

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC010968
Case Name	Gerald LeVora Sr. v. Carlinville Park District
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0331
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Holly Marcum
Respondent Attorney	Glenn Blackmon

DATE FILED: 8/1/2025

/s/ Frank Soto, Commissioner

Signature

24 WC 10968

Page 1

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gerald LeVora Sr.,
Petitioner,

vs.

NO: 24 WC 10968

Carlinville Park District,
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, employment, and medical expenses, and being advised of the facts and law, affirms, and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 06, 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.

24 WC 10968

Page 2

Under Section 19(f)(2), no “county, city, town, township, incorporated village, school district, body politic, or municipal corporation” shall be required to file a bond. As such, Respondent is exempt from the bonding requirement.

August 1, 2025

O: 07/23/25

FJS/as

046

/s/ *Frank J. Soto*

Frank J. Soto

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC010968
Case Name	Gerald LeVora Sr. v. Carlinville Park District
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	Adam Hinrichs, Arbitrator

Petitioner Attorney	Holly Marcum
Respondent Attorney	R Mark Cosimini, Kisa Sthankiya

DATE FILED: 12/6/2024

/s/ Adam Hinrichs, 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
19(b)

GERALD LEVORA

Employee/Petitioner

v.

CARLINVILLE PARK DISTRICT

Employer/Respondent

Case # **24** WC **010968**

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 **10/30/2024**. 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 17, 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 **\$29,900.00**; the average weekly wage was **\$575.00**.

On the date of accident, Petitioner was **71** 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 all medical charges for Petitioner's reasonable, necessary and related medical treatment, as outlined in Petitioner's Exhibits 4 through 6, totaling \$9805.00. Respondent shall pay these medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall provide and pay for Dr. Solman's prescribed surgical course of care, and any other necessary and related follow up care, consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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



Signature of Arbitrator

December 6, 2024

FINDINGS OF FACT

Testimony of Petitioner

a. Job Duties & Schedule

Gerald Levora (“Petitioner”) is 71 years old, semi-retired, and has been employed by the Carlinville Park District (“Respondent”) since 2019. Petitioner works regularly from March through November, at which time he is made inactive in the Respondent’s payroll system, however, he is not laid off and does not draw unemployment. (T. 28-29). Petitioner testified that his job duties included mowing grass, weed eating, chalking ball fields, painting ball fields, cleaning restrooms, and doing whatever else was asked of him. (T. 11). Petitioner was provided a set of keys for just about everything the Respondent owned, such as the park board building, the pool, and all padlocks, the gate, and a shed. (T. 12). At no time since being hired in 2019 has Petitioner been asked to turn in those keys until October 2024, when he was asked to return them by November 14th. (T. 12-13).

Petitioner testified that when he began working for the Respondent, he was provided with a written job description with an effective date of June 2016, which did not have a place for him to sign and did not have any beginning or ending dates. (T. 14, PX.7). After the injury in question, Petitioner was provided with a new job description with an effective date of March 2024. (T. 15, PX.8). Petitioner testified that the only differences between the two documents was that the new one changed the hours per week worked, had a start date, and a place for his signature.

Petitioner testified that since he started working for the Respondent, he has been called in during the winter months of November through the beginning of March for various reasons such as fixing soccer nets at the Demuzio Center, getting change when needed, or called in for other reasons, but not on a steady basis. (T. 16). Petitioner identified checks with multiple payments that he received for time worked, as needed, during the off-season winter months in 2020, 2021, 2022 and 2023. (T. 17-19, PX. 9).

On cross-examination, Petitioner testified that work performed at the Demuzio Center would fall under his job duties since the last line of the job description indicates that he shall perform “other duties as assigned by Park District Director.” (T. 35, PX7 p. 71). Petitioner testified that he had been paid in prior years for taping lines and fixing soccer nets at the Demuzio Center in the off season. (T. 35-36). Petitioner would keep track of his time for these off-season activities, and when he determined he was owed a check, he would tell Ms. Regina Byots, Respondent’s Director, how much he was owed. (T. 39).

b. Slip and Fall

On February 17, 2024, Ms. Byots called Petitioner and asked if he could come to the Demuzio Center and get the lock off a beverage cooler so that they could sell the drinks while there were soccer games underway at the facility. The beverage cooler was padlocked and the key was missing. Petitioner testified that he understood the request to be within the scope of his job duties, as he had been called to come unlock things before. (T.20-23). Petitioner testified that when he had been asked to perform tasks in the off season, it was Ms. Byots who made those requests, and he had been paid for his time worked. (T. 23).

After arriving at the Demuzio Center, Petitioner realized that he was in the wrong vehicle, so he went back to get tools from another vehicle to open the cooler. After returning to the Demuzio Center, he got out of his vehicle, walked around the front of it, hit a patch of ice, and fell, landing on his right shoulder. (T. 24, 92).

After the fall, Petitioner noticed that he had pain and could no longer raise his arm. He went to Carlinville Area Hospital emergency department later that day for evaluation. (T. 25). Petitioner notified Ms. Byots about 20 minutes after the fall that he had fallen and was hurt. (T. 26).

Mr. Levora testified that he cannot raise his right hand above his shoulder without help, that he doesn't sleep well at night, and that he can't comb his hair without help. He further testified that prior to the February 17, 2024 fall, he did not experience any of these symptoms in his right arm. (T. 27)

Testimony of Regina Byots

Regina Byots testified that she has been the Director of the Carlinville Park District since 2014. In that capacity, she manages the city pool and lifeguards, hire refs and umpires for recreation league baseball and softball, she hires for soccer and manages all the leagues, and in the off season they rent the Demuzio Sports Center from the Carlinville School District, where they have an indoor soccer program. (T. 63-64).

Ms. Byots testified that on February 17, 2024, Petitioner was inactive in the Park District System. (T. 67). On that date they got to the sports center in the morning and found that they couldn't find the key to the beverage cooler. Ms. Byots contacted the employee from the night before and she could not find it. (T. 74). So, Ms. Byots called the Petitioner and asked if he could go to the Demuzio Center and cut the lock off of the beverage cooler. (T. 75).

On cross-examination, Ms. Byots testified that the Carlinville Park District is the sole lessee of the Demuzio Center during the off hours of the school district in the winter months. Respondent hosts indoor soccer there, and can rent it out for birthday parties or other events. (T. 91).

She further testified that when she called Petitioner on February 17, 2024, she did not tell him that she was calling him in their capacity as friends. (T. 91). Ms. Byots testified that the beverage cooler at the Demuzio Center was owned by Pepsi, and was leased and controlled by the Respondent. Respondent needed the cooler unlocked to sell water, soda and/or tea, the sale of which benefitted the Respondent. (T. 92).

When asked about Petitioner's pay during the off season, Ms. Byots testified that Petitioner would tell her that "he worked so and so for two weeks, can I get paid", and she would present it to the board members and they would issue him a check from the Respondent's payroll. (T. 93).

Finally, Ms. Byots testified that Petitioner reported the fall and the injury to his right shoulder to her prior to his attending a water heater installation that same day in Litchfield. (T. 94).

Medical Treatment

Petitioner was initially seen at Carlinville Hospital on February 17, 2024. He denied any prior problems with his shoulder. He reported that he had a slip and fall at 7:30 a.m. that morning. On examination, he had limited ability to move the shoulder. Shoulder x-rays were taken and showed no acute injuries. Severe degenerative changes were noted in the AC joint. Adjacent ribs and lungs appeared to be normal. The impression was severe degenerative changes in the right shoulder. A CT scan of the upper extremity was taken that also showed no evidence of any osseous injury, but prominent osteoarthritis of the AC joint with inferiorly directed spur of the acromion. Petitioner was diagnosed with a right shoulder strain. Petitioner was discharged and recommended to follow up with a PCP to discuss an MRI with arthrogram. (PX1, p. 27-33)

On February 20, 2024, Petitioner presented at Carlinville Family Health by Nurse Practitioner Tinsley. Petitioner again reported shoulder pain after a fall while in Carlinville to open a drink machine for the Carlinville Park District. He had limited range of motion in the right shoulder. They ordered an MRI arthrogram to rule out a rotator cuff tear. (PX1, p. 5)

On March 7, 2024, Petitioner underwent the MRI arthrogram. The MRI revealed a massive 6 x 5 cm full-thickness tear of the right supraspinatus and infraspinatus with torn tendinopathic margins retracted to the glenoid, mild chronic atrophy of the supraspinatus and infraspinatus with subacute denervation of the infraspinatus, superior subluxation of the humeral head with mild glenohumeral joint chondrosis, severe right

acromioclavicular joint osteoarthritis, and insertional right supraspinatus cuff tendinopathy with partial-thickness articular sided tearing. (PX 2, p. 39-41).

a. Dr. Corey Solman Treatment Evaluation & Report

On July 3, 2024, Petitioner presented to Dr. Corey Solman, an orthopedic surgeon at Midwest Orthopedic and Spine Specialists. (PX3) Petitioner complained of right shoulder pain and weakness. He again denied shoulder issues prior to the alleged February 17, 2024 work accident.

On physical examination, Dr. Solman found that Petitioner's right shoulder had limited range of motion. Dr. Solman further indicated that Petitioner had limited supraspinatus and external rotation strength with pain. Dr. Solman indicated that Petitioner had tenderness to palpation over the bicipital groove area. Dr. Solman found that Petitioner had a mildly positive Popeye sign. Dr. Solman noted that there was some mild pain with cross-arm adduction, as well as pain with O'Brien's sign and pain with Speed's testing.

Dr. Solman took new x-rays and reviewed prior imaging. He reviewed a CT scan of the right shoulder from February 17, 2024. Dr. Solman indicated that it showed some mild degenerative changes on the humeral head and the glenoid but no significant narrowing of the glenohumeral joint. It showed some arthritic changes in the AC joint with some superior and inferior spurring of the AC joint. Dr. Solman also reviewed the MRI of the right shoulder from March 7, 2024. Dr. Solman noted narrowing of the AC joint, supraspinatus tearing with retraction and some atrophy of the supraspinatus muscle without significant fatty infiltration, and some tearing of the infraspinatus tendon with mild atrophy.

