

**ILLINOIS WORKERS' COMPENSATION COMMISSION**

**DECISION SIGNATURE PAGE**

Case Number	22WC031970
Case Name	INSURANCE COMPLIANCE v. BOOST ENTERPRISES, INC
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Decision
Commission Decision Number	25IWCC0115
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 4/11/2025

*/s/Stephen Mathis, Commissioner*

\_\_\_\_\_  
Signature

22 WC 31970

19 INC 00299

Page 1

STATE OF ILLINOIS

)

) SS.

COUNTY OF COOK

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<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,

Petitioner,

vs.

No. 22 WC 31970

19 INC 00299

Boost Enterprises, Inc., and Arthur Cup  
Individually and as President,

Respondents.

CORRECTED DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner brings this action by and through the Office of the Illinois Attorney General, against Respondent, alleging violations of §4(a) of the Illinois Workers' Compensation Act ("Act") and §9100 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission ("Rules") for failure to procure mandatory workers' compensation insurance. Petitioner alleges Respondent knowingly and willfully lacked workers' compensation insurance for 3,439 days from April 10, 2014 to September 8, 2023. Proper and timely notice was provided to Respondent and a hearing was held before Commissioner Stephen Mathis in Chicago, Illinois on September 24, 2024. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent knowingly and willfully violated §4(a) of the Act and §9100 of the Rules from April 10, 2014 through September 8, 2023. The Commission also finds that Respondents were in default after proper and timely notice. Accordingly, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with §4(d) of the Act in the sum of \$1,719,500.00. The Commission further orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of \$18,235.21, for a total amount of \$1,737,735.21.

## **I. Findings of Fact**

Assistant Attorney General Rachel Hamer stated on the record that notice of the hearing date was sent to Boost Enterprises' registered agent and President, Mr. Arthur Cup, at 197 W. Fullerton Ave., Glendale Heights, IL 60139 by regular mail and served through the Secretary of State. PX3. Notice of the hearing date was also sent to Mr. Cup's confirmed e-mail address, [boostenterprises@gmail.com](mailto:boostenterprises@gmail.com). Id.

Personal service to this address was previously attempted on February 1<sup>st</sup> and 3<sup>rd</sup> of 2023 which was unsuccessful. PX1. The Attorney General Investigations Unit was thereafter able to locate an e-mail address for Mr. Cup who communicated with Investigator John Legan in March 2023 confirming he was aware of this insurance compliance case. PX2. Thereafter, AAG Hamer began to email Mr. Cup and he responded confirming he was aware of this insurance compliance case. PX3 at 2.

Antonio Smith, an investigator for the Illinois Department of Insurance, testified that his investigation of Respondent began in 2020. On February 3, 2020, a State of Illinois Notice of Non-Compliance form was sent via certified mail by his office to Respondent at 197 W. Fullerton Ave., Glendale Heights, Illinois 60139. PX4. The Notice stated that according to Commission records, the Respondent was not in compliance with the requirements of Section 4(a) of the Act for the period beginning April 10, 2014 through the date of the notice. Id. Also on February 3, 2020, Petitioner sent a State of Illinois Notice to Employer of Insurance Compliance Informal Conference, set for March 3, 2020 at 11:00 a.m. PX5. Neither Respondent nor any proxy appeared on that date.

Investigator Smith testified to his belief that Respondent was required by the Act to provide workers' compensation insurance coverage for its employees. In support of this, Investigator Smith identified the arbitration decision of *Moise Garcon v. Boost Enterprises, Inc.; Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund*, Ill. Workers' Comp. Commission, No. 19 WC 010233 (May 25, 2022), PX11. In the decision, which was issued on May 25, 2022, the arbitrator found that an employer-employee relationship did exist between the parties. Id. Additionally, the arbitrator found that, as part of its operation, Respondent's employees drove semi-trucks to carry loads, which was sufficient to subject Respondent to the automatic coverage provisions of §3 of the Act. Id. at 6. The arbitrator also found that Respondent was uninsured on the accident date of February 6, 2019. Id. at 10. An award for permanent partial disability benefits was entered on behalf of the Petitioner. Id. at 2. The award was entered against the Injured Workers' Benefit Fund to the extent permitted and allowed under section 4(d) of the Act. Id. at 3. On January 25, 2023, The Injured Workers' Benefit Fund issued payment to Petitioner in the amount of \$18,235.21 in the form of a check. PX12. The check indicated this was the full and final workers' compensation benefit award against the Injured Workers' Benefit Fund for case 19WC010233. Id.

Investigator Smith conducted an inquiry into whether Respondent was self-insured by making a request to the Commission's Office of Self-Insurance Administration. A sworn certification by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance Administration

stated that no certificate of approval to self-insure was issued by the Commission to Boost Enterprises, Inc. from April 10, 2014 to September 8, 2023. PX9. The certification also identifies Arthur Cup as Respondent's President. *Id.*

Investigator Smith also requested insurance information from the National Council on Compensation Insurance (NCCI). Roguens Loriston certified that the NCCI is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Respondent did not file policy information showing proof of workers' compensation insurance at any time from April 10, 2014 through September 8, 2023. PX10.

Investigator Smith also requested records from the Illinois Secretary of State, which indicated Respondent was incorporated on April 10, 2014 and that the initial registered agent and incorporator was "Arthur Cup." PX7. An updated printout of the Secretary of State's Business Entity Search, dated September 17, 2024, revealed that Boost Enterprises, Inc. dissolved on September 8, 2023. PX6.

Lastly, Investigator Smith requested records from the Illinois Department of Revenue who certified that the department had processed Illinois corporation income and replacement tax returns for the years 2014 through 2021 but not thereafter. PX8.

