2 and 4)

Mr. Clardy indicated in his investigation report that a contributing cause to Petitioner's accident was "Housekeeping". Immediate corrective action included "housekeeping can be improved upon and a pre-apprentice would be hired to help Mr. Wood organize the warehouse". Permanent corrective action included housekeeping/organization and for Petitioner to be removed from the warehouse and relocated to the lunchroom.

Mr. Clardy opined in his Investigation Final Report dated 3/28/19 that the incident was staged and did not occur. He based his opinion on his reenactment of the alleged accident. The first reenactment resulted in neither of Mr. Clardy's feet touching the pallet when he turned away from the peg board. A second reenactment occurred after moving the pallet as directed by Petitioner and Mr. Clardy noted that his right foot contacted the pallet and not his left foot as Petitioner reported and described to Dr. Ellinas. The Arbitrator notes that Petitioner reported in his written accident report completed ten minutes after the accident that the second time he walked across the pallet the pallet broke and his foot twisted. He did not specifically describe how he walked toward and across the pallet. Mr. Wood's report indicated that Petitioner stepped onto the pallet and the board broke under his left foot sending the front of his left shoe under a board on the pallet. Mr. Wood did not specifically describe how Petitioner walked toward or across the pallet. Dr. Ellinas noted that Petitioner was packing wrenches when he stepped on a pallet and part of it broke and he fell on his left side. The Arbitrator does not find the history contained in Dr. Eillinas' report inconsistent with Petitioner's written statements or testimony as alleged by Mr. Clardy.

Based on the record as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 3/26/19. Pursuant to the stipulation of the parties that the sole issue in dispute is accident and all other issues are reserved, the Arbitrator makes no findings as to Petitioner's entitlement to benefits.

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	23WC004375
Case Name	Thomas Perry v. R&L Carriers
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0190
Number of Pages of Decision	11
Decision Issued By	Commissioner Raychel Wesley

Petitioner Attorney	David Jerome
Respondent Attorney	Matthew Ignoffo

DATE FILED: 4/30/2025

/s/Raychel Wesley,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS PERRY,

Petitioner,

vs. NO: 23 WC 04375

R & L CARRIERS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, changes 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.

While the Commission ultimately affirms the Arbitrator's award of permanent partial disability benefits, we find it appropriate to slightly amend the rationale for the sake of accuracy. In analyzing the five enumerated factors in §8.1b of the Act, we note that in discussing subsection (ii) "Occupation," the Arbitrator noted Petitioner was an over the road truck driver who had subsequently returned to his pre-accident employment, which was categorized as "heavy nature." The Commission finds no official job description in the record, and acknowledges Petitioner's testimony that he drives the truck, but does not move freight. We find it speculative to characterize Petitioner's job as heavy [duty] in nature, and strike such language from page 4 of the Decision of the Arbitrator.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 26, 2024, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $937.11 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 17.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have a credit of $11,934.84 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have a credit of $8,219.35 for temporary partial disability benefits paid.

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

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

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.

April 30, 2025

RAW/wde

D: 3/19/25

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/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC004375
Case Name	Thomas Perry v. R&L Carriers
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Matthew Ignoffo

DATE FILED: 2/26/2024

/s/Bradley Gillespie, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 21, 2024 5.10%

25IWCC0190

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

THOMAS PERRY,
Employee/Petitioner

Case # 23 WC 004375

v.

Consolidated cases:

R&L CARRIERS,
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 BRADLEY GILLESPIE, Arbitrator of the Commission, in the city of Mt. Vernon, on February 5, 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 11/12/19, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $122,664.88; the average weekly wage was $2,358.94.

On the date of accident, Petitioner was **54** years of age, married 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 $11,934.84 for TTD, $8,219.35 for TPD, $0 for maintenance, and $ for medical expenses, for a total credit of $**20,154.19**.

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

ORDER

Respondent shall pay the sum of $937.11/week for a period of 87.5 weeks, totaling $81,997.13 because the injuries alleged by Petitioner resulted in 17.5% loss of use of the person-as-a-whole pursuant to § 8(d)(2) of the Act.

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

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

Bradley D. Gillespie
Signature of Arbitrator

February 26, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS PERRY,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case 23 WC 004375**
	)	
R&L CARRIERS,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

This matter proceeded to hearing on February 4, 2024, in Collinsville, Illinois. (Arb. Ex. #1). Thomas Perry [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on February 10, 2023, alleging accidental injuries while working for R&L Carriers [hereinafter "Respondent"] occurring on March June 23, 2022. (Arb Ex. #2) The following issues were in dispute:

- Causal Connection;
- Nature & Extent

FINDINGS OF FACT

Thomas Perry, Petitioner, is a 55 year old over the road truck driver that has been working for Respondent since 2006. (Tr. pp. 8-9) Petitioner's job duties included driving a tractor trailer with a second driver. (Tr. p. 9) The team drove from the St. Louis terminal to New Orleans and back again. (Tr. pp. 9-10) Petitioner drove 10 ½ to 11 hours per day. (Tr. p. 10) He testified that his job is physical because he has to repeatedly climb in and out of his cab; drop the trailer legs; and open back doors on the trailer. *Id.*

On June 23, 2022, Petitioner was at the terminal in Sauget, Illinois. (Tr. p. 10) He was getting ready to go to bed in the cab as he had driven the night before. (Tr. p. 11) He was moving a rug from the sleeper cab to clean it outside. *Id.* He explained that he grabbed the rug under his left arm; climbed out of the truck; missed the bottom step; and fell four to five feet landing onto a concrete surface. *Id.* Petitioner demonstrated that when he fell, his right arm was overhead, and he landed along his entire right side. (Tr. p. 12) Petitioner initially noticed that he was not able to breathe and thought that he had the "wind knocked out of me…". *Id.*

Petitioner was sent by his employer to Concentra Medical Center. (Tr. p. 13) Medical records indicate that Petitioner was initially seen on June 23, 2022. (PX #1 p. 40)The doctor noted that Petitioner injured himself when he was attempting to climb out of his semitruck after parking his vehicle. *Id.* He missed the bottom step and fell approximately 3 to 4 feet onto concrete pavement landing on his right side and scraping his left knee and right elbow. *Id.* He was noted to have severe pain with his right ribs since that time. *Id.*

Petitioner was diagnosed with having a closed fracture of one rib; contusion of ribs; contusion of the left knee and lower leg; abrasion of the right elbow; contusion of the right elbow and forearm; abrasion of the left knee. (PX #1 pp. 42-3) He given an injection of Toradol and a Lidocaine patch was applied to his right ribs. (PX #1 p. 40) Petitioner was prescribed Lidocaine patches, Flexeril, Acetaminophen and Etodolac. *Id.*

Petitioner followed up with Concentra Medical Center on June 24, 2022, as the medications were not controlling his symptoms. (PX #1 pp. 9) Petitioner continued to have 10/10 pain in his right ribs with deep breathing and movement of his torso. *Id.* Petitioner noted that the pain radiated along his back and side of his right ribs. *Id.* He described the pain as being sharp and burning. *Id.* In response, Concentra gave him an ace bandage to use for comfort. (PX #1 p. 11)

On June 25, 2022, Petitioner was seen at Anderson Hospital Emergency Room with complaints of right sided chest wall pain. (PX #2 p. 11) The Emergency Room physician noted that Petitioner had fallen approximately 4 to 6 feet from a semitruck landing on his right side. *Id.* Since that time, Petitioner was noted to have increased right sided chest pain. *Id.* The pain medications were not controlling his symptoms. *Id.* He noted that when he breathes, feels as though his ribs were popping. (PX #2 p. 11)

X-rays were taken of his ribs and showed displaced fractures of the right fifth through seventh ribs and non-displaced fractures of the eighth, ninth and 10th ribs. (PX #2 p. 14) He was also noted to have opacities of the right lung that were reflective of atelectasis versus pulmonary contusion. *Id.* Petitioner was transferred to St. Louis University Hospital by way of Abbott EMS. (PX #3)

St. Louis University Hospital records indicate that Petitioner was seen via EMS for injuries following a fall out of an 18 wheeler onto the ground. (PX #4 p. 2) Petitioner underwent a CT scan of his cervical spine, thoracic spine, lumbar spine, and x-rays of his pelvis, and chest. (PX #4 p. 5) He was diagnosed with having a closed fracture of multiple ribs on the right side. The doctor described Petitioner as having displaced rib fractures right 5-7 and non-displaced fractures right 8-12.(PX #4 p. 9)

After being released by St. Louis University Hospital, Petitioner remained off work as he continued to have ongoing problems. (Tr. pp. 14-5) Petitioner testified that he talked with Respondent's adjuster indicating that the ribs were not healing. (Tr. p. 15) He was unable to find a doctor who specialized in rib displacement and was told that there were only two specialists and both were located at Barnes Hospital. *Id.*

On August 22, 2022, Petitioner was seen at Barnes Hospital where he was advised that the ribs remained displaced and mobile within his chest. (Tr. p. 15) As a result, on September 13, 2022, Petitioner underwent surgery that included adding titanium plates and screws to reconnect five different ribs, including right rib 4 through 9. (Tr. p. 16; PX #6)

Petitioner was admitted into Barnes Hospital from September 13, 2022, until September 15, 2022. (PX #5) (While hospitalized, he underwent surgery that included the insertion of Zimmer Biomet Ribfix Blue hardware for ribs 5 through 9.) He was diagnosed with having chronic nonunion of multiple rib fractures following a fall. (PX #6 p. 4)

Postoperatively, Petitioner followed up with Dr. Mark Hoofnagle for post-operative surgical wound care. On October 17, 2022, Dr. Hoofnagle examined Petitioner for the final time. (PX #5 pp. 9-14) At that time, Petitioner was noted to have minor aches at the surgical site but was otherwise having a good recovery and function. (PX #5 p. 10) He placed Petitioner at maximum medical improvement; tenured light duty for two weeks; and released him to return to work full duty effective October 31, 2022. (PX #5 pp. 11-12)

Petitioner testified that he was paid lost time benefits by Respondent while he was off work as well as periods when he was working light duty. (Tr. p. 17) Petitioner testified that during his recovery process, there were times when he performed office work that included making phone calls regarding missing freight. *Id.* During this light duty, his hours were limited and he was paid the appropriate temporary partial disability for the remaining hours. Petitioner believes that his medical bills have been appropriately paid.