Dr. Solman diagnosed Petitioner with a likely acute chronic rotator cuff tear with early rotator cuff tear arthropathy, as well as a possible long head biceps rupture. Dr. Solman found that Petitioner had some asymptomatic chronic tearing of the supraspinatus with some atrophy, which he noted many patients live with, but that his fall injury now involved the infraspinatus. Dr. Solman opined that the February 17, 2024 fall created an acute on chronic tear which was now involving the infraspinatus, and had made Petitioner's right shoulder significantly dysfunctional.

Dr. Solman opined that Petitioner's work-related injury on February 17, 2024, was a "substantial contributing factor in the development of this right shoulder pathology." Dr. Solman recommended a right reverse shoulder arthroplasty. Dr. Solman recommended that Petitioner be off-work. (PX3, p. 47-51).

When Petitioner was called back to work for Respondent on March 11, 2024, he testified that he has been working full duty through the date of trial. (T. 49)

Dr. Timothy Farley Section 12 Exam and Report

On July 23, 2024, Petitioner presented for a Section 12 Examination with Dr. Timothy Farley, an orthopedic surgeon, at the Respondent's request. (RX 4). Petitioner gave a history consistent with his testimony, and again denied any injury to his right shoulder prior to the accident in question, when he could move his arm fully, and felt no sensation of weakness in his right shoulder.

Dr. Farley reviewed the medical records and performed a physical examination. Upon examination, Dr. Farley noted reduced range of motion on the right shoulder. Petitioner had 4/5 strength. He had pain with Neer and Hawkin maneuvers. Petitioner reported decreased mobility, and pain at 3/10. Dr. Farley reviewed the MRI films and CT scan of the right shoulder.

Dr. Farley diagnosed Petitioner with a chronic massive tear of the rotator cuff including the subscapularis, supraspinatus and infraspinatus.

Dr. Farley opined that the work injury was not the “proximate cause” of the right shoulder rotator cuff tear. (RX4, p. 6) He noted there was advanced rotator cuff tearing in the shoulder. He noted that there was a significant amount of atrophy in the right shoulder when compared to the left shoulder. He opined that given the time it took to develop atrophy of any rotator cuff muscle following a tear, it was more likely than not that the tearing of the supraspinatus, subscapular and infraspinatus predated the alleged work accident. Further, the MRI of the right shoulder did not have reactive edema or other acute signs of injury. Moreover, Petitioner denied any bruising, swelling or other findings within the right shoulder at the time of the injury.

Dr. Farley disagreed with Dr. Solman’s opinion that Petitioner had acute-on-chronic tear based on the lack of bruising/swelling, as well as the radiographic and physical exam findings.

Dr. Farley opined that a reverse right shoulder surgery based on the radiographs and MRI films would be reasonable, but unrelated to the Petitioner’s February 17, 2024, slip and fall.

Credibility Assessment

The Arbitrator finds that Petitioner’s testimony was consistent and supported by the record. Ms. Byots’ testified that the Petitioner was the kind of person you can count on, like when Petitioner testified that he looked at a faucet for her mother, because she added, that is just the “type of person that he is.” (T. 41, 79). Respondent’s witness’ testimony further supports Petitioner’s credibility. Given the record taken as whole, the Arbitrator finds the Petitioner to be a very credible witness.

CONCLUSIONS OF LAW

Issue (B) Was there an employee-employer relationship? The Arbitrator finds as follows:

There is no dispute that Petitioner’s regular work season ran from approximately March through November of each year, essentially Spring through Autumn, during which time Petitioner was active on the payroll of the Respondent.

There is also no dispute that during the Winter off-season, Petitioner would be placed on inactive payroll status. However, during the Winter, Petitioner performed work for Respondent for which he was compensated once he reported that he had accumulated enough hours. Petitioner had performed work in the off-season in each of the four years preceding the date of the alleged accident, and was paid by Respondent for his hours worked. (PX. 9).

Until October 2024, eight months post-accident, Petitioner was never asked to turn in his keys during the off-season. He was never terminated at the end of the season or asked to reapply for employment in March of the following year. He simply received a message in early March advising him of when his full-time job duties would resume.

There is no dispute that Ms. Byots called Petitioner on the morning of February 17, 2024 and asked him to come to the Demuzio Center to open a locked beverage cooler so that Respondent could sell beverages to earn money during the indoor soccer games that Respondent was hosting.

In Petitioner’s job description, there is no seasonal limitation outlined for his employment relationship. Moreover, it specifically states that “other duties as assigned by Park District Administrator” is a requirement. (PX 7). Additionally, Petitioner did not file for unemployment during the winter off-season.

When Petitioner received the call to come unlock the cooler in February 2024 before his regular work season began, he understood the request to be within the scope of his job duties, as he had been called to come unlock things before, and had worked as needed in the off-season in each of the last four years, and been paid for his time. (T. 16-23, PX. 9). Ms. Byots testified that she did not advise the Petitioner otherwise. (T. 91). Notably, Petitioner had also performed tasks, as a family friend, for Ms. Byots' mother in the past. (T. 41).

As Petitioner worked for Ms. Byots at the park district, and was also a family friend, the line between the two could be blurry in some situations, but not this one. Ms. Byots' asked Petitioner to perform a task at a facility being operated by Respondent, opening a beverage container, so that Respondent could generate income during the course of its operations.

The record is clear, an employee-employer relationship existed between the Petitioner and Respondent during his regular schedule from Spring through Fall; and during the Winter when he was called into work, on an as needed basis, by Respondent, as outlined in Petitioner's job description. (PX 7)

The Arbitrator finds that an employee-employer relationship existed.

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 Illinois Supreme Court in *McAllister vs. Illinois Workers' Comp. Comm'n*, 2020 IL 124848 (2020), considered whether an injury is directly linked to one of the three types of employment-related risks:

- (1) acts an employee is instructed to perform by their employer,
- (2) acts an employee had a common-law or statutory duty to perform, and
- (3) acts that the employee might reasonably be expected to perform incident to their assigned duties. *Id.* at ¶ 46.

The Court explained that such employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related tasks which contributes to the risk of falling." *Id.* at ¶ 40.

The Court in *McAllister* confirmed their decision in *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill.2d 52 (1989), which held that prior to conducting a neutral-risk analysis of whether the employee was exposed to a greater risk than the public, it must first be determined if the injury arose out of an employment-related risk. *McAllister*, 2020 IL 124848 at ¶ 60. If the injury did arise out of such a risk, its level of risk to an employee as compared to the general public is irrelevant. *Id.* at ¶ 61.

In *Caterpillar*, the Court held that an injury arises out of one's 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. 129 Ill. 2d 52, 58. "An activity is incidental to the employment if it carries out the employer's purposes or advances its interests, either directly or indirectly." *Sears, Roebuck & Co. v. Industrial Comm'n*, 79 Ill. 2d 59 (1980).

Moreover, the Court in *McCallister*, quoting *Wise v. Industrial Comm'n*, reiterated that "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." *McCallister*, 2020 IL 124848 at ¶ 34; 54 Ill. 2d 138, 142 (1973).

Petitioner testified that he understood Ms. Byots, Respondent's director's, request to come and unlock the beverage cooler to be within the scope of his job duties, as he has been called to come and unlock things in the

past. (T. 22-23). Further, Petitioner testified when he had previously been called to perform tasks during the off season, it was Ms. Byots who had called him with such requests, and he had been paid for his time. (T. 23).

Ms. Byots testified that when she called Petitioner on February 17, 2024, she did not tell him that she was calling him in his capacity as a friend, she only asked if he could come to the Demuzio Center to cut the lock off of Respondent's soda cooler. (T. 75, 91). She further testified that the cooler was leased and controlled by the Respondent, and they needed the cooler unlocked so they could sell beverages from it, the sale of which benefitted the Respondent. (T. 92).

After getting the proper tools to perform the Respondent's requested task, Petitioner got out of his vehicle at the Demuzio Center, walked around the front of his vehicle, hit a patch of ice, and fell, landing on his right shoulder. (T. 24, 92). Petitioner was only at the Demuzio Center that day to complete a task at Respondent's request, that would directly benefit the Respondent. (T. 24, 32, 92)

Petitioner was performing acts incident to his assigned duties, for the advancement of Respondent's interests. Moreover, Petitioner's actions incident to performing his assigned task were reasonable and foreseeable. Therefore, the Petitioner has met his burden, and proven that he sustained an accident arising out of and in the course of his employment by Respondent.

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

The Petitioner must show that some act or phase of employment was a causative factor in her resulting condition of ill-being. *Sisbro Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). A claimant may be entitled to benefits under the Act even though they suffer from a preexisting condition of ill-being. *Id.* at 205. "[I]n preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.* at 204–05.

Petitioner was seen in the emergency room of Carlinville Area Hospital on the date of his injury, reporting pain and decreased range of motion since a fall that morning. A subsequent MRI performed on March 7, 2024 revealed a massive 6x5cm full-thickness tear of his rotator cuff. (PX2, p. 41). Petitioner denied any prior issues with his right shoulder, and no evidence was included in the record of prior complaints or medical treatment for his right shoulder. (T. 27)

When Petitioner followed up with orthopedic surgeon, Dr. Corey Solman, he provided a consistent history and mechanism of injury. Petitioner again reported that he had no prior issues with his shoulder, but now had problems elevating his right arm, difficulty sleeping and difficulty with work activities. (PX3, p. 47). Dr. Solman examined Petitioner and diagnosed him with an acute on previously asymptomatic chronic rotator cuff tear with early rotator cuff tear arthropathy, which he directly attributed to Petitioner's fall on February 17, 2024 *Id.* at 50. Dr. Solman determined that Petitioner likely had some chronic tearing of the supraspinatus with some atrophy, which he noted many patients live with, but that the fall now involved the infraspinatus, his shoulder was significantly dysfunctional. *Id.* at 50-51. Dr. Solman opined that Petitioner's work-related injury on February 17, 2024, was a "substantial contributing factor in the development of this right shoulder pathology." *Id.* at 50. Dr. Solman opined that Petitioner would be best served undergoing a right reverse shoulder arthroplasty. *Id.* at 51.