## **I. Conclusions of Law**

The Commission's authority and jurisdiction over insurance non-compliance cases is authorized by Section 4(d) the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity, or bond or through a purchased policy. Section 9100.90 of the Rules codifies the language of the Act, and additionally describes the notice of non-compliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice of the proceedings, as noted above, was provided to Respondent.

The Commission first addresses whether Respondent is subject to the Act. Pursuant to §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 those "engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

15. Any business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof."

*820 ILCS 305/3(15) (West 2016).*

The Commission finds that Respondent's business falls within these provisions of the Act. Investigator Smith's testimony that Respondent was subject to the Act is supported by the arbitration decision in *Garcon*, wherein the arbitrator concluded that, as part of its operation,

Respondent's employees drove semi-trucks in order to transport loads, which was sufficient to subject Respondent to the automatic coverage provisions of §3 of the Act. PX11 at 6. Accordingly, the Commission finds that Respondent's business engaged in work which automatically fell within the provisions of the Act.

Pursuant to §4(a) of the Act, all employers who come within the provisions of the Act are required to provide workers' compensation insurance. 820 ILCS 305/4(a) (West 2016). 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 §4 of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). The Rules also provide that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(E). Additionally, "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(d)(3)(D).

Here, Petitioner submitted a certification from the Department of Self-Insurance that no certificate of approval to self-insure was issued by the Commission to Boost Enterprises, Inc. from April 10, 2014 through September 8, 2023. Petitioner also submitted the NCCI certification that Respondent did not file policy information showing proof of workers' compensation insurance at any time from April 10, 2014 through September 8, 2023. Investigator Smith concluded that Respondent did not have workers' compensation insurance, nor was it self-insured during the relevant time period. Accordingly, the Commission concludes that Respondent failed to comply with the legal obligations imposed by §4(a) of the Act from April 10, 2014 through September 8, 2023.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states in pertinent part:

Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section . . . the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have

knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. 820 ILCS 305/4(d)(West 2016).

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. *See State of Illinois v. Murphy Container Service*, 03 INC 00155, 07 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the length of time that Respondent was in violation of the Act in failing to obtain workers' compensation insurance was significant. Respondent failed to have insurance for 3,439 days from April 10, 2014 through September 8, 2023. In the Arbitration decision in case 19WC010233, the Arbitrator's findings established that Respondent had employees, one of whom sustained a work injury on February 6, 2019. As Respondent failed to have workers' compensation insurance, the Injured Workers' Benefit Fund was found liable to the worker as a result of the injury, and the Fund has the right to recover benefits due and owing if the Respondent/Owner fails to pay those benefits. Having reviewed the record, the Commission finds no evidence as to the inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission finds Respondent knowingly and willfully failed to comply with the Act for a significant period of time. Based on the record before us, the Commission finds the appropriate penalty to be \$500.00 per each day of noncompliance. The Commission assesses a penalty of \$1,719,500.00 (\$500.00 x 3,439 days) against Respondent Arthur Cup, individually and as president of Boost Enterprises, Inc., a dissolved corporation. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent Cup in the amount of \$18,235.21 representing the liability imposed on the Injured Workers' Benefit Fund in the *Garcon* case.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Arthur Cup, individually and as president of Boost Enterprises, Inc., a dissolved corporation, pay to the Illinois Workers' Compensation Commission the sum of \$1,737,735.21 pursuant to Section 4(d) of the Act and Section 9100.85(a)(1) of the Rules.

Pursuant to Commission Rule 9100.90(e), once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order payable to the Illinois Workers' Compensation Commission, 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 30 days after the final order of the Commission or the order of the court on review after final adjudication to:

22 WC 31970

19 INC 00299

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Illinois Workers' Compensation Commission  
Fiscal Department  
69 W. Washington Street, Suite 900  
Chicago, Illinois 60602

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 11, 2025**

SJM

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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	10WC008205
Case Name	Tim Cragg v. State of Illinois - Illinois Dept of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	<b><i>Corrected Decision</i></b>
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: 4/24/2025

*/s/Stephen Mathis, Commissioner*  
Signature



10WC008205  
25 IWCC 0156  
Page 1

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANKAKEE )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input checked="" type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tim Cragg,

Petitioner,

vs.

NO. 10WC008205  
25 IWCC 0156

State of Illinois – Illinois Department of Corrections,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and proper 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, corrects, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On April 8, 2025, the Commission affirmed and adopted the Decision of the Arbitrator. On April 9, 2025, Petitioner filed a motion pursuant to section 19(f) of the Act to correct clerical errors in the Arbitrator’s Decision. The parties agree that the Arbitrator’s Decision should be corrected with respect to the permanent total disability rate and credit for the medical bills paid.

With respect to the permanent total disability rate, the parties agree the weekly rate should be corrected to \$1,231.41.

With respect to credit for the medical bills paid, the parties agree that the credit is for the bills that were paid by Respondent prior to the trial. These bills were not part of the trial; only unpaid bills were requested and awarded. Accordingly, there should be no credit against the unpaid medical bills awarded at trial.

10WC008205  
25 IWCC 0156  
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IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 16, 2024, is hereby corrected, 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 Corrected Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

**April 24, 2025**

SJM/sk  
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** )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input checked="" type="checkbox"/> | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input type="checkbox"/>            | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION**

**Tim Cragg**  
 Employee/Petitioner

Case # **10** WC 008205

v.

Consolidated cases: **n/a**

**State of Illinois, Dept. of Corrections**  
 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 **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 dermatome, 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 discectomy 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 arthroscopy 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 un rebutted. 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 (1<sup>st</sup> 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.