Petitioner testified that he was able to return to work as an over the road truck driver and remains in that position as of today. (Tr. p. 18) At trial, Petitioner was seen leaning on his left arm. He explained that tilting to the left is the most comfortable position for him. (Tr. p. 19) If he tries to straighten up while sitting, he starts to have tingling as well as sharp little pains coming from the area of his ribs that also wraps around to the front of his rib cage. (Tr. pp. 19-20) Petitioner testified that while he drives, he must now lean to the left especially with the chair bouncing around. (Tr. p. 20) He noted that the ribs still hurt and will stiffen up if he does not lean to the left. (Tr. pp. 20-1) Petitioner noted that when he is not driving, he is in the sleeper cab while his co-driver takes over the driving duties. (Tr. p. 21)

Petitioner noted that he was traditionally a side sleeper but now he can no longer sleep on his right side due to pain. (Tr. pp. 21-2) This is significant as Petitioner traditionally slept on his right side so that he would be facing the back of the truck in the event that the truck had to stop abruptly. (Tr. pp. 22) Petitioner testified that since he can only sleep on his left side, he must place a number of pillows in front of his face so that he does not run the risk of his face running into the cabinet behind the driver. (Tr. pp. 22-3) Petitioner testified that he is also unable to sleep on his back due to snoring and therefore he is limited exclusively to only being able to sleep on his left side. (Tr. pp. 23-4)

Petitioner testified that if he had to climb in and out of the cab numerous times throughout the day, he experiences sharp pains in his ribs and the area is tender.(Tr. p. 24) Petitioner also testified that when dropping the legs on the trailer, he sometimes has problems if the gears are stiffer as he is now having to use his left hand which is awkward given how he faces the trailer. (Tr. p. 25)

Petitioner testified that he cannot lift as much as he used to due to the problems with the ribs. (Tr. p. 26) He noted that he cannot carry large bags of dog food in front of him as he used

to. *Id.* He now must throw it over his left shoulder in order to place it into the shopping cart. *Id.* Petitioner noted that if you try to lift or put the item on his right shoulder, it causes pain within his rib areas. (Tr. p. 27)

Petitioner testified that there were certain activities at home like using a push mower or doing car repairs such as changing his wife's headlight which cause him pain or discomfort. (Tr. p. 27) He noted that while performing these activities, he would have increased symptoms in the area of the rib fractures. *Id.* He noted that he must now use his left arm exclusively for any significant lifting or he will have problems within the damaged ribs. *Id.* Petitioner noted that he now takes Aleve four or five times per week due to flareups with the pain in his ribs. (Tr. p. 28) He also uses Bio-freeze approximately once per week to reduce the symptoms. (Tr. p. 29)

On cross-examination, Petitioner confirmed that he went to Concentra on the date of the accident as soon as he was able to get his breath back. (Tr. p. 29) He noted that his last date of treatment was October 17, 2022, with Dr. Hoofnagle. (Tr. p. 30) He confirmed that he has not had any treatment since that visit and was not provided any permanent work restrictions. (Tr. p. 31) Petitioner noted that the doctor told him that he needs to stay within his ability at the time of the last visit. *Id.*

Issue (L): What the Nature and Extent of the Injury:

Respondent contests the medical causation as it relates to the nature and extent of permanent partial disability. Petitioner testified that he had no prior or subsequent injuries to his ribs and therefore his condition remains causally related to the work accident.

Pursuant to § 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of § 8.1b 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).

With regards to subsection (i) of § 8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. Accordingly, the Arbitrator gives no weight to this factor.

With regards to subsection (ii) of § 8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner continues to work full duty as an over the road truck driver. However, Petitioner testified to ongoing problems in driving for extended time periods; climbing in and out of the cab; sleeping on his right side; opening truck doors; and dropping trailer legs. Further the Arbitrator acknowledges the heavy nature of Petitioner's occupation and gives significant weight to this factor.

With regards to subsection (iii) of § 8.1b(b), the Arbitrator notes that Petitioner was 55 years old at the time of the accident. Pursuant to **Jones v. Southwest Airlines**, 16 I.W.C.C. 0137

(2016), the Commission concluded that greater weight should be given to a Petitioner who is younger in age because he will have to work with a disability for an extended period of time. The Arbitrator considers Petitioner's age at the time of the accident and his relatively long average life expectancy. Based on the foregoing, the Arbitrator places some weight on this factor.

With regards to subsection (iv) of § 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no evidence of reduced earning capacity contained in the record. Petitioner testified he has returned to full-duty work for Respondent in the same position he was working prior to the accident. The Arbitrator therefore gives less weight to this factor.

With regards to subsection (v) of § 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the medical records in evidence establish Petitioner sustained 6 fractured ribs that ultimately required surgery and hardware to re-attach displaced fractures of 5 ribs on the right side which includes ribs 5 through 9. Petitioner testified to ongoing problems at the surgical site that makes it painful to sit up straight; lift any major weight, twisting to perform activities; or mowing his grass with a riding lawn mower. The Arbitrator places some 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 17.5% loss of use of the person-as-a-whole pursuant to § 8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005451
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0191
Number of Pages of Decision	6
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 4/30/2025

/s/Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHERYL HARRIS,

Petitioner,

vs. Nos: 24 WC 5451

CITGO PETROLEUM,

Respondent.

ORDER ON PETITIONER'S MOTION TO DISMISS REVIEW

This matter comes before the Commission on Petitioner's Motion Dismiss Respondent's Review. The Decision of the Arbitrator was issued on May 22, 2024. In the Decision the Arbitrator found Petitioner failed to prove a compensable accident on June 9, 2021 and denied compensation. Respondent did not file its Petition for review until July 11, 2024.

By way of background, this claim was consolidated with three other claims. In 21 WC 17061, the Arbitrator found Petitioner proved a compensable repetitive trauma accident on May 5, 2021 causing right CTS/CUTS and awarded her medical expenses submitted, 31&5/7 weeks of TTD, and 61.7 weeks of PPD representing loss of 12.5% of the right hand and 15% of the right arm. In 23 WC 3516 the Arbitrator found Petitioner proved a repetitive trauma accident on January 26, 2023 and awarded her 100&6/7 weeks of TTD, medical expenses submitted, and 65.20 weeks of PPD representing loss of 20% of the right thumb and 10% for the "loss of shoulder" (person-as-a-whole). In this claim, the Arbitrator found that Petitioner did not prove accident/causation on June 9, 2021 and denied compensation. In 24 WC 5546, the Arbitrator found Petitioner proved a repetitive trauma accident on June 7, 2021 and awarded her 22.15 weeks of PPD representing loss of 5% the left hand and 5% of the left arm.

Respondent filed timely Petitions for Review on 21 WC 17061 and 23 WC 3516, which will be addressed by separate decisions. Respondent acknowledges that its Petitions for Review in this matter and in 24 WC 5546 were not filed timely. Nevertheless, Respondent argues its tardiness was excusable because it was not served with the Decision of the Arbitrator until the date it files its Petition for Review.

The Commission acknowledges that it did not serve Respondent with the Decision of the Arbitrator within the time specified for notice. However, the Commission can only serve parties which have filed their appearances in particular matters. Here, the records of the Commission show that Respondent did not file an appearance in the instant claim. Therefore, there was no way for the Commission to timely serve Respondent with the Decision of the Arbitrator. In addition, the Commission operates under the premise that the parties, and perhaps in particular the lawyers, are obligated to follow the progression of their cases. Here, as noted above this claim was consolidated with three other claims. Respondent filed appearances in two out of the four claims, was timely served with the decision of the Arbitrator in those claims, and filed timely Petitions for Review on those claims. It would seem that once Respondent was served with one of the Decisions in the consolidated claims it would be put on notice to determine whether Decisions in the other claims were issued as well. According, Petitioner's Motion to Dismiss Review is Granted.

IT IS THEREFORE ORDERED BY THE COMMISSION Petitioner's Motion to Dismiss Respondent's Review is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's Petition for Review in instant matter is dismissed and the Decision of the Arbitrator becomes the Decision of the Commission.

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.

April 30, 2025

DLS/dw
O-4/9/25
46

/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	24WC005451
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	21WC017061; 23WC003516; 24WC005546;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	3
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Scott Shapiro
Respondent Attorney	

DATE FILED: 5/22/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cheryl Harris
Employee/Petitioner
v.
Citgo Petroleum
Employer/Respondent

Case # **24** WC **005451**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **February 28, 2028**. 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 _____

Cheryl Harris v. Citgo Petroleum, 24WC005451 (consol. 21WC017061, 23WC003516, 25WC005546)

FINDINGS

On **June 9, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**89,232.00**; the average weekly wage was $**1,716.00**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **0** dependent children.

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

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

ORDER

The Arbitrator finds that Petitioner did not sustain accidental injuries arising out of and in the course of her employment with Respondent on June 9, 2021, but instead sustained a compensable work accident on June 5, 2021 (see case 21WC017061). All other issues are moot.

No benefits are awarded.

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

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

Signature of Arbitrator

May 22, 2024

See case 21WC017061.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC003516
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0192
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 4/30/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHERYL HARRIS,

Petitioner,

vs. No: 23 WC 3516

CITGO PETROLEUM,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, temporary total disability benefits ("TTD"), and permanent partial disability benefits ("PPD"), modifies the Decision of the Arbitrator, as specified below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made hereof.

The Arbitrator found Petitioner proved a repetitive trauma accident causing conditions of ill-being of her right thumb and right shoulder manifesting themselves on January 26, 2023. She awarded Petitioner 100&6/7 weeks of TTD, medical expenses submitted into evidence, and 65.20 weeks of PPD representing loss of 20% of the right thumb and 10% for the "loss of right shoulder" (person-as-a-whole). The Commission agrees with the analysis of the Arbitrator on the issue of accident, causation, medical expenses, and the extent of Petitioner's partial permanent disability. Therefore, the Commission affirms and adopts the Decision of the Arbitrator on those issues.

On the issue of TTD, as noted above the Arbitrator awarded Petitioner 100&6/7 weeks of TTD from January 26, 2023, through December 31, 2024. The Commission notes that proofs were closed on February 28, 2024, which was 10 months before the termination date of TTD. In addition, Petitioner testified she retired from employment as of January 1, 2024.

Therefore, the Commission modifies, what is likely a clerical error in the Decision of the Arbitrator, to change the TTD termination date from December 31, 2024 to December 31, 2023, and the total TTD award from 100&6/7 weeks to 48&4/7 weeks.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated May 22, 2024 is hereby modified as specified above and otherwise affirmed and adopted, which is attached hereto and made hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner TTD benefits if $1,144.00 per week for 48&4/7 weeks, commencing January 26, 2023 through December 31, 2023, as provided in §19(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay outstanding reasonable and necessary medical services from Dr. Patel, Dr. Ahsan, and Athletico, as provided in §§ 8(a)/8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner PPD benefits of $871.73 per week for 15.20 weeks, because the injuries sustained caused the 20% loss of the right thumb, as provided in §8(e)(1) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner PPD benefits of $871.73 per week for 50 weeks, because the injuries sustained caused the 10% loss of the person-as-a-whole as provided in §8(e)(1) of the Act.

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 proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 30, 2025

DLS/dw
O-4/9/25
46

/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	23WC003516
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	21WC017061; 24WC005541; 24WC005546;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 5/22/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cheryl Harris
Employee/Petitioner
v.
Citgo Petroleum
Employer/Respondent

Case # **23** WC **003516**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **February 28, 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 **January 26, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**89,232.00**; the average weekly wage was $**1,716.00**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,144.00 per week for 100-6/7 weeks, commencing January 26, 2023, through December 31, 2024, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services from Dr. Patel, Dr. Ahsan, and Athletico, 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 $871.73 per week for 15.20 weeks, because the injuries sustained caused the 20% loss of the right thumb, as provided in Section 8(e)(1) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $871.73 per week for 50 weeks, because the injuries sustained caused the 10% loss of the right shoulder, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

ICArbDec p. 2

May 22, 2024

FINDINGS OF FACT

This matter was heard on February 28, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were accident, causation, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 2 (AX2).

This case, 23WC003516, is consolidated with 22WC017061, 24WC005451 and 24WC005546. This case deals with Petitioner's claimed injuries of exacerbation of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, right thumb CMC synovitis, and right shoulder adhesive capsulitis.