Respondent's examiner, Dr. Timothy Farley, agreed that Petitioner had a massive tear of the rotator cuff including the subscapularis, supraspinatus, and infraspinatus. Dr. Farley also agreed that a reverse right shoulder surgery would be reasonable. However, Dr. Farley opined that Petitioner's injury was not the "proximate cause" of his right shoulder rotator cuff tear. Dr. Farley found that there was advanced rotator cuff

tearing in the shoulder. He noted that there was a significant amount of atrophy in the right shoulder when compared to the left shoulder. He opined that given the time it took to develop atrophy of any rotator cuff muscle following a tear, it was more likely than not that the tearing of the supraspinatus, subscapular and infraspinatus predated the alleged work accident. (RX4)

The Arbitrator is persuaded by the opinion of Dr. Solman, whose opinion is consistent with the causation standard set forth in *Sisbro*. While Petitioner had a tear in his right shoulder prior to the accident, he had no pain complaints or medical treatment prior to his work injury, when the force of his body weight landed on his right shoulder. After the fall, Petitioner had ongoing and consistent complaints in his right shoulder that required immediate and ongoing medical attention. These facts support Dr. Solman's opinion that Petitioner suffered an acute on chronic injury causing a previously asymptomatic condition to become symptomatic and require medical attention.

Given the chain of events, the persuasive opinion of Dr. Solman, and the totality of the evidence, the Arbitrator finds the Petitioner has met his burden, and finds that his current condition of ill being in his right shoulder is causally related to his work accident.

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

Incorporating the above, the Arbitrator finds the medical care Petitioner received related to this claim to be reasonable and necessary. Respondent shall pay the reasonable, necessary and related medical expenses contained in Petitioner's exhibits 4 through 6, totaling \$9805.00. Respondent shall pay these medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act.

Issue (K): Is the Petitioner is entitled to any prospective medical care? The Arbitrator finds as follows:

Incorporating the above, the Arbitrator finds that the Petitioner has yet to reach maximum medical improvement, and is entitled to prospective medical treatment.

The Arbitrator finds Dr. Solman's opinions persuasive, and finds his prescribed surgical course of care is reasonable, and necessary to cure and relieve the effects of Petitioner's work injury. Respondent is ordered to provide and pay for Petitioner's prescribed medical care, pursuant to Section 8(a) and 8.2, and subject to the medical fee schedule, as well as any other reasonable, necessary and related follow-up care.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030376
Case Name	Thomas Spaulding v. Bridgestone Americas
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0332
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	Mary Massa, Todd Schroader
Respondent Attorney	Emilie Miller

DATE FILED: 8/1/2025

/s/ Maria Portela, Commissioner

Signature

DISSENT

/s/ Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS SPAULDING,
 Petitioner,

vs.

NO: 21 WC 30376

BRIDGESTONE AMERICAS,
 Respondent,

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Decision, however supplements the reasoning contained under Sections (C) & (F) with the following:

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 (2006); see also *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill.2 524, 529-30 (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 (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 (1982).

Petitioner testified that he worked a job that involved a fair bit of walking and some going up and down 15" steps. (T. 10, 13) However, there is no indication that he informed his treating physician, Dr. Novotny, what his job duties were or that he related his pain complaints to his work activities.

Petitioner completed an accident report on August 4, 2021 that indicates that he sustained a specific accident on that date. (Px13) In that report, Petitioner alleges a lower back and hip injury from a twisting motion while tossing plys. He also alleges that the "concrete floor" caused injury. (Px13) However, the evidence does not support Petitioner sustained a specific accident on August 4, 2021. Moreover, the evidence does not support that Petitioner sustained a repetitive trauma injury as a result of his work activities. With respect to repetitive trauma, there is no "manifestation date" of August 4, 2021, as Petitioner did not seek medical attention on said date, nor did he stop working on that date. Additionally, the records of his primary care physician, Dr. Holschbach, clearly indicate that Petitioner had been treating for his osteoarthritis for quite some time and had been prescribed Nabumetone, prednisone burst and gabapentin. (Px1, 8/30/21)

The medical records indicate that the Petitioner suffered from a preexisting congenital condition known as hip dysplasia. (Px12, p. 7; Px2, 9/21/21) When Petitioner presented to Dr. Novotny on September 21, 2021, he indicated that this was a chronic condition from which he suffered for years and which was aggravated by all activities including lying down, changing clothes, getting out of bed, etc. (Px2) Dr. Novotny testified that the work activities identified in Petitioner's job description *could* aggravate Petitioner's underlying hip dysplasia. (Px12, p. 9) However, Dr. Novotny testified that the increased risk of having osteoarthritis would exist regardless of work activity. (Px12, p. 12)

Respondent's Section 12 examiner, Dr. King, testified that Petitioner's need for hip replacement surgery was based solely on his structural makeup and congenital hip dysplasia. (Rx2, p. 11). He further opined that regardless of work activity, Petitioner would have absolutely required hip replacement surgery at some time regardless of activity. (Rx12, p. 10) Dr. King also testified that based on his review of the records he saw nothing to indicate an aggravating event or situation had occurred. (Rx2, p. 10) Dr. King further explained that based on his review, he could not say that Petitioner's work activities were an aggravating factor in his condition. (Rx2, p. 11)

Tazewell Cnty v. Ill Workers' Comp. Comm'n, 2025 IL App (4th) 230754WC addresses repetitive injury and pain resultant from a pre-existing condition. In *Tazewell*, the Court addressed whether repetitive work activity that results solely in pain from a preexisting non-work-related condition is compensable under the Act in the absence of a concomitant worsening of the underlying non-work-related condition.

The *Tazewell* Court reasoned that the aggravation or acceleration of a preexisting condition caused by work-related activity is compensable under the Act. *Sisbro, Inc. v. Illinois Workers' Comp. Comm'n*, 207 Ill.2d 193, 204-05 (2003). The *Tazewell* Court reasoned that when a preexisting condition is asymptomatic and then becomes painful as the result of work-related

activity, that symptomatic condition is compensable under the Act as an aggravation of the preexisting condition even in the absence of an organic or structural change in the preexisting condition. When a preexisting asymptomatic condition becomes painful for reasons other than an organic or structural change or natural progression, it follows that the preexisting condition was aggravated by something. If the aggravation is work-related, such as repetitive trauma, and solely causes pain, the courts holds that the pain suffered is, in and of itself, a compensable aggravation of the preexisting condition. *Tazewell Cnty v. Ill Workers' Comp. Comm'n*, 2025 IL App (4th) 230754WC ¶31. However, in the instant case, Petitioner did not prove that his condition was aggravated nor accelerated by work. Additionally, he did not prove that the repetitive actions of his work activity caused pain for reasons other than an “organic or structural change or natural progression.”

There is no recovery where the employee's condition of ill-being is merely the result of a normal degenerative process of a preexisting condition (*Sisbro, Inc.*, 207 Ill.2d at 204-05). Instead, it is the employee's burden to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury. *Sisbro, Inc.*, 207 Ill.2d at 204-05. Absent this evidence, Petitioner's claim falls short of the line drawn in *Sisbro*.

Therefore, the Commission finds Petitioner failed to prove that he sustained a work-related injury on August 4, 2021, or that his current condition of ill-being was causally related to his work activities.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

August 1, 2025

/s/ Maria E. Portela

Maria E. Portela

MEP/dmm

/s/ Christopher A. Harris

O: 71025

Christopher A. Harris

DISSENT

Clearly, Petitioner's congenital hip condition-hip dysplasia was aggravated by his years of working as a tirebuilder for the Respondent. I would reverse the Arbitrator's denial of benefits in this case. Therefore, I respectfully dissent from the Majority's decision to affirm and adopt the Arbitrator's decision.

Petitioner suffered from congenital hip dysplasia. Respondent's section 12 examiner explained that the condition causes the individual to have more friction in the joint than someone without it. Further, movement causes the cartilage in the joint to wear away faster than in someone without the condition. On cross examination, despite denying on direct examination that Petitioner's work activities had any effect on his need for hip replacement surgery, Respondent's section 12 examiner admitted that Petitioner's movement at work was a factor contributing to his need for hip replacement surgery.

The law in this state is that the employer takes the employee as he or she is, which includes any pre-existing conditions. *Sisbro, Inc. v. Industrial Comm'n (Rodriguez)*, 207 Ill. 2d 193, 278 Ill. Dec. 70, 797 N.E.2d 665 (2003). If work activities aggravate a preexisting condition resulting in the need for treatment the claim is compensable. *Tazewell Cnty. V. Ill. Workers' Comp. Comm'n*, 2025 Il App (4th) 230754WC. Work activities causing pain are sufficient to establish an aggravation of the preexisting condition. *Id.* Finally, 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 and need for treatment. *Sisbro*, 207 Ill. 2d at 205 (citing *Rock Road Construction Co. v. Industrial Comm'n*, 37 Ill. 2d 123, 127, 227 N.E.2d 65 (1967)).

The Petitioner worked as a tirebuilder for Respondent for over 25 years. He reported to his treating orthopedic surgeon and the section 12 examiner that he worked all those years on his feet. He further testified that he would walk an average of over 5 miles a day. While many workers walk more than 5 miles a day, many walk less. Petitioner's work activities were clearly "a" cause for his need for treatment. In my view, the fact that he may have eventually needed treatment regardless of his work duties is irrelevant. His work duties contributed to his need to undergo treatment. The case is compensable. Therefore, I respectfully dissent from the Majority's Decision.

/s/ Marc Parker

Marc Parker

AUGUST 1 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC030376
Case Name	Thomas Spaulding v. Bridgestone Americas
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Emilie Miller

DATE FILED: 5/23/2024

/s/ Kurt Carlson, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

STATE OF ILLINOIS)
)SS.
 COUNTY OF BLOOMINGTON)

☐	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 Spaulding

Employee/Petitioner/ todd@beckerinjurylaw.com

v.

Bridgestone Americas

Employer/Respondent/ emiller@hennessyroach.com

Case # **21 WC 30376**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson** Arbitrator of the Commission, in the city of **Bloomington**, on **02-28-24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **08-04-21**, 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 \$ **51,324.00** ; the average weekly wage was \$ **987.00** .

On the date of accident, Petitioner was **49** years of age, *married* with **two** 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 \$ **an amount to be determined** under Section 8(j) of the Act.

ORDER

Because Petitioner's condition of ill-being of his hips has not been found to be causally related to the injury, 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.

Kurt A. Carlson

Signature of Arbitrator

May 23, 2024

FINDINGS OF FACT

History of Case

On August 4, 2021, Petitioner was a forty-nine-year-old married male with two dependents under the age of eighteen. Petitioner works for Respondent as a bias tire builder. Petitioner has worked for Respondent since April 5, 1994. (Pet's Ex. 13) Petitioner alleges that his bilateral hips replacements were caused by his repetitive job duties.

Of note, Petitioner originally seemed to claim specific loss by way of an injury report on August 4, 2021. (PX #13) But record shows that the theory of recovery was repetitive trauma.

Petitioner's Testimony

Petitioner testified he is responsible for making bias plies for off-road tires, including those used for construction and mining. (T. 8) He testified he works a twelve-hour shift from 7:00 a.m. to 7:00 p.m., fifteen days per month. (T. 14 and 20)

Petitioner testified that after attending a ten-minute meeting first thing in the morning, he begins work on his machine. He testified the machine he runs is approximately 150 feet by 150 feet and contains eleven different stations. (T. 9)

Petitioner testified he first loads material into a let-off. He testified this is done by pushing a cart on tracks loaded with material into the machine. He testified the cart is the size of a VW Bug, holds 400 to 500 yards of material, and takes approximately 20 minutes to load. (T. 10-12)

Once the material is loaded, Petitioner testified a belt takes the material to a table where it is cut by a radial arm saw. Once cut, the fabric is then sent down another belt to an air table where he assembles it with a push press. Once assembled, the ply is sent up another belt to a windup where he takes it apart and removes the ply using a cart. (T. 10)

Petitioner estimated he spends between five minutes and twenty-five minutes per station, depending on the station, and walks approximately five miles per day while operating his machine. (T. 10-11) He testified he encounters stairs while running the machine. (T. 12-13)

He testified there is one step-up to the left-off and one step-up to the windup that are each approximately fifteen inches tall. (T. 13-14) He testified there is also a staircase to the upper level, containing fifty stairs. (T. 14) He testified he does not have to use the staircase to the upper level very often. (T. 15) He estimated he goes up and down the step-up to the left-off 10 to 15 times a day but that sometimes it is as low as four. (T. 13) He did not provide an estimate regarding how many times he goes up and down the step-up to the windup, but in total testified he goes up and down steps twenty to thirty times per day. (T. 21)

Petitioner never testified that any of the above work activities caused, aggravated, accelerated, or exacerbated his pre-existing hip condition. Further, Petitioner never testified that the repetitive work activities caused him pain. While it is true, Petitioner reported a specific loss on August 4, 2021, in that he was experiencing soreness in his low back and hip that day. (T. 16) (PX #13) It is also true that Petitioner never sought medical care for that specific loss. Petitioner lost no time from work as a result of that event. At the time of the occurrence, he wrote that he had never received medical care for the injury and that he did not wish to receive outside medical treatment. (PX #13)

Medical Evidence

Nevertheless, Petitioner initially sought treatment from his primary care physician, Dr. Justin Holschbach, on August 30, 2021, when he requested referral to an orthopedist for hip pain. (Pet. Ex. 1)

Evidence of Prior Medical Treatment

Petitioner acknowledged treating for hip pain with Dr. Holschbach prior to August 4, 2021; however, those records were not admitted into evidence by either party. Upon close inspection of that medical record, one can see that in the patient's prior medical history, Mr. Spaulding had been previously prescribed Nabumetone (RELAFEN) – a highly regulated non-steroidal anti-inflammatory used primarily for osteoarthritis. (PX #1 p.1 & 4). Dr. Novotny's records show that this "pre-occurrence" medication was filled on July 20, 2021! (PX 2 p.12) Petitioner gave no history of repetitive-work activity to either Dr. Holschbach or Novotny.

Dr. Joseph Novotny (surgeon)

Dr. Holschbach referred Mr. Spaulding to Dr. Joseph Novotny whom he saw on September 21, 2021. (PX #2) Dr. Novotny noted that Petitioner presented with end-state osteoarthritis of the bilateral hips and hip dysplasia and had failed extensive conservative management and was asking to proceed with hip arthroplasty. Petitioner was diagnosed with bilateral hip dysplasia and osteoarthritis and referred for arthroplasty. (Pet. Ex. 2) Petitioner gave no repetitive work activity history to Dr. Novotny and could not identify the context of his hip pain. (PX #2 p.13) His medical records show that the most recent prescription for Nabumetone (RELAFEN) was on July 12, 2021, less than a month before the alleged date of loss. (PX #2 p.12) The court is in the dark about who prescribed this medication, but it was probably the primary treater, Dr. Holschbach.

Petitioner was scheduled for bilateral hip replacement surgery without undergoing any further conservative measures like injections, augmented medication, or physical therapy.

Petitioner underwent arthroplasty on his left hip on November 22, 2021. (PX #9).

Petitioner underwent right hip surgery on February 7, 2022. (PX #10)

On March 22, 2022, Dr. Novotny wrote that Petitioner was doing extremely well and Petitioner was released to return to work full duty effective April 1, 2021. (PX #2, p. 5-8)

Petitioner was last seen by Dr. Novotny on September 14, 2023, and was confirmed to be at maximum medical improvement. However, he was advised he would need to return every two to three years for routine follow-up and x-rays. (PX #2 p. 1-2)

Deposition Testimony of Dr. Novotny

Dr. Novotny testified in conjunction with this hearing on March 30, 2023. (Pet. Ex. 12)

Dr. Novotny testified regarding his treatment of Petitioner, including his surgeries, and causation. As it relates to Petitioner's treatment, Dr. Novotny testified Petitioner presented with bilateral end-state osteoarthritis and hip dysplasia and requested to proceed with hip replacements. (Pet. Ex. 12, p. 6) Dr. Novotny testified he then proceeded with surgery in 2021 on Petitioner's left hip and 2022 on his right hip.

Dr. Novotny testified that hip dysplasia is a congenital condition that occurs when the hip joint forms abnormally at birth, resulting in increased risk for osteoarthritis. (Pet. Ex. 12, p. 7) Dr. Novotny testified that regardless of activity, Petitioner's dysplasia increased his risk of osteoarthritis regardless of work activity. (Pet. Ex. 12, p. 12)

As for causation, Dr. Novotny was provided the following hypothetical on direct examination:

I'd like for you to assume that the shift that Tom has is from 7 a.m. to 7:00 p.m. I'd like for you to assume that when he has an initial meeting, that lasts approximately 10 to 15 minutes. At approximately 7:15 in the morning, he starts his machine up, and that during the course of a shift, he routinely travels four and a half to five miles. This travel is typically within an area of about the size of a house. In that area, there's several steps that are 15 inches high. At all points, he is moving from one side of this machine to the other to make adjustments or to feed material into the machine. During the course of that time prior to his surgeries, he was pushing material. He was taking material on an air hockey table and sidestepping to feed it into the machine. Again, during the course of the day, he was walking and going up sets of these stairs constantly. He had 10-minute break every two hours, and then he had a 20-minute lunch. (Pet. Ex. 12 p. 8)

In response, Dr. Novotny testified it is reasonable that Petitioner's underlying job description aggravated his underlying hip dysplasia. (Pet. Ex. 12, p. 9) However, on cross examination Dr. Novotny admitted Petitioner most likely would have required surgery regardless of his work activities due to his hip dysplasia. (Pet. Ex. 12 p. 12-13)

Deposition Testimony of Dr. David J. King

Dr. David King testified in conjunction with this hearing on January 19, 2024. (Rep. Ex. 2)

Dr. King testified that he conducted a review of Petitioner's medical records at Respondent's request on August 5, 2023. (Rep. Ex. 2, p. 6) Dr. King testified he reviewed Dr. Novotny's medical records, Petitioner's operative reports, and the transcript of Dr. Novotny's deposition.

Dr. King testified he agreed with Dr. Novotny's assessment for Petitioner of bilateral hip dysplasia and progressive degenerative osteoarthritis, as well as his need for surgery. (Rep. Ex. 2, p. 8) Dr. King explained that hip dysplasia is where the hip socket does not correctly form at birth causing disruption of forces in the hip, which lead to the development of osteoarthritis. (Rep. Ex. 2, p. 9)

Dr. King reviewed the hypothetical provided to Dr. Novotny and testified that Petitioner's work activities in no way caused his need for surgery. (Rep. Ex. 2, p. 9-10) Dr. King testified that regardless of work activity Petitioner would have absolutely required hip replacement regardless of activity. Dr. King testified he was surprised Petitioner did not require hip replacement sooner as most cases of dysplasia require placements in the 30s or 40s. (Rep. Ex. 10-11)

On cross-examination, Dr. King was asked to address the movement required of Petitioner's work activities and the impact on his development of osteoarthritis. Dr. King testified Petitioner's need for surgery is based solely on his structural makeup and congenital dysplasia. (Rep. Ex. 2, p. 14-15)

CONCLUSIONS OF LAW

(C) & (F): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? Is Petitioner's current condition of ill-being causally related to the injury?

This Arbitrator finds Petitioner's current condition of ill-being is not casually related to the injury. An injury must arise out of and in the course of claimant's employment. 820 ILCS 305/1(d). Case law interpreting the Act makes it clear that both elements must be present at the time of the accidental injury to justify compensation.

In theory, the last "repetitive act" that Petitioner performed was on August 4, 2021, when the incident report was filled out. So, the first element of "in the course of" seems to have been met, as relates to the time, place, and circumstance of Petitioner's employment. As an aside, the Arbitrator notes that the accident report only related to hip pain - in the singular. While it is true that the duties Petitioner performed over the last 30 years were ones that "he might reasonably perform" or "were instructed to perform," It is also true that Petitioner never told the court or his physicians those activities caused him problems or became painfully difficult over time. McAllister v. Illinois Industrial Commission 181 N.E.3d 656, 450 Ill.Dec. 304 (2020) Since there is no link between Petitioner's repetitive work activities and his bilateral hip condition, Petitioner has failed to prove that an accident occurred.

There is no dispute by either Dr. Novotny or Dr. King that Petitioner's bilateral congenital hip dysplasia would have resulted in his need for hip replacements regardless of his work activities. Dr. Novotny's records show that most any physical activity was an aggravating factor including; laying down, changing clothes, getting out of bed and standing. (PX #12 p.1) While it is true that Dr. Novotny testified that Petitioner's hypothetical work activities could aggravate hip dysplasia, he did not state that the activities led to his need for bilateral hip replacement surgery. (PX #12 p.13) It bears repeating that Petitioner never testified that that work activities caused an increase in bilateral hip pain and he never discussed his work activities with his treater. As such, Petitioner has not met his burden of proving accident or that his current condition is causally related to the injury.