Job Duties

Petitioner started working for Respondent in 2002. (T. 11) For the last 17 years of her employment with Respondent, Petitioner has worked as a picker, forklift driver and loader. (T. 11-13)

As a picker, Petitioner would go to the office and get an order from a customer then pick the items listed on that order. (T. 12, 19) On average, she would pick about 500 items per day, for an average of 10-12 hours per day including Saturdays and load them onto pallets. (T. 12-14) Those items weighed anywhere from 1 pound up to 120 pounds. (T. 12-13) The 120-pound item was an oil keg which Petitioner had to physically maneuver off one pallet onto another. (T. 13) Everything else she picked during the day required her to physically lift with her hands. *Id.* Petitioner would also have to load cartons, up to 10 at a time, which could weigh up to 30 pounds each and stack them on a pallet. (T. 15) The pallet was on the floor so she would lift the cartons, sometimes over her head, to stack them on the pallet. *Id.* Petitioner would drive a forklift all day. (T. 11-12, 18) As a loader, Petitioner would load trucks with pallets. (T. 13) It was a fast-paced job, requiring her to drive in tight spaces, constantly turning the steering wheel with the controls in order to back up, go forward, left, and right. *Id.* Driving the forklift involved constant maneuvering down narrow corridors of the warehouse, requiring a lot of hand work, back and forth, shoulders up and down. (T. 13, 17) Petitioner would steer with one hand and shift with the other. (T. 17)

International loads required more strenuous work. (T. 13) After loading the truck, Petitioner had to take 2 large pieces of plywood up the ramp and onto the truck to secure the load, so it did not shift. *Id.* After the last 2 pallets were loaded, Petitioner would get a two-by-four and nail it to the ground to also secure the load. (T. 14)

Prior Medical Condition

Prior to the Spring of 2021, Petitioner did not experience any physical difficulties performing any of her job duties. (T. 19) She did not have any pain, numbness or tingling in her right arm or right hand. (T. 21) Petitioner did not sustain any injury to or seek any medical treatment for her right hand, right arm or right elbow before the Spring of 2021. *Id.*

Accident

Beginning in the Spring of 2021, Petitioner noticed that she was experiencing difficulties in picking things up or gripping them with her right hand and right arm. (T. 19) She started to feel numbness, tingling and pain in her right hand and right elbow. *Id.* Petitioner felt pain in her right elbow while lifting items. *Id.* June 5, 2021, was the last day Petitioner worked for Respondent before beginning treatment for the pain in her right hand and right elbow. (T. 22-23)

After noticing the pain in her right hand, right arm and right elbow in the spring of 2021, Petitioner went to see her primary care physician, Dr. Medavaram, at Naperbrook Medical Center. (T. 20) During that visit, Dr. Medavaram took Petitioner off work and ordered a nerve test. *Id.*

Summary of Medical Records

On April 20, 2021, Petitioner had an EMG/ Nerve Conduction study that revealed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally, the right was moderate in nature and the left is mild in nature. (PX7)

Petitioner went to see her primary care physician, Dr. Meher Bala Medavaram at Naperbrook Medical Center on June 7, 2021. (PX1) Petitioner complained of tingling, numbness and pain in her hand and wrists that went up her arms and was not improving. Dr. Medavaram diagnosed Petitioner as having bilateral carpal tunnel syndrome.

On June 9, 2021, Petitioner saw Dr. Michael Cohen at DuPage Medical Group. (PX2) Petitioner complained of tingling and numbness in her fingers and pain in her right elbow. Petitioner indicated that she had pain doing just about anything with her hands, including opening jars. Petitioner also reported that she had some paresthesia in the right hand with some night awakenings which occurred about once a week. Petitioner reported that she did a lot of lifting at work. Dr. Cohen reviewed the EMG and diagnosed Petitioner as having right carpal tunnel syndrome and medial epicondylitis of the right elbow. Dr. Cohen provided Petitioner with a wrist brace, ordered physical therapy, prescribed anti-inflammatory medication, and took Petitioner off work. Petitioner underwent physical therapy at DuPage Medical Group from June 9, 2021, through July 13, 2021. On June 24, 2021, Petitioner returned to Dr. Cohen still complaining of numbness and tingling in her right arm. Dr. Cohen had her continue physical therapy for another 4 weeks and returned her to work with a 5-pound lifting restriction. Respondent did not accommodate her restrictions, so she remained off work. (T. 25)

On July 20, 2021, Dr. Cohen ordered an MRI and continued Petitioner's prior work restrictions. (PX2) Petitioner underwent the MRI of her right elbow on July 28, 2021, the results of which were normal. On August 5, 2021, Dr. Cohen advised Petitioner that the MRI of her right elbow was normal, and she did not have any evidence of carpal tunnel based on her exam or subjective symptomatology. Dr. Cohen released Petitioner to return to work without restrictions on August 13, 2021.

Petitioner returned to work on August 13, 2021, and felt terrible pain throughout the day, worse than what she had experienced before. (T. 27) Petitioner returned Dr. Medavaram again on August 26, 2021, seeking a referral for a second opinion regarding the pain in her right hand and arm. (PX1) Dr. Medavaram diagnosed Petitioner with right and left arm pain and bilateral carpal tunnel syndrome, and referred her to Dr. Kush Patel for a second opinion.

On August 31, 2021, Petitioner saw Dr. Patel and complained of ongoing pain in her wrists and arms. (PX3) Dr. Patel diagnosed Petitioner with bilateral carpal tunnel and cubital tunnel syndrome. He found that her symptoms were clinically consistent with carpal tunnel and cubital tunnel syndrome and that there is EMG/NCV evidence to support both diagnoses. Dr. Patel determined Petitioner's work had likely contributed to the development of carpal tunnel syndrome bilaterally. Dr. Patel recommended that Petitioner have both a right carpal tunnel and right cubital tunnel release and released her to return to work with a 5-pound lifting, pushing, pulling, and carrying restrictions with bilateral hands. She was allowed to drive a forklift. Respondent did not accommodate her restrictions (T. 30)

On October 13, 2021, Dr. Patel performed a right endoscopic carpal tunnel release and right cubital tunnel release. (PX3, PX8) Petitioner continued to follow up with Dr. Patel during her recovery. (PX3) Petitioner underwent post-operative physical therapy from October 26, 2021, through December 16, 2021, at Edwards Occupational Health. (PX5)

On November 30, 2021, Petitioner reported that she had a complete resolution of her numbness and tingling and had full recovery of sensation. (PX3) On January 11, 2022, Petitioner reported that she did not have any more numbness or tingling and wanted to return to work. Dr. Patel released Petitioner to return to work on January 27, 2022, and indicated that he would proceed with left sided carpal tunnel and left sided cubital tunnel releases whenever Petitioner was ready.

Due to a planned vacation, Petitioner did not return to work until February 1, 2022. (T. 32-33)

After returning to work Petitioner had a few flare ups of pain in her right wrist and right arm but was able to perform her regular duties at work. (T. 34) She did return to see Dr. Patel on several occasions after returning to work on March 11, 2022, May 9, 2022, and the last on June 7, 2022. (T. 34, PX3) On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions. He also wanted to continue monitoring her left sided symptoms which were very mild at the time. (PX3)

On August 23, 2022, Dr. Patel opined that Petitioner developed right carpal tunnel syndrome and cubital tunnel syndrome, as well as left carpal tunnel syndrome and cubital tunnel syndrome, secondary to her job which required heavy repetitive lifting.

Petitioner returned to Dr. Patel on January 26, 2023, complaining of right hand and arm pain that began more than a month earlier, as well as pain in the base of her thumb. Dr. Patel indicated that Petitioner had been doing well until she exacerbated her median and ulnar nerve. Dr. Patel felt that some time off avoiding heavy repetitive work would help calm the nerve down and took Petitioner off work. On February 10, 2023, Petitioner complained of continued right hand and right thumb complaints. Dr. Patel diagnosed Petitioner as having right thumb CMC joint synovitis.

On February 20, 2023, Petitioner underwent a Section 12 examination (IME) with Dr. Michael Birman at Respondent's request. (RX1) Dr. Birman issued his report on February 27, 2023. Petitioner reported ongoing pain in the right wrist and thumb with radiation into the forearm. Petitioner indicated that her symptoms are worse at night and that she has difficulty opening doors and squeezing. Petitioner also complained of pain in the right elbow and right shoulder. Dr. Birman examined Petitioner and reviewed her medical records. Dr. Birman also noted Petitioner's job duties. Dr. Birman diagnosed Petitioner having right cubital tunnel syndrome, status post cubital tunnel release, and right elbow medial epicondylitis which had resolved. Dr. Birman opined that Petitioner's right cubital tunnel syndrome was not caused, aggravated or accelerated by her job duties. Dr. Birman further opined that Petitioner's work activities could have been a factor in causing or aggravating her medial epicondylitis. Dr. Birman found that Petitioner's treatment had been reasonable and necessary. Dr. Birman determined that Petitioner did not require any more treatment, nor did she require work restrictions.

On February 27, 2023, Petitioner complained of right wrist, thumb and shoulder pain. Dr. Patel referred Petitioner to Dr. Zahab Ahsan regarding her right shoulder and administered a corticosteroid injection to Petitioner's right thumb. Dr. Patel kept Petitioner off work.

Petitioner saw Dr. Ahsan on March 6, 2023. (PX4) Petitioner complained of right shoulder pain that radiated down her arm from time to time and described her work activities. Petitioner explained that most of her

pain was limited to when she did heavy lifting at work. Dr. Ahsan noted some limitation in Petitioner's right shoulder range of motion. Dr. Ahsan diagnosed Petitioner as having adhesive capsulitis, acute right shoulder pain, and bicep tendonitis. Dr. Ahsan administered a corticosteroid and Ketorolac injection and Petitioner reported immediate relief. Dr. Ahsan ordered physical therapy and took Petitioner off work. Petitioner underwent physical therapy from April 4, 2023, through May 18, 2023, at Athletico Physical Therapy. (PX6) On March 30, 2023, Dr. Patel noted that Petitioner's neuritis had calmed down regarding her right carpal tunnel and cubital tunnel. (PX3) On April 27, 2023, Dr. Patel determined that the injection to Petitioner's thumb did not work. Dr. Patel felt Petitioner might be a surgical candidate and kept Petitioner off work. Dr. Patel explained that regardless of whether Petitioner proceeded with surgery, she should not return to her job for fear of exacerbation, reinjury or worsening of her right thumb pain. On June 7, 2023, Petitioner saw Dr. Ahsan and reported temporary improvement in her right shoulder pain following the injection. (PX4) Dr. Ahsan ordered a right shoulder MRI and restricted Petitioner from using her right arm. Dr. Ahsan determined that Petitioner's right shoulder problems were related to her work. On June 22, 2023, Dr. Patel found that Petitioner's right carpal tunnel and cubital tunnel were stable, but kept Petitioner off work due to continued right upper extremity problems.

Petitioner underwent the right shoulder MRI on June 24, 2023, the result of which showed marked tendinopathy of infraspinatus tendon extending anteriorly to involve conjoined rotator cuff tendon and posterior fibers of the supraspinatus with associated reactive edema in the adjacent posterior aspect of the greater tuberosity and also intramuscular edema, and mild amount of fluid in the subdeltoid and subacromial bursa. There were no tears or retraction, and biceps tendon was intact. On July 7, 2023, Dr. Ahsan reviewed the MRI and diagnosed Petitioner as having tendinopathy and subacromial impingement of the right rotator cuff and recommended arthroscopic surgery with subacromial decompression and debridement. Dr. Ahsan restricted Petitioner to sedentary duty. Petitioner decided to not undergo surgery and did not return to Dr. Ahsan. (T. 43)

On September 11, 2023, Petitioner underwent a second IME with Dr. Birman at Respondent's request. (RX2) Dr. Birman issued his report on September 18, 2023. Dr. Birman again examined Petitioner and reviewed her medical records (but her right shoulder treatment records were not provided to Dr. Birman). Dr. Birman diagnosed Petitioner as having right shoulder pain, bilateral thumb base pain with mild right thumb carpometacarpal joint arthritis, and left-hand numbness and tingling. Dr. Birman deferred any opinions or recommendations regarding he right shoulder and found that Petitioner had reached maximum medical improvement (MMI) regarding the right elbow medial epicondylitis and right cubital tunnel syndrome, per his prior report. As to Petitioner's right carpal tunnel syndrome, Dr. Birman found that work activities could be a factor, but that, regardless of causation, Petitioner's carpal tunnel syndrome had been treated and she was at MMI for her right carpal tunnel syndrome. Regarding Petitioner's bilateral thumb pain, Dr. Birman noted arthritis, which is common for someone Petitioner's age. Dr. Birman explained that unless Petitioner was utilizing forces through her thumbs excessively and consistently in a forceful manner throughout the workday to the point that it would accelerate her arthritis, Petitioner's pain is a natural progression of her thumb base arthritis. Dr. Birman recommended an injection to treat the pain. Dr. Birman could not provide any opinion regarding work restrictions without additional medical and work information.

On September 14, 2023, Petitioner returned to Dr. Patel complaining of ongoing pain in her thumbs and bilateral carpal tunnel and cubital tunnel syndrome symptoms. Dr. Patel told Petitioner to continue to use her thumb braces and ordered an EMG.

Petitioner's Current Condition

Petitioner was able to perform her regular work activities through the end of 2022. (T. 34-35) Petitioner did not return to work after January 26, 2023, and retired on January 1, 2024. (T. 44-45)

Petitioner still experiences pain in her right wrist and elbow. Her fingers still have numbness. (T. 46) She has difficulty sleeping at night because of her pain and experiences pain and discomfort when turning jars and unscrewing things. *Id.* She experiences pain daily in her right wrist, elbow and hand. *Id.* On average, her pain level for her right wrist is 7 out of 10. (T. 46-47)

Petitioner also continues to experience pain and discomfort in her left hand, wrist and elbow. (T. 48-50) Dr. Patel gave her a brace which she was wearing. *Id.* It is not every day but when she does have pain, the pain level is 4 out of 10. *Id.*

Petitioner experiences pain every day in her right thumb. (T. 47) The ball of her thumb is tender, and she feels pain when trying to grip something. *Id.* Her pain level is 5 out of 10. *Id.*

Petitioner's right shoulder is very painful, and her pain level is about 9 out of 10. (T. 48) She feels this pain every day. *Id.* She has pain when sleeping or when lifting up a bag or milk. *Id.* She experiences pain with and without activities. *Id.*

CONCLUSIONS OF LAW

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

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner, worked for the Respondent for 22 years. For the last 17 years of her employment with Respondent, she worked as a picker, forklift Driver and loader. The job was hand intensive and required lifting items from 1 to 120 pounds, as well as cartons, and constant maneuvering of the forklift. Petitioner worked full duty from February 1, 2022, through January 26, 2023. Per Petitioner's report to Dr. Patel, she started to have right upper extremity problems in December 2022 and January 2023. Dr. Patel indicated that Petitioner had been doing well until she exacerbated her median and ulnar nerve. On February 27, 2023, Petitioner complained of continued right wrist, thumb and shoulder pain. On March 6, 2023, Dr. Ahsan diagnosed Petitioner as having adhesive capsulitis, acute right shoulder pain, and bicep tendonitis. With conservative care, Petitioner's neuritis had calmed down regarding her right carpal tunnel and cubital tunnel. Petitioner underwent physical therapy and injections for her right thumb and shoulder pain, both of which failed to provide permanent relief. Petitioner underwent the right shoulder MRI on June 24, 2023, the result of which showed marked tendinopathy of infraspinatus tendon extending anteriorly to involve conjoined rotator cuff tendon and posterior fibers of the supraspinatus with associated reactive edema in the adjacent posterior aspect of the greater tuberosity and also intramuscular edema, and mild amount of fluid in the subdeltoid and subacromial bursa.

In regard to repetitive traumas, the court in *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 879 (1999), stated that "[a]n employee who suffers a gradual injury due to a repetitive trauma is eligible for benefits under the Act, but he must meet the same standard of proof as a petitioner alleging a single, definable accident. Proof that the relationship of employer and employee existed at the time of the accident is one of the elements of an award under the Act. The date of the accidental injury in a repetitive trauma case is the date on which the injury 'manifests itself.'" Furthermore, "[t]here must be a showing that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987).

The Arbitrator notes that Dr. Patel opined that Petitioner's work likely contributed to the Petitioner's development of carpal tunnel syndrome and that Petitioner developed carpal tunnel syndrome and cubital tunnel syndrome secondary to her job which required heavy repetitive lifting. Additionally, the medical records show that Petitioner had flare ups from time to time that eventually calmed down. The Arbitrator notes that while Dr. Birman found that Petitioner's cubital tunnel syndrome was not causally related to Petitioner's job, and Dr. Cohen did not find that Petitioner had carpal tunnel syndrome and that the MRI of her elbow was normal, the EMG/NCV study revealed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally, the right was moderate in nature and the left is mild in nature, contradicting Dr. Cohen's and Dr. Birman's findings. As such, the Arbitrator finds the findings and opinions of Dr. Patel more persuasive than those of Dr. Cohen and Dr. Birman. As such, the Arbitrator finds that Petitioner sustained a temporary aggravation of her right carpal tunnel and cubital tunnel syndromes on January 26, 2023, that resolved by March 30, 2023.

Regarding Petitioner's right shoulder and right thumb pain, the Arbitrator notes that Petitioner did not have any problems with her right shoulder or thumb prior to January 26, 2023. The record is devoid of any indication that Petitioner sustained an intervening accident or had any treatment to her right shoulder or thumb prior to January 26, 2023. Additionally, Dr. Birman explained that if Petitioner was utilizing forces through her thumbs excessively and consistently in a forceful manner throughout the workday to the point that it would accelerate her arthritis, Petitioner's pain is a natural progression of her thumb base arthritis and recommended an injection to treat the pain. However, the injection administered to Petitioner's thumb failed to provide any lasting relief. The Arbitrator also notes that, as previously detailed above, Petitioner job was hand and force intensive since she was required to lift items from 1 to 120 pounds and perform maneuvering of the forklift. The Arbitrator finds that this is the kind of forceful and repetitive work that would accelerate Petitioner's thumb arthritis. Further, while the right shoulder MRI did not show any tears or retraction, it showed marked tendinopathy of infraspinatus tendon extending anteriorly to involve conjoined rotator cuff tendon and posterior fibers of the supraspinatus with associated reactive edema in the adjacent posterior aspect of the greater tuberosity and also intramuscular edema, and mild amount of fluid in the subdeltoid and subacromial bursa. Again, a condition that had not existed prior but would become symptomatic with repetitive, consistent and heavy lifting and arm use.

Based on the above, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent on January 26, 2023.

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

The Arbitrator notes that Petitioner worked full duty from February 1, 2022, through January 26, 2023. Per Petitioner's report to Dr. Patel, she started to have right upper extremity problems in December 2022 and January 2023. Dr. Patel indicated that Petitioner had been doing well until she exacerbated her median and ulnar nerve. On February 27, 2023, Petitioner complained of continued right wrist, thumb and shoulder pain. Petitioner was ultimately diagnosed as having neuritis, adhesive capsulitis, acute right shoulder pain, bicep tendonitis, and right thumb CMC joint synovitis. With conservative care, Petitioner's neuritis had calmed down regarding her right carpal tunnel and cubital tunnel. A right shoulder MRI taken on June 24, 2023, showed marked tendinopathy of infraspinatus tendon extending anteriorly to involve conjoined rotator cuff tendon and posterior fibers of the supraspinatus with associated reactive edema in the adjacent posterior aspect of the greater tuberosity and also intramuscular edema, and mild amount of fluid in the subdeltoid and subacromial bursa. Conservative treatment failed and Petitioner did not undergo the recommended surgeries. Petitioner was not released to return to work and ultimately retired on January 1, 2024. The Arbitrator further notes that Dr. Patel explained Petitioner should not return to her job for fear of exacerbation, reinjury or worsening of her

right thumb pain. Dr. Birman deferred his opinion regarding Petitioner's right shoulder issues and explained that unless Petitioner was utilizing forces through her thumbs excessively and consistently in a forceful manner throughout the workday to the point that it would accelerate her arthritis, Petitioner's pain is a natural progression of her thumb base arthritis. Dr. Birman recommended an injection to treat the pain. Dr. Birman could not provide any opinion regarding work restrictions without additional medical and work information. Petitioner continues to have right thumb and shoulder pain.

Based on the above, the Arbitrator finds that Petitioner's right carpal tunnel syndrome and right cubital tunnel syndrome were temporarily exacerbated on January 26, 2023, and resolved by March 30, 2023. The Arbitrator further finds that Petitioner right shoulder and thumb conditions are causally related to the January 26, 2023, work accident.

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

The Arbitrator notes her findings regarding accident and causal connection above. The Arbitrator further notes that Petitioner underwent conservative treatment that temporarily resolved her symptoms. The Arbitrator also notes that there is nothing in the record to indicate that the treatment provided was unreasonable or unnecessary.

Based on the above, the Arbitrator finds that Respondent shall pay outstanding medical expenses from Dr. Patel, Dr. Ahsan, and Athletico pursuant to Sections 8(a) and 8.2 of the Act.

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:

The Arbitrator notes her findings regarding accident and causal connection above. The Arbitrator further notes that Petitioner was taken off work on January 26, 2023, and was not released to return to work by her treaters. However, Petitioner retired on January 1, 2024.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from January 26, 2023, through December 31, 2023.

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 picker, forklift driver and loader at the time of the accident and that she was not able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor substantial weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 60 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 no evidence was presented regarding any impact on Petitioner's future earnings as a result of this accident and Petitioner retired. The Arbitrator gives this factor no 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 while Petitioner's bilateral carpal tunnel syndrome and cubital tunnel syndrome calmed down in about 2 months, Petitioner continues to have right thumb and shoulder pain. Petitioner has been diagnosed with adhesive capsulitis, acute right shoulder pain, bicep tendonitis, and right thumb CMC joint synovitis. The Arbitrator gives this factor considerable 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 20% loss of use of the right thumb, pursuant to Section 8(e)(1) of the Act and 10% loss of use of the right shoulder pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC023471
Case Name	Scott A Conklin v. City of Chicago - OEMC
Consolidated Cases	
Proceeding Type	*Remand from the Appellate Court of Illinois First District, Workers' Compensation Division*
Decision Type	Commission Decision
Commission Decision Number	25IWCC0193
Number of Pages of Decision	7
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	John Popelka
Respondent Attorney	Elaine Newquist

DATE FILED: 4/30/2025

/s/ Deborah Simpson, Commissioner

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)
- ☐ PTD/Fatal denied
- ☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT A. CONKLIN,
Petitioner,

vs. No: 16 WC 23471

CITY OF CHICAGO - OEMC,
Respondent.

DECISION AND OPINION ON REMAND FROM APPELLATE COURT

This matter comes before the Commission on Remand from the Appellate Court of Illinois, First District, Workers' Compensation Division. An Arbitration decision in this matter was issued on September 24, 2018. In that decision, the Arbitrator awarded Petitioner outstanding medical expenses incurred and a wage differential of $972.32 per week. By operation of law, the wage differential is in effect either upon the claimant reaching his 67th birthday or five years after the award became final, whichever occurs later. *See*, 820 ILCS 305/8(d)1. Because Petitioner was 44 years of age at the time of the accident on June 6, 2016, his 67th birthday is obviously the later date. Neither party sought review of the Decision of the Arbitrator.

At the instant hearing, Petitioner alleged that he received his last wage differential payment on February 4, 2022. Petitioner's lawyer asserted that the payments were suspended because Petitioner did not execute an "Alive and Well Check" form Respondent sent to Petitioner's lawyer for Petitioner to sign. Petitioner's lawyer stressed that the suspension was unreasonable because he, as an officer of the court, advised Respondent that Petitioner was indeed alive and well.