It appears to the Arbitrator that the need for bilateral hip replacement surgery was contemplated by the Petitioner and his primary physician prior to August '21. Petitioner had a recent prior medical history regarding his arthritis and those records appear to have been withheld. Further, no attempt at conservative treatment in the form of injections, augmented medication or physical therapy was contemplated before surgery. Petitioner was not taken off work until his first hip surgery and he was scheduled for bilateral hip replacement immediately.

As a result of the above, Petitioner failed to prove that his accident "arose out of his employment" as there is no testimony stating the repetitive work activities caused pain or difficulty. In looking at the entire record, it appears that the risk was personal (congenital) in nature and there is no compelling evidence that his repetitive work activities caused, accelerated or permanently exacerbated his condition and the need for bilateral hip replacement.

(J): Has Respondent paid all appropriate charges for reasonable and necessary medical services?

As Petitioner's current condition of ill-being has been found not to be causally related to the injury, related medical services are denied.

(K): Is Petitioner entitled to TTD benefits?

As Petitioner's current condition of ill-being has been found not to be causally related to the injury, TTD is denied.

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

As Petitioner's current condition of ill-being has been found not to be causally related to the injury, PPD is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC031700
Case Name	Roberto Cerda v. RG Construction Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0333
Number of Pages of Decision	26
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Adam Maciorowski

DATE FILED: 8/1/2025

/s/ Christopher Harris, Commissioner

Signature

DISSENT

/s/ Marc Parker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERTO CERDA,

Petitioner,

vs.

NO: 17 WC 31700

RG CONSTRUCTION SERVICES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability benefits ("TTD"), maintenance benefits, permanent partial disability, and penalties, 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.

A penalty under section 19(l) of the Act is like a late fee, and it is mandatory if the payment is late and the employer cannot show adequate justification for the delay. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552, 234 Ill. Dec. 205 (1998). When the employer relies on responsible medical opinion or when there are conflicting medical opinions, penalties are not usually imposed. *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 302, 412 N.E.2d 468, 470, 45 Ill. Dec. 117 (1980). The relevant question that must be asked is "whether the employer's reliance was objectively reasonable under the circumstances." *Electro-Motive Division v. Industrial Comm'n*, 250 Ill. App. 3d 432, 436, 621 N.E.2d 145, 190 Ill. Dec. 276 (1993). Likewise, when "determining whether an employer has 'good and just cause' in failing to pay or delaying payment of benefits, the standard is reasonableness." *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 279 Ill. Dec. 531 (2003). "Where a delay has occurred in payment of workmen's compensation benefits, the employer bears the burden of justifying the delay [citation omitted], and the standard**is one of objective reasonableness" in the belief of the employer. *Board of Education v. Industrial Comm'n*, 93 Ill. 2d

1, 9, 442 N.E.2d 861, 66 Ill. Dec. 300 (1982). An employer's belief is objectively reasonable "only if the facts which a reasonable person in the employer's position would have would justify it." *Id.* at 10. The propriety of imposing a penalty under section 19(l) is a question of fact for the Commission, and its decision will not be reversed unless it is against the manifest weight of the evidence. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 123, 561 N.E.2d 623, 630, 149 Ill. Dec. 253 (1990).

The standard for awarding penalties under section 19(k) is higher than the standard under 19(l). *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC. Section 19(k) of the Act provides for penalties where there has been an "unreasonable or vexatious" delay of payment or an "intentional underpayment of compensation." 820 ILCS 305/19(k). To obtain penalties under section 19(k), it is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. *McMahan*, 183 Ill. 2d at 515. Instead, section 19(k) penalties are "intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id.* The calculation of a penalty award under section 19(k) is simply a mathematical computation of 50% of the amount payable at the time of the award. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 22.

The Commission finds that penalties pursuant to Sections 19(l) and 19(k) are appropriate for the Respondent's failure to pay TTD benefits from July 29, 2018 through August 21, 2018. The Commission agrees with the Arbitrator that the Respondent was not justified in terminating TTD benefits between July 29, 2018 and August 21, 2018.¹

The Commission disagrees, however, with the Arbitrator's finding that it was unreasonable for the Respondent to rely on Dr. Shah's full duty release of the Petitioner on August 21, 2018. Dr. Shah, who was Petitioner's treating physician and performed both surgeries, examined the Petitioner on August 21, 2018 and noted that the Petitioner was doing well, with improved strength and range of motion. Although there were some limitations in motion, Dr. Shah found that the Petitioner could return to work without restrictions. Dr. Shah also recommended an FCE, which was performed December 21, 2018. In his later deposition, Dr. Shah confirmed that he placed Petitioner at MMI as of August 21, 2018. Petitioner then began treating with Dr. Rhode on August 29, 2018. Dr. Rhode took Petitioner off work at that time.

On August 6, 2021, Petitioner filed a Penalty Petition seeking penalties against Respondent for its refusal to pay benefits. In its response dated August 9, 2021, Respondent notified Petitioner that the denial of benefits was based, in part, on the fact that Petitioner had been released by Dr. Shah.

The Commission finds that the Respondent's decision to deny benefits after August 21, 2018 was not unreasonable or vexatious. The denial was based on Dr. Shah's medical opinion that Petitioner was at MMI, which provided the Respondent with a good faith basis to dispute liability. Therefore, penalties are not warranted for the denial of benefits after August 21, 2018.

¹The unpaid benefits cover 3-3/7 weeks at a TTD rate of \$1,115.62 totaling \$3,824.35. There is no evidence that any medical bills were due or owing during this time.

Based on the above findings, the Commission finds Petitioner is entitled to penalties pursuant to Section 19(l) in the amount of \$720.00 as Respondent failed to provide adequate justification for the refusal to pay TTD benefits from July 29, 2018 through August 21, 2018- a total of 24 days of unpaid benefits.

Additionally, the Commission awards the Petitioner \$1,912.18 under Section 19(k), which represents 50% of the TTD due between July 29, 2019 and August 21, 2018.

All else if affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed October 16, 2024, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of \$720.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner penalties pursuant to Section 19(k) of the Act in the amount of \$1,912.18.

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.

August 1, 2025

CAH/tdm
d: 7/24/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

DISSENT

I would have affirmed and adopted the well-reasoned decision of the Arbitrator in its entirety. Therefore, I respectfully dissent.

/s/ Marc Parker
Marc Parker

AUGUST 1 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	17WC031700
Case Name	Roberto Cerda v. RG Construction Services Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Adam Maciorowski

DATE FILED: 10/16/2024

/s/ William McLaughlin, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 16, 2024 4.27%

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**

Roberto Cerda
 Employee/Petitioner

Case # 17 WC 31700

v.

Consolidated cases: _____

RG Construction Services Inc.
 ,Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William McLaughlin, Arbitrator of the Commission, in the city of Chicago, on 8/7/2024. 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 1, 2017, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$87,018.36; the average weekly wage was \$1,673.43.

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

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

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

Respondent shall be given a credit of \$26,296.74 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$26,296.74.

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

ORDER

Petitioner sustained permanent partial disability to the extent of 50% loss of Hand for 102.5 weeks at the maximum rate of \$790.64 for a total award of \$81,040.60.

Respondent shall pay the medical bills directly to the provider as due and owing pursuant to the fee schedule. Respondent shall receive a credit for all amounts paid for the reasonable, necessary, and causally related bills that it has paid.

Respondent shall pay TTD from September 2, 2017, to January 23, 2018, a period of 20 3/7 weeks at the TTD rate of \$1,115.62 (2/3 of \$1,673.43 AWW), with Respondent to receive a credit for the 20 3/7 weeks paid.

Respondent shall pay TTD/maintenance from May 7, 2018 through July 8, 2018, a period of 9 weeks at the TTD rate of \$1,115.62 (2/3 of \$1,673.43 AWW).

Respondent shall pay TTD from July 9, 2018, through August 21, 2018, a period of 6 2/7 weeks at the TTD rate of \$1,115.62 (2/3 of \$1,673.43 AWW), with Respondent to receive a credit for the 3 weeks paid.

Respondent shall pay TTD/maintenance from August 28, 2018, through July 25, 2021, a period of 151 4/7 weeks at the TTD rate of \$1,115.62 (2/3 of \$1,673.43 AWW).

Respondent shall pay TTD from July 25, 2021, through May 14, 2023, a period of 94 weeks, at the differential TTD rate of \$542.99.

Petitioner is entitled to penalties of \$117,781.43 as provided by §19(k) of the Act, and \$10,000.00 as provided in §19(l) 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

October 16, 2024

IN THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

ROBERTO CERDA	)	
Petitioner,	)	
	)	
v.	)	Case No. 17 WC 31700
	)	
RG CONSTRUCTION SERVICES INC.,	)	
Respondent.	)	

Findings of Fact

The parties stipulated that Petitioner suffered a work-related injury on September 1, 2017. (Tr. 33)

Petitioner is a 50-year-old construction carpenter for Respondent, RG Construction Services, Inc. He has worked for Respondent for 26 years. Petitioner works primarily as a drywall carpenter but occasionally performs other carpenter activities. (Tr. 30- 31). Petitioner's work for Respondent requires him to pick up sheets of drywall, place them against the wall, hold them up with both hands, and drill towards the wall and ceiling. (Tr. 31). The job requires him to lift a minimum of 98 pounds and hang 40-65 sheets of drywall each day. (Tr. 32-33).

On September 1, 2017, Petitioner was working placing drywall to frame the ceiling when he fell five feet from a scaffold. (Tr. 34). As a result of the fall he injured his hand, wrist, ribs, and head. (Tr. 34). He was taken by ambulance to the emergency department at Northwestern Memorial Hospital, where he underwent an X-ray of his left wrist and ribs and a CT of his head. (Tr. 34-35). The examining Doctor, Dr. Nahzine Shakeri noted a left wrist deformity splinted in the field, left chest and left wrist pain, and concerns for head injury. (PX 1, pg. 842, 851, 947, 959, 1313, 1345, 1349). Petitioner underwent CT scans of the brain and left wrist and X-Ray of the left wrist. (PX 1, pg. 844, 911).

Petitioner was admitted to the hospital from the ER. A September 2, 2017, CT of the brain showed 4.5mm hyperdensity given trauma and shape could represent small focus of parenchymal hemorrhage and additional imaging was recommended. (PX 1, pg. 957). An x-ray of the left wrist showed a comminuted fracture of the distal radius with evidence of intra-articular extension, now status post reduction more neutral alignment of the distal radial fracture. (PX 1, pg. 957). An x-

ray of the left shoulder showed irregularity of the lateral left fifth rib which may represent nondisplaced fracture, no acute fracture or malalignment in the left shoulder. (PX 1, pg. 957).

On September 3, 2017, Petitioner was discharged from the hospital with a diagnosis of traumatic brain injury, traumatic subarachnoid hemorrhage, left wrist fracture and left rib fracture. (PX 1, pg. 683). He was advised to follow up with surgeon, Dr. Chiraq Shah. (Tr 35).

Petitioner followed up with surgeon, Dr. Chiraq Shah on September 6, 2017. (PX 1, pg. 461, 466-467). Dr. Shah noted numbness and tingling to Petitioner's thumb, index finger, and long finger. Petitioner was referred for surgery. Dr. Shah diagnosed a left grade 1 open intra-articular distal radius fracture, and noted that due to displacement, significant comminution, and progressive collapse of his reduction surgery is best. (PX 1, p. 461).

On September 7, 2017, Petitioner underwent surgery on his left wrist at Northwestern Memorial Hospital, performed by Dr. Shah. (Tr. 36, PX1 p. 18600. The operative diagnosis was left grade open distal radius fracture and left carpal tunnel syndrome. Dr. Shah performed an open reduction and internal fixation, left grade I open distal radius fracture with irrigation and debridement and a left carpal tunnel release. (PX 1, pg. 1860). Surgery included implantation of Acumed Acu-loc volar distal radius plate, 2 k-wires, 2.3 mm screws and 3.5 mm non locking screws. (PX 1, pg. 573 and 1495).

On September 8, 2017, Petitioner reported to the emergency department at Northwestern Medicine with severe left wrist pain. (PX 1, pg. 455). He was given a custom left volar wrist orthosis to immobilize the left wrist and protect the ORIF. (PX 1, pg. 457). Petitioner also saw Dr. Shah the same day noting pain was better since going to the ER for pain control at which time Dr. Shah placed a forearm splint to continue immobilization and instructed Petitioner to remain off work. (PX 1pg. 451).

On September 11, 2017, Petitioner was evaluated by Dr. Potts at Northwestern Medicine for his head injury with possible head trauma, and traumatic hemorrhage. Dr. Potts recommended a MRI and noted that the CT of Petitioner's head revealed a 4mm hemorrhage. (PX 1, pg. 447, 657, 681).

On September 13, 2017, Petitioner participated in physical therapy at Northwestern Medicine with therapist Cynthia DeStefano, PT/OT. (PX 1, pg. 443). DeStefano outlined short-term and long-term goals. improve functional use of extremity, increase L2-5 finger motion,

On September 15, 2017, Ms. DeStefano recommended OT 1-2 times a week for 12 weeks. (PX 1, pg. 441).

Petitioner presented to Dr. Shah on September 22, 2017. Dr. Shah noted digital stiffness and discussed the importance of therapy to work on active and passive range of motion. (PX 1, pg. 436. Tr. 36-37). Petitioner participated in physical therapy with Cynthia DeStefano throughout September, October, November, and December of 2017. (Tr. 37).

Petitioner returned to Dr. Shah on October 18, 2017, with continued improvement with range of motion and no significant pain. (PX 1, pg. 3970). Petitioner was instructed to continue aggressive range of motion for his digits and wrist, and work on tendon excursion and progressive strengthening. (PX 1, pg. 397). Dr. Shah placed a 10-pound weight restriction and discussed plate positioning and potential future surgery for hardware removal. (PX 1, pg. 397).

On December 13, 2017, Petitioner returned to Dr. Shah with complaints of persistent pain. (PX 1, pg. 317-19). Dr. Shah recommended continued aggressive therapy for active and passive range of motion, and a possible cortisone injection or Medrol dosepak for ulnar-sided wrist pain, as well as an MRI. He continued Petitioner's 10lb lifting restriction. (PX 1, pg. 319). The same day at therapy, Ms. DeStefano, Petitioner demonstrated max effort and remained compliant, but his pain was a limiting factor. Therapy was placed on hold pending Petitioner's Section 12 examination. (PX 1, pg. 317, 324).

Petitioner first §12 examination with Dr. Atluri

On December 19, 2017, Petitioner presented to Dr. Prasant Atluri, pursuant to §12 of the Act. Dr. Atluri found that Petitioner sustained a grade 1 open fracture of his left distal radius that was treated by Dr. Shah with an open reduction and internal fixation of the distal radius. Dr. Atluri also noted that Petitioner had carpal tunnel and that he underwent a carpal tunnel release. Dr. Atluri found that Petitioner developed frozen shoulder syndrome in his left shoulder. and noted inconsistencies on his exams that would suggest symptom magnification, but that Petitioner clearly has functional deficits in his left-hand including stiffness in his fingers. Dr. Atluri recommended physical therapy two to three times per week for an additional six to eight weeks for both the hand and shoulder and to monitor improvement by the end of that time frame. Dr. Atluri stated that

Petitioner's treatment to that point had been reasonable and appropriate, and that further treatment was reasonable, as Petitioner had not reached maximum medical improvement.

Dr. Atluri opined on the cause of the injury was work related. (RX 6 and 7).

Petitioner continued physical therapy on December 20, 2017, through February 8, 2018, with various complaints of pain and stiffness. (PX 1)

While undergoing PT, Petitioner returned to work light duty on January 29, 2018. Petitioner worked light duty for Respondent from January to March 2018. His duties included placing insulation in the walls and caulking. (Tr. 38-40). Petitioner testified he had a lot of problems with his hands while placing the sand caulk with the pump, which he reported to Dr. Shah and his physical therapist. (Tr. 38-40).

On March 9, 2018, Petitioner was formally discharged from therapy due to Respondent's insurer's denial of services. Petitioner was instructed to follow up with Dr. Shah in 2 weeks. Ms. DeStefano recommended a FCE for permanent work restrictions as client has not achieved lifting capability compatible with his job requirement. (PX 1, pg. 1653 and 1669).

Petitioner was denied worker's compensation service on March 9, 2018. He had a follow up with Dr. Shah, who also recommended a functional capacity evaluation for permanent restrictions because Petitioner had not achieved lifting capability that was compatible with his job restrictions. However, a FCE was authorized. Petitioner was denied service again on March 16, 2018.

After an examination with Dr. Shah, on March 20, 2018, Dr. Shah recommended Petitioner return to work full duty, but cautioned that Petitioner may require hardware removal in the future. (PX1 p. 1646, Tr. 38)

Petitioner returned to work but still experienced problems with his hand, wrist, and arm while working. (Tr 39). After installing insulation, wall framing and barriers, Petitioner would leave work with a sore hand. The joints on his fingers would cramp and he would lose mobility moving his hand forward and back. (Tr. 39-41).

On March 27, 2018, one week after his full duty release, Petitioner called Northwestern Medicine to inform Dr. Shah he still had pain in his hand. (PX 1, pg. 1639).

Approximately three weeks of returning to work full duty, Petitioner was laid off work and told there was no work for him. (Tr. 40).

On May 9, 2018, Petitioner returned to Dr. Shah with continued pain over the ulnar aspect of his wrist with heavy lifting activities and complained of pain with gripping and use of heavy equipment. (PX1, pg. 159-160). Dr. Shah placed Petitioner on work restrictions of 25 pounds with continued use of his splint. (PX 1, pg. 160, Tr. 41).

On June 11, 2018, Dr. Shah sent a letter requesting authorization for surgery, and surgery was approved on June 15, 2018.

Petitioner underwent surgery removing the retained hardware on his left wrist on July 9, 2018, with Dr. Shah at River North Same Day Surgery Center. (PX 1, pg. 126, Tr 42).

After the second surgery, Petitioner returned to Northwestern Medicine and saw Ms. DeStefano on July 24, 2018, for suture removal and scar control, at which time he complained of stiffness in multiple joints, muscle weakness, and retained orthopedic hardware. (PX 1, pg. 79-104).

On August 7, 2018, Petitioner complained of burning with weight bearing and continued stiffness, weakness, and pain. He had reported no improvements at his next appointment on August 14, 2018. (PX 1, pg. 79-104).

On August 21, 2018, based on Petitioners continued complaints of pain especially with extreme wrist extension and radial/ulnar deviation and complaints of stiffness in multiple joints and weakness, Dr. Shah recommended an FCE, and Petitioner was released full duty, pending the results of the FCE. (PX1 p. 59, 70, Tr. 42).

Dr. Shah's deposition testimony

Dr. Shah testified that when he saw Petitioner for the first time after his injury on September 6, 2017, Petitioner had rib fractures, a possible head injury, and a Grade I open left distal radius fracture. (RX7 pp. 7-8). Dr. Shah testified that x-rays showed an intraarticular fracture of Petitioner's distal radius and an alignment with slight shortening. (RX7 p. 11). He diagnosed Petitioner with an open fracture with displacement and operative intervention in the

form of an open reduction internal fixation and discussed proceeding with a carpal tunnel release. (RX7 p. 10-11). After surgery, Dr. Shah diagnosed Petitioner with a Grade I open distal radius fracture and said that he was status post reduction with a loss of reduction. (RX7 p. 10-11).

After the second surgery on July 9, 2018, Dr. Shah opined that Petitioner reached maximum medical improvement as of August 21, 2018, and again released him to full duty work. (RX7 p. 20-21).

Petitioner began treatment with Dr. Blair Rhode at Orland Park Orthopedics on August 29, 2018.,

Dr. Rhode noted Petitioner had a lack of motion in his left wrist as well as pain secondary to an injury at work, and recommended Petitioner restart physical therapy and if he failed to improve, undergo an FCE. Petitioner was taken off work. (PX 3, pg. 117-118, Tr 43-44).