Respondent responded that it had established a procedure of sending out these forms for claimants awarded PTD/wage differential benefits to verify their continued existence, current mailing address, and for additional information such as if the claimant is being treated by a doctor. It was eventually sent to Petitioner's lawyer because Petitioner apparently changed addresses after arbitration. Respondent stressed that both Sections 8(d)1 and 19(h) provide for a mechanism to revise permanency awards within 60 months, and Respondent developed a reasonable and not overbearing method of obtaining necessary information.

Petitioner testified that he had not received a payment on his award since February 4, 2022 and he did not receive payments in March, April, or May. The suspension of payments had caused him to "go through his savings" and he "maxed out a credit card." He had not received, nor knew anything about, any form from Respondent to fill out until his lawyer informed him of it. On cross, examination, Petitioner acknowledged that he moved since the Arbitration decision was issued and he did not inform Respondent of his relocation. On questioning from the Commissioner, Petitioner testified that initially he received payments bi-weekly, but then about after a month they arrived every month. The parties later filed a stipulation indicating that benefits were paid through March 6, 2022. He received the payments from his lawyer and not Respondent.

Petitioner submitted into evidence a letter from Respondent's Workers' Compensation administrator informing Petitioner, through his lawyers, that his benefits were suspended for failure to comply with the Alive and Well check and they would remain suspended until the form was completed. Petitioner also submitted an e-mail stream between Petitioner's lawyer and the Workers' Compensation administrator. On March 15, 2022, the administrator sent Petitioner's lawyer the form it wanted to be executed. It consisted of 10 questions asking Petitioner the identity of a current lawyer, his residence address, his mailing address, his phone number, whether he was receiving payments timely, whether he was treating with a doctor for his injury, whether he worked for any employer since the accident and for whom, whether he was self-employed in any manner, whether he performed volunteer work, and whether he was receiving benefits other than Workers' Compensation benefits.

On March 16, 2022, Petitioner's lawyer responded that he gave the administrator proof of Petitioner's continued existence based on his "word" as "officer of the court," and threatened a penalty petition if the arrearage was not paid by the end of the week. The same day, the administrator responded that they still needed the form filled out by Petitioner. Petitioner's lawyer then responded that he was filing the penalties petition.

The Commission concluded it was not unreasonable for employers with awards paid over multiple years such as permanent & total disability/wage differential awards, to seek and obtain periodic verification of the claimant's continued existence and status. However, in this instance, the Commission found unreasonable Respondent's suspension of benefits before giving Petitioner a reasonable opportunity to provide the requested information. At the same time, the Commission also noted that, Petitioner's lawyer may have exacerbated the problem by refusing to comply with the request and instead filing the instant petition for penalties and attorney fees.

Thereafter, the Commission awarded penalties and fees for non-payment of benefits between March 7, 2022, the first day Respondent was late with payment, through March 16, 2022, the date Petitioner's lawyer threatened sanctions rather than simply having the document executed. As noted above, the Arbitrator awarded Petitioner a wage differential of $972.32 per week. That award is equivalent to $138.90 per day. Therefore, for the 10 days between March 7, 2022 and March 16, 2022 Respondent did not pay Petitioner $1,389.00 in benefits that were due him and he is entitled to penalties and fees for such nonpayment. One Commissioner concurred, arguing the Commission should have awarded additional penalties and fees.

Petitioner appealed the Decision of the Commission to the Circuit Court of Cook County. The Circuit Court of Cook County confirmed the Decision of the Commission. Petitioner then appealed the Decision of the Circuit Court to the Appellate Court. The Appellate Court found that the Decision of the Commission that Respondent acted unreasonably in suspending benefits before the claimant was given an ample opportunity to respond was not against the manifest weight of the evidence.

However, the Appellate Court also noted that the Commission's order "fails to resolve several questions impacting on the issue of whether [Respondent] acted reasonably in failing to make wage differential payments after March 16, 2022." "Necessary to the resolution of the question is the determination of: (1) whether the claimant was required to answer the questions posed in the questionnaire; and (2) whether the March 15, 2022, e-mail from the claimant's attorney stating the claimant was still alive satisfied [Respondent's] right to determine the claimant's continued existence, and if it is not, whether [Respondent] acted reasonably in failing to make wage differential payments after the claimant failed to furnish the affidavit or picture requested in the March 15, 2022, e-mail." Therefore, the Appellate Court vacated the Second Corrected Order of the Commission and "remanded the matter to the Commission with directions to address the questions we have identified; determine the reasonableness of [Respondent's] nonpayment of wage differential benefits post March 16, 2022; and award the claimant the section 19(k) penalties and section 16 attorney fees to which he is entitled."

Conclusions of Law

The issues the Commission is mandated to address/adjudicate are (1) whether the claimant was required to answer the questions posed in the questionnaire; and (2) whether the March 15, 2022, e-mail from the claimant's attorney stating the claimant was still alive satisfied Respondent's right to determine the claimant's continued existence, and –not, whether Respondent acted reasonably in failing to make wage differential payments after the claimant failed to furnish the affidavit, or picture with Petitioner holding a current publication, requested in the March 15, 2022, e-mail. Interestingly, the Appellate Court noted that Petitioner agreed that Respondent, which had an ongoing obligation to pay Workers' Compensation benefits, had the right to determine whether Petitioner was still alive and well, as well as his current residence. the questions provide information that can be used to verify that it is the Petitioner actually alive and well and answering the questions.

First, in looking at the second question the Appellate Court directed the Commission to address, the Commission finds that Petitioner's lawyer's assertion to Respondent that his client is alive is not legally sufficient to satisfy the interests of employers paying PTD/wage differential benefits, which the Appellate Court has determined are legitimate. Technically, lawyers appearing before the Commission are considered officers of the court. However, that really only extends to representations made within the context of proceedings in the tribunal and concerning representations made to the adjudicator. So while perhaps an Arbitrator/Commissioner should be able to trust the representations made by a lawyer as an "officer of the court" in a proceeding before him/her, that does not mean that a lawyer must trust another lawyer's representations, especially outside the confines of the tribunal. In addition, there is no evidence that Petitioner's lawyers had actual knowledge of Petitioner's current existence, whereabouts, or other information

relevant to Respondent. Finally, on this point, the Commission notes that Petitioner's attorney failed to advise the Respondent that Petitioner had in fact moved and did not provide his new address.

In terms of whether the claimant was required to answer the questionnaire, as we noted above it consists of 10 questions including information about the claimant's lawyer if there is one, the claimant's current mailing address, current phone number, whether checks were being received timely, whether the claimant was treating for a Workers' Compensation injury, whether the claimant returned to work, if so for whom, and what they were earning, whether they were self-employed and if so doing what, whether the claimant performed volunteer work, and whether the claimant was receiving any additional benefits other than Workers' Compensation benefits such as Social Security Disability/pensions. In the opinion of the Commission, these questions do not appear unreasonable or to be overly burdensome or intrusive.

In fact, like the Respondent here, the Commission has an obligation to pay ongoing benefits under the Rate Adjustment Fund for awards of permanent total disability and instances of work-related death. *See*, 820 ILCS 305/8(g). The Commission sends out affidavits to such recipients annually and suspends benefits of recipients who do not comply with instructions for them to be executed, notarized, and sent back to the Commission. These affidavits ask the recipient their name, legal address, telephone number, date of birth, last four digits of their social security number, to specify the range of the benefits payments they receive, as well as their affirmation that the person is the one deemed eligible to receive the benefit, that they must inform the Commission of any change of settlement, or that they received a lump sum settlement, and that they completed the affidavit to the best of their knowledge. If the recipient fails to submit the requested affidavit their benefits are suspended until they do. Obviously, the Commission does not find these questions to be unreasonable, burdensome, or obtrusive and that it has the right to suspend benefits upon non-compliance.

The Commission finds that it is not unreasonable for an employer to suspend continuing Workers' Compensation in the absence of evidence establishing the claimant's continued existence, whereabouts, and status. In this case, that requirement could have been satisfied simply by the claimant filling out the questionnaire that was sent. However, the Commission is not mandating that a claimant fill out this particular form to maintain entitlement to their benefits.

If a claimant has a specific objection to filling out a form or answering a specific question, they obviously can refuse to answer. Nevertheless, that does not eliminate the claimant's responsibility to provide some evidence of their existence, whereabouts, and status upon reasonable request by the entity paying benefits. In such instances, if the employer suspends benefits because of that refusal, the claimant may file a Petition for Penalties and Fees for such suspension and the Commission may have to then decide whether that suspension was reasonable under the circumstances. Then, the Commission would likely consider whether the claimant or his lawyer, provided any other evidence of his existence, whereabouts, and status, that the Commission deems sufficient to satisfy the employer's legitimate interests. The Commission decision on whether to award penalties and/or attorney fees for such suspension would be determined on a case-by-case basis as are all instances in which the Commission adjudicates all Petitions for Penalties and Fees.

We have dealt with the mandated issues of whether the questionnaire Respondent presented was reasonable, and whether Petitioner had an obligation to supply verifying information to Respondent reasonably requested. Finally, the Appellate Court "remanded the matter to the Commission with directions to address the questions we have identified; determine the reasonableness of [Respondent's] nonpayment of wage differential benefits post March 16, 2022; and award the claimant the section 19(k) penalties and section 16 attorney fees to which he is entitled."

As noted above, in our Second Corrected Order, the Commission concluded it was not unreasonable for employers with awards paid over multiple years such as permanent & total awards and wage differential awards, to seek and obtain periodic verification of the claimant's continued existence and status. However, in this instance, we did not believe it was reasonable for Respondent to suspend benefits before giving Petitioner a reasonable opportunity to provide the requested information. On the other hand, we concluded that Petitioner's lawyer may have exacerbated the problem by refusing to comply with the request, or otherwise providing satisfactory information to the payor, and instead filing the instant petition for penalties and attorney fees.

Based on that reasoning, the Commission awarded penalties and fees for non-payment of benefits between March 7, 2022, the first day Respondent was late with payment, through March 16, 2022, the date Petitioner's lawyer threatened sanctions rather than simply having the document executed. As noted above, the Arbitrator awarded Petitioner a wage differential of $972.32 per week. That award is equivalent to $138.90 per day. Therefore, for the 10 days between March 7, 2022 and March 16, 2022 Respondent did not pay Petitioner $1,389.00 in benefits that were due him and he is entitled to penalties and fees for such nonpayment. We see no reason to change our previous decision on the issue of the award of penalties and attorney fees based on our determination of the appropriateness of the questionnaire and the Petitioner's obligation to supply verifying information as mandated by the Appellate Court.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petitioner's Motion for Petition for Penalties and Attorney Fees for Non-Payment of Award is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $694.50 in penalties under §19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay $138.90 in attorney fees under §16 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.

April 30, 2025

DLS/dw
D-3/19/25
46

/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	21WC001465
Case Name	Melvin Acosta Jr. v Artera Services/KS Energy
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0194
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	David Caplan
Respondent Attorney	J Murray Pinkston

DATE FILED: 4/30/2025

/s/Stephen Mathis, 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 Other (explain) Two doctor rule Section 8(a)	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MELVIN ACOSTA, JR.,

Petitioner,

vs. NO: 21 WC 001465

ARTERA SERVICES/KS ENERGY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection,chain of medical treatment/referrals, and prospective medical care, and being advised of the facts and law, affirms in part and reverses in part, 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 related to prospective medical care from a physician other than Dr. Salehi, and 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).

Hearing on this matter was conducted pursuant to Petitioner's 19(b) petition. At hearing the parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment with Respondent on November 17, 2020, and that notice was timely provided to Respondent. Respondent disputed causal connection, and liability for medical expenses. There was no lost time from employment, so TTD was not at issue.

The Arbitrator found causal connection and liability for certain limited medical expenses. He denied certain medical expenses associated with Dr. Salehi's care and denied prospective medical care on the basis that Petitioner exceeded his choice of two physicians pursuant to Section 8(a) of the Act and that referrals to Dr. Salehi, Petitioner's treating neurosurgeon were made ex post facto to circumvent the two-physician rule and obtain coverage for medical expenses and prospective medical care under the Act.

This matter is before the Commission on cross review. Petitioner seeks review of the issues of medical expenses, chain of medical referrals, and prospective medical care. Respondent seeks review of the issues of causal connection and medical expenses. Respondent also objects to any award of prospective medical care.

On November 17, 2020, Petitioner was employed by Respondent Artera Services as an operator of heavy machinery, i.e. an excavator. Petitioner testified that his job required him to sit on a machine and operate it for a full workday. The job did not require bending, twisting, or lifting.

Petitioner testified that on November 17, 2020, he sustained an accident at work when he was getting off his machine and slipped on a steel road plate and twisted his lower back. He immediately experienced pain in his lower back and tingling in his left leg that extended down to his toes. Petitioner had a remote history of sciatic pain that resolved in May 2020 and Petitioner was performing full duty work at the time of the November 2020 work accident.

Having reviewed the record in its entirety, the Commission affirms the Arbitrator's finding that the Petitioner's current condition of ill-being is causally connected to his November 17, 2020, work related accident and affirms the award of the limited medical expenses awarded by the Arbitrator. The Arbitrator correctly awarded certain medical bills based upon the finding of causal connection and denied certain medical bills that were incurred after Petitioner exceeded his choice of two physicians. The Commission modifies the award of medical expenses to adjust the Sherman Hospital bill of $560.49 to allow for a credit to Respondent of $223.51 for medical benefits previously paid by workers' compensation.

The Arbitrator found that Petitioner's first choice of medical provider was Union Health Clinic where Petitioner first sought treatment on December 1, 2020. At that time, he gave a history of his work-related injury of November 17, 2020. Union Health Clinic functioned as Petitioner's primary care provider. Petitioner was a member of Operators' Engineers' 150, and the Union Health facility was the union health clinic. Union Health prescribed physical therapy which was provided through the clinic and ordered an MRI.

The MRI was performed on December 4, 2020. The interpreting radiologist noted a disc protrusion at L2-3 measuring 6 mm in depth at the base causing moderate spinal canal stenosis; small L3-4 right paracentral disc protrusion causing mild spinal canal and lateral recess narrowing; and L4-5 disc protrusion with adjacent extruded disc fragment (7mm x 4 mm x 7mm)

causing mild spinal canal narrowing. Moderate right and marked left neural foraminal stenosis were also identified at this level.

Petitioner's symptoms of low back pain and numbness extending down the left leg persisted despite the course of physical therapy. Union Health subsequently referred Petitioner to Premier Pain and Spine. He first presented to Premier Pain on December 14, 2020. This referral was timely and appropriate and within the chain of referral from his first physician choice, Union Health Clinic.

Premier Pain Clinic recommended a left L4-5, L5-S1 TFSI which was denied by worker's compensation and never administered. The Premier Pain clinical notes reflect an assessment of radiculopathy of the lumbar region and intervertebral disc degeneration. The medical record noted that Petitioner failed conservative measures such as time, physical therapy, and analgesics.

On January 5, 2021, Petitioner presented to Evolve Chiropractic-Schaumburg. The records from Evolve Chiropractic reflect that Petitioner identified the source of the referral to Evolve Chiropractic as "Facebook". The Arbitrator found, and the Commission affirms that this constituted Petitioner's second physician choice pursuant to Section 8(a) of the Act. Petitioner received a series of chiropractic treatments, but his low back and left leg symptoms did not improve.

Petitioner presented to Dr. Sean Salehi, M.D., a specialist in neurosurgery on February 22, 2021. Dr. Salehi's records contain a Neurological History Form signed by Petitioner. Petitioner did not identify any referring physician on the form. Petitioner indicated that he was not referred by a physician but that he was referred by a "friend." The Commission agrees with the Arbitrator that Petitioner did not come under Dr. Salehi's care as the result of any valid chain of medical referral.

Dr. Salehi recommended an ESI. Petitioner reported continuing pain in his low back and pain and numbness, and pain down his left leg. Dr. Salehi also prescribed another course of physical therapy. Petitioner was denied both the ESI and PT by workers' compensation.

On April 5, 2021, Petitioner returned to Dr. Salehi and reported he still had the low back pain that extended down to his left toes and that none of the treatment recommended by Dr. Salehi was approved by workers' compensation. Dr. Salehi then recommended surgery. Petitioner returned to full-duty/full-time work following this appointment. Petitioner testified that even with his pain that he was able to sit and operate his machine and that it was financially necessary that he continue to receive an income. Petitioner testified at hearing that he would like to undergo the surgery recommended by Dr. Salehi.

Petitioner underwent a Section 12 examination at the request of Respondent with Dr. Kern Singh in October 2021. Dr. Singh diagnosed lumbar strain and degenerative lumbar

spondylosis. He opined that the spondylosis pre-existed the November 17, 2020, work related accident. According to Dr. Singh the spondylosis is age related and not causally related to the work accident. He further expressed the opinion that Petitioner sustained a soft tissue strain because of the November 17, 2020, accident that would have resolved in six weeks following the date of injury and that Petitioner was at MMI within that time span. Dr. Singh testified that Petitioner is able return to full-time/ full duty work with no restrictions.

Petitioner returned to Dr. Salehi on November 22, 2021. Dr. Salehi ordered an updated MRI. He returned to Dr. Salehi on December 13, 2021, and he again recommended surgery. Petitioner continued to work but he experienced no improvement in his lower back or legs. He continued to work regular duty throughout 2023.

Dr. Salehi testified via evidence deposition that Petitioner's diagnosis is a herniated lumbar disc producing nerve impingement of the L4-5 level resulting in lumbar radiculopathy. He stated that there is a direct causal relationship due to a consistent mechanism of injury resulting in a herniated lumbar disc and temporal connection. Dr. Salehi opined that Petitioner is under light duty restrictions made necessary by the work-related injury of November 17, 2020.

Dr. Salehi testified that the prospective treatment Petitioner requires is a decompression, i.e. a lumbar micro-decompression. Post-operatively he will require 12 sessions of physical therapy starting 3-4 weeks following surgery. Petitioner will then require 10 sessions of work conditioning before achieving MMI and release to full-duty work.

Dr. Salehi testified on cross-examination that his early treatment recommendation of ESI and additional physical therapy would no longer be reasonable treatment because of the time that has elapsed since the work accident to the present. Early on the hope is that the herniations will subside with conservative treatment. Once the herniation is persistent for many months it is less likely that conservative care will provide lasting relief. The conservative approach at the present time would be a waste of resources.

The Arbitrator found the testimony of Dr. Salehi to be more persuasive than that of Dr. Singh and made his finding that Petitioner's current condition of ill-being is causally connected to the November 17, 2020, work accident. The Commission finds the Arbitrator's finding of causal connection to be well-founded and based upon the evidence.

Petitioner seeks review of the Arbitrator's denial of prospective medical care i.e. the recommendation for surgery from Dr. Sean Salehi. Additionally, Petitioner seeks the award of certain medical bills denied by the Arbitrator that were associated with the treatment rendered by or on the order of Dr. Salehi.

The Commission affirms the Arbitrator's finding that the choice of Dr. Salehi was outside of the two-physician rule mandated by Section 8(a) of the Act. Similarly, the choice of Dr. Salehi did not derive from a valid chain of referral from either Union Health Clinic or Evolve

Chiropractic. Dr. Salehi represented Petitioner's third choice of physician thus relieving the Respondent of any obligation to pay medical expenses associated with his treatment or recommended prospective medical care under the Act.

Petitioner sought to remedy the dilemma posed by Dr. Salehi's status as the third physician chosen by seeking a retrospective referral specific to Dr. Sean Salehi from Union Health Clinic on July 27, 2022. The nurse practitioner noted that Dr. Salehi was a "specialist not available through HST, patient was encouraged to discuss coverage with member benefits and inform if he would like to continue. Patient offered additional resources for referral services and declined."

Petitioner then returned to Premier Pain and Spine and requested and obtained a referral specifically to Dr. Sean Salehi on September 28, 2022. The Commission notes that this "referral" was obtained well over a year since Petitioner's initial consultation with Dr. Salehi in early 2021.

Petitioner urges in his brief that an award of both the prospective care recommended by Dr. Salehi, and the medical expenses related to Dr. Salehi's care and treatment is sanctioned based upon *Absolute Cleaning/SVM v. IWCC,* 409 Ill. App. 3d 463 (2011). The Commission's reading of the case is that the court's analysis did not extend to the situation of a retrospective medical referral and did not sanction same. Rather the appellate court's analysis focused upon the genesis of the referral in determining whether it was valid and ruled that to be valid it was only necessary that the referral came from the Petitioner's treating physician.

The Commission is concerned that the retroactive referrals specifically to Dr. Salehi obtained by Petitioner in the present case may violate the two-physician rule in Section 8(a) of the Act. The Act however does not prohibit Petitioner from again returning to his first choice of physician for further medical care and guidance in relation to his work injury. The Commission therefore finds that Petitioner should be permitted to again return to the Union Health Clinic and request a referral for a further treatment recommendation to a physician other than Dr. Salehi.

Petitioner may then follow up on the referral and seek another consultation from a physician other than Dr. Salehi. This allows Petitioner to pursue evaluation for further treatment without the impediment presented by the two-physician rule and seek an award of prospective medical care if he sees fit based upon the advice provided by a new physician based upon a valid referral.

Based upon the foregoing analysis the Arbitrator's outright denial of prospective medical care is reversed. The Arbitrator's denial failed to consider the entirely acceptable option of Petitioner again returning to Union Health for a referral to another physician.

The matter shall be remanded to the Arbitrator for further hearing on the issue of prospective medical care after Petitioner has obtained a new referral from Union Health to a physician other than Dr. Salehi and received medical advice concerning prospective treatment

and any recommendations following therefrom. The Commission affirms the Arbitrator's finding of causal connection and the award of certain medical expenses that preceded Petitioner's third choice of Dr. Salehi. Finally, the Commission adjusts the amount of the medical bill from Advocate Sherman in the amount of $784.00 to reflect the credit due to Respondent in the amount of $223.51 for workers' compensation benefits previously paid.

The Decision of the Arbitrator is for the reasons stated above therefore reversed in part as pertains to prospective medical care, and affirmed in part as pertains to causal connection, and the award of certain modified medical expenses.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is permitted to again return to Petitioner's first physician, Union Medical Clinic, for a further referral for prospective medical care and treatment to a physician other than Dr. Sean Salehi.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings consistent with this Decision on the issue of prospective medical care related to Petitioner's current condition of ill-being causally connected to his work-related injury sustained November 17, 2020, and pursuant to the Commission's order that Petitioner is allowed obtain a medical referral/recommendation from Union Medical Clinic to a physician other than Dr. Salehi.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $5,182.06 for medical expenses under §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 the medical bill from Advocate Sherman Hospital be adjusted to allow for a credit to Respondent of $223.51.

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 $20, 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.

April 30, 2025

SJM/msb
o: 3/5/25
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	21WC001465
Case Name	Melvin Acosta Jr. v Artera Services/KS Energy
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Caplan
Respondent Attorney	J. Murray Pinkston, III

DATE FILED: 5/29/2024

/s/Jeffrey Huebsch, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 29, 2024 5.17%

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)

Melvin Acosta, Jr. Case # **21** WC **001465**
Employee/Petitioner
v.
Artera Services/KS Energy
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 **March 21, 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 **Has Petitioner exceeded his 2 choices of physicians allowed under §8(a) of the Act?**

FINDINGS

On the date of accident, **11/17/2020**, 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.