Petitioner returned to physical therapy with Kerwin Yenter, from September 4, 2018. Through September 25, 2018, Mr. Yenter continually noted Petitioner was limited by pain, decreased range of motion, and decreased strength, and Petitioner was dysfunctional in his ability to perform tasks necessary for normal work function and activities of daily living. (PX 3, pg. 101-115).

On September 28, 2018, Petitioner returned to Dr. Rhode who recommended continued physical therapy and consideration of FCE. (PX 3, pg. 98-99).

Petitioner continued physical therapy on October 2, 2018, through October 24, 2018, it was noted that Petitioner was making significant gains toward goals and was on track regarding normal and expected progression but was limited by pain, decreased range of motion and decreased strength. (PX 3, pg. 83- 97). Petitioner testified he felt relief from physical therapy, but that his pain never went away. (Tr. 44).

On October 24, 2018, Petitioner returned to Dr. Rhode with pain over the radial side, poor wrist movement, and limited extension and flexion. Dr. Rhode noted that Petitioner's condition is permanent and recommended an FCE. (PEX 3, pg. 80).

FCE

Petitioner underwent a Functional Capacity Evaluation on December 21, 2018. The evaluation yielded valid results, and Petitioner had limitations including decreased grip and upper

extremity strength. Petitioner reported increases in left ulnar side wrist pain during grip screen, waist to floor lift, waist to crown, and front carry. He also noted ventral wrist discomfort during heavier lifting on waist to floor lift and front carry. (PX 3)

Based on the FCE. Dr. Rhode placed Petitioner on permanent restrictions of modified medium heavy work with an overhead lift of 10-20 pounds. Dr. Rhode found Petitioner was medically a candidate for vocational rehabilitation. (PX1 p. 75-76).

Second FCE

Based on follow up appointments with Dr. Rhode which showed the worsening conditions, DR. Rhode ordered another Functional Capacity Evaluation, which was conducted on December 4, 2020. The results of the December 4, 2020, FCE remained the same as the results from the first FCE on December 21, 2018. (PX3 p. 34-36).

Third FCE

On February 4, 2021, Petitioner underwent a baseline FCE performed by Wendy Urteaga, DPT at Athletico Physical Therapy. (EX 4, pg. 4).

Dr. Rhode assessed Petitioner again on February 9, 2021, and reviewed the FCE results. Dr. Rhode noted the new FCE was more restrictive than the prior. He therefore reduced Petitioner's permanent restrictions to light/medium with a 10–20-pound overhead limitation. Dr. Rhode found that Petitioner had reached maximum medical improvement. (PX3 p. 47).

Second §12 examination with Dr. Atluri

Petitioner was examined by Respondent's §12 examiner, Dr. Atluri, again at the request of Respondent's insurance company on July 9, 2021. REX4, REX5 p. 24, TR 45. Dr. Atluri found the FCE results were valid but concluded they did not match the clinical findings at his evaluation. (RX5 p. 32). Dr. Atluri reported that Petitioner had sustained a traumatic open distal radius fracture in his left wrist that was complicated by acute carpal tunnel syndrome. Dr. Atluri stated that the restrictions assigned by Dr. Shah were reasonable and necessary, but that the additional diagnoses from Dr. Shah on September 24, 2021, were not causally related to the work accident. (RX5 p. 33,

37-38). Dr. Atluri believed Petitioner had reached maximum medical improvement. and noted Petitioner did not require work restrictions. (RX5 p. 33).

On September 24, 2021, Petitioner returned to his surgeon, Dr. Shah. Petitioner reported that he had started a new job and had worsening pain over the radial aspect of his wrist and a catching sensation in his left long finger. Dr. Shah diagnosed left department tenosynovitis, mild radioscapoid arthrosis and left long trigger finger and instructed Petitioner to use his splint while working and underwent a corticosteroid injection at the base of his left long finger. (PX 1, pg.8-9).

Dr. Atluri third §12 report

Respondent's §12 examiner, Dr. Atluri, issued a third on November 12, 2021, after Dr. Shah updated his records to include symptomatic triggering of the left middle finger as well as de Quervain's extensor tenosynovitis involving the Petitioner's left wrist. Dr. Atluri opined that the condition diagnosed and treated at the September 24, 2021, visit was a new diagnosis, and therefore not related to the September 1, 2017, injury. He stated that his opinions, including those regarding restrictions stemming from the September 1, 2017, work accident, otherwise remained unchanged. (RX4).

Self-directed job search

Petitioner began a self-directed job search after his hardware removal surgery. (Tr. 50). Arbitrator notes that Petitioner's Exhibit 8 includes Petitioner's self-directed job logs, which are in Spanish. However, it appears to the Arbitrator that the job contacts, dates, and times represent a self-directed job search. As a result of Petitioners job search, petitioner found and began a job at Amity Packaging. (Tr 50-51). His job duties included placing labels on food bags and putting together boxes of small cartons. The heaviest weight he lifted at Amity was about five pounds. Petitioner testified he was able to do the job but would return home with pain in his hand. (Tr. 52). Petitioner beginning employment with Amity on August 6, 2021, and ended May 14, 2023. Petitioners' earnings were \$76,466.43 during that time period. (PX7).

Petitioner saw Dr. John Fernandez, an orthopedic surgeon at Midwest Orthopedics at Rush in Chicago on April 27, 2022. (PX5 p. 118-23, Tr 44-45).

Dr. Fernandez's diagnosis was an open fracture of the distal radius with carpal tunnel syndrome. (PX 5, pg. 121). Dr. Fernandez characterized the current symptoms as residual stiffness and pain at the left wrist secondary to posttraumatic arthritis with some limitation in motion and also a diagnosis of left middle finger trigger finger and left wrist de Quervain's tenosynovitis. PEX 5, pg. 121. He recommended a reduction and fixation of the fracture and carpal tunnel release with subsequent removal of deep hardware implant. He found Petitioner had reached a stable plateau and that Petitioner reached maximum medical improvement and concluded he does not believe a full normal recovery was possible. Dr Fernandez further noted that there is a definite causal relationship to the work-related injury and his current condition of ill-being and that there was no preexisting condition He reported that Petitioner's light duty restrictions of 10-20 pounds are permanent. These restrictions also included refraining from significant or rapid repetition across the wrist or hand with regard to use of tools or machinery. (PX 5, pg. 122).

Dr. Fernandez's deposition

At his deposition, Dr. Fernandez testified consistent with his notes and the medical reports which was a diagnoses of a post-open fracture of the distal radius with carpal tunnel syndrome, with residual stiffness and posttraumatic arthritis with limitations in motion and strength. (PX5 p. 26). Dr. Fernandez testified that Petitioner's diagnoses of left and middle finger trigger finger and left wrist de Quervain's stenosing tenosynovitis were related to the injury. (PX 5, pg. 31-36).

Dr. Fernandez explained that the two diagnoses have a high likelihood of recovery, but Petitioner will never make a full recovery from the wrist fracture due to the loss in motion at maximum improvement. (PX5 p. 27)

On April 28, 2023. Petitioner returned to Respondent with lifting restrictions of 55 pounds to waist and 25 pounds overhead. (Tr 52). Petitioner has been working for Respondent under those restrictions since May 2023. He works on framed walls that need tapering using caulking and glue with a roller in addition to placing insulation and frame walls around buildings. (Tr 47-49).

Testimony of Edmund Sexton

Edmund Sexton is a business representative for Mid-America Carpenters Regional Council. He represents members of the local union helping them find employment and issues on their jobsites. (Tr 6-7). He places carpenters with contractors and has placed members at RG Construction Services. (Tr. 9-10). Mr. Sexton testified it would be difficult to place a drywall carpenter with physical restrictions because the job duties require workers to install heavy drywall and carry tools. (Tr. 10-11).

Testimony of Jeffrey Lister

Jeffrey Lister, its general superintendent and a union carpenter. (Tr. 80). Mr. Lister testified his job responsibilities are to attend safety meetings, startup meetings, assign Foremen to jobs, and hire or maneuver manpower required at every job he supervises. He also ensures they have the material and equipment required to perform their job safely and properly. (Tr. 87).

Mr. Lister testified he knows Petitioner from the job. (Tr. 88). Mr. Lister testified carpenters would apply for a position and state what field of carpentry they are most knowledgeable and experienced in. (Tr 88). Though he does not hire people for jobs, Mr. Lister testified that Respondent accommodates everyone with restrictions that they work to accommodate. (Tr 95-96).

Mr. Lister testified he believes Petitioner's restrictions are medium to heavy duty work, meaning 50 to 100 pounds. Mr. Lister testified he is aware of an email releasing Petitioner to work medium to heavy duty work. (TR. 99).

Conclusions of Law

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission* (1970) 47 Ill.2d 144, 265 N.E. 2d 129. 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* (1977) 68 Ill.2d 236, 369 N.E.2d 853. 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* (4th Dist. 1989) 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794. A claimant has the burden of proving all the elements of the claim in order to establish a right to compensation. *Greater Peoria Mass Transit District v. Industrial Commission* (1980) 81 Ill.2d 38, 43; 39 Ill.Dec. 817; 405 N.E.2d 796. The burden of the claimant is to prove a compensable injury by a preponderance of credible evidence. *A.M.T.C. of Illinois, Inc. v. Industrial Commission* (1979) 77 Ill.2d. 482, 488; 34 Ill.Dec. 132; 397 N.E.2d 804.

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission* (1982) 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650. The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission* (1983) 98 Ill.2d 20, 455 N.E.2d 86. To argue to the contrary would require that an award be entered or affirmed whenever a claimant testifies to an injury no matter how much his testimony may be contradicted by the evidence, or how evident it may be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission* (1956) 8 Ill.2d 407, 134 N.E. 2d 307. It is not enough that the petitioner is working when an accidental injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission* (1969) 44 Ill.2d 207, 214, 254 N.E.2d 522; see also *Hansel & Gretel Day Care Center v Industrial Commission* (1991) 215 Ill.App.3d 284, 574 N.E.2d 1244.

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

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury. The Petitioner's testimony is credible and consistent with the medical records. Petitioner testified that he had not suffered any injuries prior to his accident. 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). To constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Teska v. Indus. Comm'n*, 266 Ill.App.3d 740, 742 (1st Dist. 1994). Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act. *Id.* 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). In Petitioner's case the absence of symptoms prior to Petitioner's injuries combined with his symptoms since the work injury supports the Arbitrator's finding of causal connection. The Arbitrator notes that Petitioner developed arthritis, trigger finger, and deQuervain's in the same wrist on which Petitioner underwent two invasive surgeries. In addition, Petitioner credibly testified, and the medical records support, that he has suffered pain in his left wrist since the work accident, which were corroborated by the physical therapist Cynthia Destefano.