In the year preceding the injury, Petitioner earned **$104,624.00**, and the average weekly wage was $**2,012.00.**

On the date of accident, Petitioner was **52** 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 of $5,405.57, in accordance with the Medical Fee Schedule, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Petitioner's claim for prospective medical treatment is denied. Petitioner has exceeded the number of physicians allowed under Section 8(a) of the Act.

In no instance shall this Award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a 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 Arbitrato

May 29, 2024

FINDINGS OF FACT

As a preliminary matter, Respondent withdrew RX 4, as being duplicative of RX 9. RX 4 has been destroyed. It is noted that PX 1, the evidence deposition of Dr. Salehi has been paginated twice. The Arbitrator's citations are to the page numbers in the lower right corner, consistent with the rest of Petitioner's exhibits, which are contained in a binder. ("PX Book").

Petitioner was employed by Respondent as a heavy machine operator. In this job, he would operate an excavator. The job did not involve lifting, bending, or twisting.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on November 17, 2020. Petitioner testified that he slipped on a steel road plate while getting off his machine. He twisted and tweaked his low back. He noticed pain in his low back and tingling in his left leg, down to his toes. (T. 12-13).

The accident was not reported immediately, as Petitioner thought it was nothing and he would be off work for Thanksgiving week. Petitioner testified that he told his foreman, John Henry, about the injury when he returned to work, around November 30. (T. 13-14).

Petitioner first sought medical treatment for his injury at the union clinic (Operator's Health Center), Petitioner's primary care physicians. (T. 14-15). The first physician's visit took place on December 1, 2020. An MRI was ordered and PT was prescribed. The PT took place at the clinic. The MRI was done on December 4, 2020. (T. 16). .

Petitioner was referred to Premier Pain by the union clinic. An ESI was recommended, but it was declined by workers' compensation and group insurance. (T. 16-17).

Petitioner then sought chiropractic treatment at Evolve Chiropractic. He had 7 treatments at Evolve. He did not notice a change in symptoms after the treatments. He had low back pain and throbbing and numbness all the way down his left leg, down to his toes. He could not stand long, but sitting was ok, so he could continue to work. (T. 18-19).

On February 21, 2021, Petitioner sought treatment with Dr. Sean Salehi. He gave a history of the work accident and Dr. Salehi reviewed the MRI film. Petitioner told Dr. Salehi about a prior occurrence of low back pain, which occurred around March 27, 2020. (T. 18-21).

Petitioner testified that the onset of back pain on March 27 was not due to an accident. He woke up that day and he could not sit. He went to his clinic and they prescribed PT at ATI. He had therapy for about 6 weeks. It was better after he completed therapy. (T. 21-23). The next time that he developed back pain was on November 17. (T. 23). Petitioner testified that his back pain was different on March 20, as compared to after the accident of November 17. "My lower back and my pain down my left leg. All the way down to my toes." (T. 24-25). He testified that he didn't notice any of those symptoms from the first occurrence. (T. 25).

Dr. Salehi prescribed an epidural, which was not approved. Dr. Salehi also recommended PT, which was not authorized. Petitioner did not receive the epidural and the PT. (T. 25-26).

Petitioner followed up with Dr. Salehi on April 5, 2021 and Dr. Salehi recommended surgery. (T. 26). Petitioner testified that after the second Dr. Salehi visit, he returned to work. (T. 27). The Arbitrator

notes that no TTD was claimed at trial and no TTD information was provided by the Parties. (ArbX 1). Petitioner continued to work as an operator through 2024.

Petitioner attended a §12 examination by Dr. Kern Singh in October of 2021. (T. 27-28).

Petitioner followed up with Dr. Salehi, who ordered further MRI studies and, as of February 14, 2024, continued to recommend surgery. (T. 30-33).

Petitioner identified PX 6 as bills incurred as a result of treatment that he received. (T. 34-35).

Petitioner testified that he would undergo the surgery proposed by Dr. Salehi, if it was awarded. Petitioner testified that he currently notices pain in his low back, running down his left leg to his toes. He couldn't walk when it first happened. He testified that his pain has not changed. (T.36-37).

On cross examination, Petitioner confirmed that when the November 17, 2020 injury occurred, he could not walk for 2 weeks. He agreed that the accident happened not days, but within 2 weeks of Thanksgiving. After the accident, he continued to work until the Thanksgiving holiday. (T. 37-40).

He could not recall exactly when he reported the accident to his employer. He reported the accident to John Massey, after he had seen a doctor and had put it on his personal insurance. (T. 39-40).

Petitioner agreed that he had sciatica before the November 17 accident. The sciatica had started in March of 2020, as described above. He said the prior sciatica had only run to his rear end, not down his left leg. He would dispute records from the March incident that said that he had pain down his left leg. (T. 41-44). To his recollection, he did not recall sciatic problems down his left leg prior to November 17, 2020. (T. 47). Later, on cross examination, Petitioner stated that he never had any of the shooting pain down his left leg prior to November 17, 2020. (T. 49).

Petitioner has been a diabetic for years. (T. 41).

Petitioner agreed that he received treatment at Elgin Foot and Ankle Clinic in September of 2020, for pain and numbness to the toes of his left foot. (T. 44-45). Petitioner testified that he had been experiencing pain and numbness to the toes of his left foot "since the accident of November 17th." (T. 45). He denied telling the doctors in September of 2020 that he had been experiencing the symptoms for months. (T. 45-46).

Petitioner testified that he told the doctor at the December 1, 2020 visit, Dr. Casaclang, to put the charge on his personal insurance. He told the doctor that he "didn't think KS Energy had anything to do with this." (T. 40).

Petitioner testified that he found Evolve Chiropractic on his own. He also received acupuncture treatment from his wife's doctor for a couple of sessions. This treatment was for the injury of November 17th to his lower back, running down his leg. (T. 49-50).

Petitioner testified that he was referred to Dr. Salehi by a friend. He was not referred to Dr. Salehi by a doctor. (T. 54-55). Petitioner identified PX 7 as a referral to Dr. Salehi that he received in August of 2023. (T. 35-36). PX 7 is a referral from Dr. Kapoor to Dr. Salehi, dated 9/28/2022. PX 8 is a referral to Dr. Salehi from George Kakis, DC, dated 8/5/2022 and apparently signed by Dr. Kakis on 8/6/2022. (PX Book, pp 489-492). As to the referral from Premier to Dr. Salehi, that was made 9/28/2022. The referral took place after he started treating with Dr. Salehi. (T. 58-59).

Petitioner agreed that he had worked his regular duties since the accident. (T. 55). He had recently been laid off, along with other workers from Respondent. (T. 55-56).

On redirect examination, Petitioner answered "No" to the question: "Did you have any symptoms in your feet when you were a diabetic?" (T. 57).

Petitioner testified that he has limitations regarding his ability to stand more than 20 minutes to a half hour. (T. 60-61).

PX 1 was the evidence deposition of Dr. Sean Salehi. Dr. Salehi is a board certified neurosurgeon, fellowship trained in complex spine reconstruction. He was Petitioner's treating neurosurgeon. The history given at the first visit on February 22, 2021 was of a work injury on November 17, 2020, with pain in the left side of his low back, which later started radiating down the left leg to the foot. The pain started to intensify, especially over the holiday weekend. He returned to work, but the pain was so much that he could barely walk. He subsequently went on to see a chiropractor, and did acupuncture, with minimal relief. He was scheduled for an ESI, which was cancelled due to insurance authorizations. He had a prior incident of leg pain about a year ago, which he saw a chiropractor and his pain had resolved within a week. (PX 1, 8-9). The physical exam revealed some loss of range of motion, but the strength testing and neurologic testing was normal – and it was noted that Petitioner denied any difficulty with walking. Tenderness in the low back was noted, with decreased sensation in the left lateral foot (S1 distribution sciatica). (PX 1, 14-16). Dr. Salehi viewed the MRI as showing a transitional segment some radiologists would call it L5-S1) and disc herniations at L2-3 and L3-4, with a herniation at L4-5 inferiorly migrating on the left with moderate disc height loss at L4-5. At L4-5, the disc had extruded and moved downward on the left side, with clinical significance due to the patient's symptoms and complaints. (PX 1, 17-18). As of April 5, 2021, Dr. Salehi recommended a microdiscectomy surgery, because of lack of improvement with conservative care. Light duty work restrictions were continued. (PX 1, 21). Dr. Salehi's diagnosis as to Petitioner's condition regarding his low back is: Lumbar herniated disc resulting in nerve impingement at L4-5, resulting in lumbar radiculopathy (commonly known as sciatica). He testified that there is a direct causal connection between the work injury of November 17, 2020 and the diagnosis, due to the consistent mechanism of injury resulting in a lumber herniated disc and the temporal connection. (PX 1, 33-34). Causation was endorsed as to the work restrictions placed upon Petitioner and the recommended surgery. Dr. Salehi disagreed with Dr. Singh's opinion that Petitioner suffered a only a lumbar strain as a result of the work injury. A lumbar strain doesn't cause sciatica. Sciatica is a result of a nerve impingement. (PX 1, 28). On cross examination, it was noted that Dr. Salehi had not reviewed any prior medical records. It was Dr. Salehi's understanding that Petitioner had just the one prior onset of left-sided sciatica about one year prior to the first visit with Dr. Salehi. (PX 1, 37). Petitioner's complaints have not resolved. They have been constant and persistent. (PX 1, 47). Additional conservative treatment would not be reasonable at this point. (PX 1, 51).

Respondent submitted the evidence deposition of Dr. Kern Singh as RX 1. Dr. Singh is a board certified orthopedic spine surgeon, with a 131 page CV. (RX 1, 6. RX 1, EX 1). He examined Petitioner on October 4, 2021. The physical exam was normal. He also reviewed medical records. (RX 1, 9-11). Dr. Singh's diagnosis was lumbar muscular strain and degenerative lumbar spondylosis. The soft tissue strain was related to the work accident. The spondylosis was not causally connected to the work injury. (RX 1, 12). Dr. Singh thought that Petitioner's left leg complaints do not correlate with a dermatomal distribution to a lumbar nerve root compression, being diffuse, and not localizable to a particular radicular pattern. (RX 1, 12-13). Petitioner could work full duty without work restrictions. He thought that 4 weeks of PT was appropriate treatment. Petitioner would have reached MMI four to six weeks

after the accident. On cross examination, Dr. Singh confirmed that he noted no Waddell's signs in his examination of Petitioner. Petitioner's leg complaints could be related to a diabetic peripheral neuropathy. (RX 1, 23, 22).

Submitted medical records document Petitioner's complaints of low back and left-sided radicular symptoms, prior to the November 17, 2020 work accident. Petitioner had a telemed session with Meghan Hagan, NP from the Operator's Health Center, on March 27, 2020, at which time Petitioner complained of sharp left hip pain, back pain, and with radiation down the left leg, with numbness and tingling. (RX 9, p 817). Petitioner reported that this current episode started "yesterday," but that the problem occurs "constantly" and was "unchanged." (RX 9, p 822-823). Petitioner described the pain was "aching" at 9/10, radiating to the left knee, thigh, and foot, and included left leg pain, numbness, and tingling. (RX 9, p 823). The diagnosis made was "sciatica of the left side." (RX 9, p 817).

Petitioner called Nurse Hagan back on April 1, 2020, inquiring: "With the Sciatica issue, should I be doing any kinds of exercise to relieve the pain?" (RX 9, p 812). Petitioner filled out a telemedicine questionnaire describing his sciatica pain (RX 9, p 808), and then discussed at-home exercises and medications that were being recommended (RX 9, p 803). On April 15, 2020, Petitioner called Nurse Hagan for a follow up of his sciatica of the left leg, because he continued to have radiating pain down the left leg into the foot, (RX 9, p 790), as well as numbness and cramping in the left leg. (RX 9, p. 791).

Petitioner presented to ATI Physical Therapy on April 17, 2020, for an evaluation of ongoing left-sided sciatica. At that time, the primary complaints were of radiating pain and numbness, most painful over his left ankle and foot, along with difficulty with lifting from floor, squatting and standing for more than 30 minutes, with pain rated at 10/10 during activity. (RX 6). During the period from April 17, 2020 through May 20, 2020, the Petitioner underwent 11 sessions of physical therapy at ATI. The ATI Discharge Summary, dated May 26, 2020, indicated that Petitioner was undergoing physical therapy for symptoms consistent with left sciatica, and was discharged on his own request. Petitioner reported that he was 100% better. (RX 6, p 15)

On June 30, 2020, Petitioner called Operator's Health Center, indicating that he was experiencing tingling in his toes. (RX 9, p 766).

On September 9, 2020, Petitioner was seen at Elgin Foot and Ankle Center for an initial visit for ongoing pain and numbness of his 3rd through 5th toes of the left foot. At that time, the Petitioner reported that he has been experiencing these symptoms for several months due to an insidious onset and had a history of sciatica and had recent physical therapy for his sciatica. (RX 5, p 6).

Petitioner was seen at Operator's Health Center on November 7, 2020. The reason for the visit was Follow-Up, Type II Diabetes. (PX 3, pp 295-300). Chronic left-sided low back pain with left-sided sciatica (noted on 05/18/2020), was documented on the problem list. (RX 9, p 700). Diabetic left leg peripheral neuropathy was noted, for which he saw a foot doctor was also noted. (RX 9, p 706). The review of systems and physical exam for this visit shows no low back/sciatica findings. (RX 9, pp 707-708).

The Operator's Health Center records show that Petitioner made an "e-visit" on November 30, 2020 at 8:28 am. Petitioner reported that he was experiencing "lower back pain," running "into my left leg," with the current pain being "as bad as I have ever had." (RX 9, p 698). When he was asked about the cause of the pain, Petitioner stated that he: "…cannot remember an injury." And when asked about timing of the the onset, he stated: "More than 2 days but less than 1 week." (RX 9, p 698). Regarding prior problems, he stated: "Yes, I have many times had pain similar to this before." (RX 9, p 698).

At the first visit with Dr. Casaclang at Operator's Health Center, on December 1, 2020, Petitioner complained of low back pain with radiation down the left leg, following a slip before Thanksgiving. Dr. Casaclang diagnosed Petitioner with "chronic left-sided low back pain and sciatica," and ordered medications and an MRI. (RX 9, pp 685-696). An MRI was performed on December 4, 2020, which was read to show disc protrusions, with mild to moderate stenosis at the L2-L3 and L3-L4 levels, a small protrusion at L4-L5 causing marked left neuroforaminal stenosis at the L4-L5 level. (PX 2, pp 284-286).

Dr. Casaclang saw Petitioner again on December 8, 2020, for what he described as "chronic left-sided low back pain with left-sided sciatica." Petitioner reported mild improvement with the medications, (RX 9, p 666). He was referred to Premier Pain Specialists, for lumbar ESI treatments, for treatment of "lumbar disc disease and chronic LLE radiculopathy…" (RX 9, p 665).

On December 14, 2020, Petitioner had an initial evaluation with Dr. Rohan Kapoor at Premier Pain & Spine, where he reported that he had slipped at work on November 17, 2020, with mild symptoms at first, but then a week later became more painful with left side radiculopathy. Dr. Kapoor reviewed the report of 12/4/20 lumbar MRI, and described the L4-L5 findings as neuroforaminal osteoarthritis. Dr. Kapoor then recommended a left L4-L5, L5-S1 transforaminal epidural steroid injection. (PX 4, p 343-344).

On January 5, 2021, Petitioner was seen at Evolve Chiropractic of Schaumburg. (PX 5). He reported that he was experiencing symptoms of lower back and leg pain, which appeared on December 23, 2020. (PX 5, pp 358-363). Petitioner reported that he had already received acupuncture for this condition. Petitioner reported that he had been "diagnosed with sciatica about 1 year ago," but that he was "still tingling down left leg and numbness in left foot." The Evolve history report also indicates that he suffered no Home, Sports, or "Other" injuries, although the cause is identified as "Fall", and that he also "states he does not want to pursue work comp with us." (PX 5, pp 360-361). As for treatment, Petitioner testified that Evolve providers stretched his back and cracked it, but that he did not feel any change after that treatment. (T. 19).

Petitioner next south treatment with Dr. Sean Salehi on February 22, 2021. (PX 2). Dr. Salehi's chart note of February 22, 2021 documents a history of work accident and increasing symptoms consistent with Petitioner's testimony. Petitioner advised of a prior history of leg pain about a year ago. He saw a chiropractor and the pain resolved within a week. "He has had no residual pain at all up until this injury." (PX 2, 108). Some range of motion decrease was noted, along with 5/5 strength and a benign neurologic exam. Dr. Salehi's diagnosis was: intervertebral disc disorders with radiculopathy. He related this to the work injury. PT and an ESI were recommended. (PX 2, p 109).

At the follow up on April 5, 2021, Petitioner showed improved findings on his neurologic exam, but he continued with complaints of pain radiating down the left leg. On these findings, Dr. Salehi recommended lumbar surgery. (PX 2, pp 114-116). Petitioner had follow-ups with Dr. Salehi through February 27, 2024. Dr. Salehi continues to recommend surgery. (PX 2, pp 145-147).

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)

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

The November 17, 2020 work accident was stipulated to.

Petitioner had a prior incident of sciatica, beginning March 27, 2020, for which he had PT and appears to have stopped treating for the sciatica in May of 2020. Petitioner is a diabetic with neuropathies, for which he received treatment for pain in the left foot and ankle at Elgin Foot and Ankle in September of 2020. Sciatica appears to have not been considered at that time. No back pain/sciatica was noted when Petitioner was seen by his PCP on November 7, 2020.

Petitioner's testimony and the histories given to some of the medical providers have some flaws. He told Dr. Salehi that his sciatica related to the onset about a year before their first interaction had resolved in a week with chiropractic treatment (No. PT lasted for over a month, but 100% improvement was noted on the ATI PT final report). He did say that the original post-injury treatment was not to be put through workers' compensation when he sought treatment at Operator's and Evolve. He agreed that he had sciatica before the November 17, 2020 work accident, but described it as only running to the buttocks and the ATI and Operator's records document radiation of sciatica type pain down the left leg to the foot.

Dr. Singh noted no Waddell's signs in his examination of Petitioner and opined that petitioner's LLE do not correlate with lumbar nerve root compression.

In making his finding on the issue of causation, the Arbitrator consider's Petitioner's testimony, the medical records and the testimony of two highly credentialed and respected spinal surgeoens.

The Arbitrator, as the finder of fact, observed Petitioner's demeanor in testifying and has weighed the consistencies and inconsistencies in Petitioner's testimony and the medical records. Petitioner appears to be a stoic individual, who wanted to get on with his post-injury medical treatment and did continue to work as a heavy equipment operator (while there was no testimony regarding bouncing around that occurs when one runs an excavator, along with climbing up and down the machine and making appropriate inspections that are required to be done by the operator, the Arbitrator will infer that the above was associated with Petitioner's job), even when excused by Dr. Salehi. Petitioner's testimony is found to be credible.

The Arbitrator finds the opinions of Dr. Salehi to be more persuasive in this case. Dr. Salehi explained that Petitioner's complaints and the MRI findings correlated with a symptomatic L4-L5 herniated disc and the proposed L4-L5 microdiscectomy surgery. He endorsed causation based on the mechanism of injury and the temporal connection with Petitioner's constant and persistent symptoms. Again, on November 7, 2020, there was no mention of sciatica or back pain.

Dr. Singh's opinions are not found to be persuasive. Of course the spondylolysis seen on the diagnostic films is not causally connected to the work injury. That is a condition that develops over time. Dr. Singh did not comment on whether the work injury aggravated, accelerated or exacerbated the degenerative condition that was obviously in Petitioner's lumbar spine, opining only that the injury resulted in a lumbar strain and Petitioner's lower extremity complaints were not consistent with lumbar nerve root impingement. Of course Petitioner is a diabetic and he has some neuropathies.

Dr. Salehi's opinions best comport with the evidence adduced.

Petitioner's current condition of ill-being regarding his low back, to wit: symptomatic herniated disc at L4-L5, in need of microdiscectomy surgery, as described by Dr. Salehi, is causally relate to the November 17, 2020 work injury.

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

Petitioner's Claimed bills were contained in PX 6. The Arbitrator addresses the bills claimed on the Request For Hearing form, in accordance with Walker v. Industrial Commission, 345 Ill. App. 3d (1084).

Certain bills are awarded, based upon the Arbitrator's findings above on the issue of causation. Certain bills are denied, based upon the Arbitrator's findings on the issue of the 2 Doctor rule, below.

The bills from Northshore Westchester Neurosurgery and Chicago Neurospine Surgery are denied, as these bills were incurred after Petitioner exceeded his two choices of physicians allowed under §8(a) of the Act.

The bill from Evolve Chiropractic is awarded in the amount of **$485.57**, for services rendered 1/5/2021-1/20/2021. All other Evolve charges are for services rendered after Petitioner exceeded his two choices of physicians and are denied

The bill from Premier Pain is awarded in the amount of **$2,313.00**.

The bill from South Hub Radiology for the review of the 12/4/20 MRI is awarded in the amount of **$279.00**.

The bill from Advocate Healthcare for the 12/4/20 MRI is awarded in the amount of **$1,544.00**.

The bill from Advocate Sherman Hospital for the date of service of 12/3/20 is awardedin the amount of **$784.00**. This was for a venous doppler study to rule out a vascular origin of Petitioner's LLE complaints post-accident.

The bill from ADCO billing Solutions is denied, as it was incurred after Petitioner exceeded his two choices of physicians.

The total amount of bills awarded is $5,405.57, to be paid pursuant to the Medical Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act.

As to the issue of prospective medical care, the Arbitrator finds that Petitioner is Not entitled to any prospective medical care, as he has exceeded his two choices of physicians allowed under §8(a) of the Act and Respondent therefore has no liability for any charges for medical services incurred after February 21, 2021.

WITH RESPECT TO ISSUE (O)-Other-HAS PETITIONER EXCEEDED HIS 2 CHOICES OF PHYSICIANS ALOOWED UNDER §8(a) OF THE ACT?, THE ARBITRATOR FINDS:

Petitioner has exceeded his two choices of physicians allowed under §8(a) of the Act.

His first choice of physician is Operator's Health Services, where he first received treatment on December 1, 2020.

His second choice of physician is Evolve Chiropractic, where he first received treatment on January 15, 2021. It is noted that, arguably, Evolve is provider number three because Petitioner received acupuncture from his wife's acupuncturist, but neither party followed up on identifying this provider.

Dr. Salehi was Petitioner's third choice of physicians, who he first sought treatment from on February 21, 2021. He was referred to Dr. Salehi by a friend. He was not referred by a physician to Dr. Salehi at the time that he was first seen. Petitioner received Ex Post Facto referrals from Premier and Evolve in September and August of 2022, a year and a half subsequent to his first visit. The referrals were not timely and are of no effect. Respondent's liability for medical expenses has been extinguished. Pluto v. Illinois Indus. Comm'n, 272 Ill. App. 3d 722 (1995).