Dr. Fernandez, Dr. Rhode, and Dr. Shah all support a finding of causal connection. The Arbitrator relies on the medical records of Northwestern Medicine, Orland Park Orthopaedics, Athletico, and Midwest Orthopedics at Rush, which all support the conclusion that Petitioner's injuries were caused by the September 1, 2017, accident.

Additionally, the §12 examiner helps to establish causal connection. He opined that Petitioner's left wrist fracture and left carpal tunnel syndrome were "directly attributable" to the work injury, that Petitioner's left-hand stiffness and left shoulder adhesive capsulitis were complications of his original wrist injury and therefore causally related. Later Dr. Atluri opined that the trigger finger and de Quervain's were unrelated. and that Petitioner required no work restrictions, while also conceding Petitioner's ongoing left wrist arthritis was related to the work injury. Dr. Atluri also testified that Petitioner's medical care was reasonable and necessary and recommended temporary work restrictions, including to avoid forceful gripping and a five-pound lifting limit with no overhead lifting.

Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act. *Teska*, 266 Ill.App.3d at 742. A nonemployment-related factor which is a contributing cause with the compensable injury in ensuing injury or disability, however, does not constitute an intervening cause sufficient to break the causal connection between the employment and claimant's condition of ill-being. *Id.* Those other conditions, whether work-related or not, may have aggravated the claimant's condition is irrelevant. *Vogel v. Indus. Comm'n*, 354 Ill.App.3d 780, 786 (2d Dist. 2005). Arbitrator concludes that, had Petitioner not suffered an initial wrist fracture in his work injury, he would not have developed the related arthritis, trigger finger, and de Quervain's. His increase in symptoms with a return to repetitive work is a natural and foreseeable consequence of the original fracture and surgeries.

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

Having found in favor of Petitioner on current condition is casually related to his September 1, 2017 work accident Arbitrator finds the Respondent obligated to pay medical bills related to his condition and treatment. Petitioner's Exhibit A was admitted into evidence and included Petitioner's medical bills, including those from Orland Park Orthopedics and Athletico. The Arbitrator finds that all medical bills are reasonable, necessary, and causally related to the work accident Petitioner sustained on September 1, 2017. Respondent shall pay the medical bills directly to the provider as due and owing pursuant to the fee schedule. Respondent shall receive a credit for all amounts paid for the reasonable, necessary, and causally related bills that it has in fact paid.

(K). What temporary benefits are in dispute? – Temporary Total Disability, Maintenance, TPD

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. *Matuszczak v. Ill. Workers' Comp. Comm'n*, 2014 IL App (2d) 130532WC ¶14. *Westin Hotels v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007)

In this case there is no dispute that TTD was paid for the initial period Petitioner was off work after surgery, from September 2, 2017, to January 23, 2018, a period of 20 3/7 weeks. On January 28, 2018, Petitioner returned to work for Respondent under light duty restrictions and worked in that capacity until May 6, 2018, when he was laid off. Despite Petitioner's restrictions, Respondent offered no alternative position or vocational rehabilitation services after May 6, 2018. Respondent paid no TTD from May 6, 2018, until after Petitioner's second surgery, from July 8, 2018 – July 29, 2018. After the surgery, Respondent stopped paying TTD on July 29, 2018, even though Dr. Shah did not release Petitioner to return to work in any capacity until August 21, 2018. The §12 examiner found Petitioner reached MMI on August 21, 2018. Respondent paid no TTD between July 30, 2018, and August 21, 2018. Arbitrator finds Petitioner is entitled to TTD from July 8, 2018, through August 21, 2018 (6 2/7 weeks) at the TTD rate of \$1,115.62 (2/3 of \$1,673.43 AWW). Arbitrator awards Respondent a credit for the TTD paid between July 8, 2018, and July 29, 2018 (3 weeks).

Respondent contends that the obligation to pay TTD was terminated on August 21, 2018, when Dr. Shah released Petitioner to return to work after the second surgery. Arbitrator notes Dr. Shah's release was pending the results of an FCE, was not timely authorized. The Three FCEs that were eventually performed all revealed medium duty limitations in Petitioner's functional abilities. Accordingly, Dr. Shah never released Petitioner in a full duty capacity.

Moreover, on August 29, 2018, Dr. Rhode again took Petitioner off work completely. At that time, Respondent had no opinion in its possession that Petitioner was able to work. that, After Dr. Rhode took Petitioner off work on August 29, 2018, Respondent did not offer an accommodated position to Petitioner or provide vocational rehabilitation. Petitioner was able to find new employment on July 25, 2021. Thus, because Respondent has offered no opinion that Petitioner was capable of full duty work between August 29, 2018 and July 25, 2021 and did not offer Petitioner a light duty position within his restrictions, Based on the facts Arbitrator concludes Respondent is obligated to pay Petitioner TTD and/or maintenance for that time period,

August 28, 2018 through July 25, 2021 (151 4/7 weeks) at his full TTD rate, \$1,115.62 (2/3 of \$1,673.43 AWW).

After his new employment on July 25, 2021, thru May 14, 2023, a period of 94 weeks Petitioner's average weekly wage was \$858.95. Petitioner's average weekly wage with Respondent is \$1,673.43. Therefore, the weekly differential average weekly wage for that period of time is \$814.48 (\$1,673.43 – \$858.95), translating to differential TTD rate of \$542.99 (2/3 of \$814.48). Arbitrator finds Respondent is obligated to pay differential TTD in the amount of \$542.99 for the 94-week period between July 25, 2021 and May 14, 2021.

No vocational Rehabilitation was offered to the Petitioner as defined in 9110.10 of the Commission Rules, therefore Arbitrator finds that Petitioner's self-directed job search was diligent, given the limitations of his educational background, work history, computer literacy, and lack of assistance from Respondent. *See Roper Contracting v. Indus. Comm'n*, 349 Ill.App.3d 500 (5th Dist. 2004) (nothing in the Act prohibits a self-directed job search), *Catalano v. City of Chicago*, 13 IWCC 0458 (Apr. 26, 2013) (diligent job search not required to establish entitlement to wage differential award, but job search can be factor relevant to determine whether petitioner has suffered impairment to his or her pre-injury status).

Arbitrator relies on—*Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill.2d 132, 149 (2010). Which reads in part, 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. *Id.* 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. *Id.* Here, Petitioner's condition had not stabilized at the time he was laid off by Respondent, even according to Respondent's own §12 examiner. Accordingly, Arbitrator finds Respondent's obligation to pay TTD as dictated above. did not cease when it laid off Petitioner.

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

Applying the five factors of Section 8.1b of the Act in determining PPD, the Arbitrator finds as follows:

- 1) AMA Rating: There was no AMA rating offered.

- 2) Occupation: Petitioner is a carpenter in the construction industry. His job duties requires physical activity as part of his normal duties as evidence of the heavy duty nature of the occupation. The Arbitrator assigns greater weight to this factor.
- 3) Age: Petitioner is 50 years old. He has at approximately 17 more years in the work force. It is Dr. Fernandez's opinion that the Petitioners condition will worsen as he ages. . The Arbitrator assigns moderate weight to this factor.
- 4) Future earning capacity: Petitioner returned to light duty work with permanent restrictions. There is currently no diminishment in Petitioner's earning capacity given his light duty position with Respondent. However, his restrictions could hamper a position with a different employer. . The Arbitrator assigns some weight to this factor.
- 5) Evidence of disability corroborated by the evidence: The Petitioner had two surgeries to his left wrist. Petitioner is on permanent restrictions with no overhead lifting greater than 20 pounds. Petitioner is 50 years old. Arbitrator believes his pain will have a substantial impact on the performance of his job and his activities of daily living.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 50% loss of Hand, representing 102.5 weeks at \$790.64 per week pursuant to §8.1(b) of the Act.

M. Should penalties or fees be imposed upon Respondent?

The Arbitrator finds Petitioner is entitled to penalties and attorneys' fees because Respondent has offered no reasonable basis for withholding medical and temporary total disability benefits.

Section 19(k) penalties

The Arbitrator finds Respondent's failure to pay temporary total disability benefits or medical bills after July 28, 2018, is unreasonable and orders Respondent to pay penalties Section 19(k) of the Act. Penalties pursuant to §19(k) of the Act are appropriate "where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay." "Failure to pay compensation in accordance with the provisions of §8(b) of the Act shall be considered unreasonable delay." 820 ILCS 305/19(k).

When an employer fails to pay compensation, that employer bears the burden of showing that it had a reasonable belief that the failure was justified. *City of Chicago v. IWCC*, 409 Ill.App.3d 258 (1st Dist. 2011). The employer must show that the facts in its possession would lead a reasonable person to believe that the claimant is not entitled to prevail under the Act. *Cook County v. Indus. Comm'n*, 160 Ill.App.3d 825, 830 (1st Dist. 1987). An honest, though flawed, belief is not enough to escape liability. *Id.*

As discussed above, Arbitrator concludes that when Respondent terminated benefits on July 28, 2018, Respondent was not justified in doing so. Respondent's Sec §12 examiner found MMI was not reached until August 21, 2018. There was no evidence presented for failing to pay benefits between July 28, 2018, and August 21, 2018.

Moreover, after August 21, 2018, Respondent's reliance on Dr. Shah's full duty release was not reasonable and in good faith. Dr. Shah stated that his release was dependent on and pending the results of an FCE which was not done. In addition, Petitioner as taken off work completely by Dr. Rhode on August 28, 2018. A second §12 examination was not performed until over two years later. Arbitrator concludes respondent presented no opinion that Petitioner was capable of full duty work after August 28, 2018. Therefore, Respondent had no good faith basis for terminating TTD benefits at that time.

Based on all the foregoing, the Arbitrator finds Respondent's refusal to timely pay temporary total disability benefits and medical bills was without good faith basis, vexatious and unreasonable within the meaning of §19(k). Respondent is obligated to pay penalties pursuant to

§19(k) of the Act in the amount of \$111,808.20 (50% of the TTD benefits payable at the time of the award, \$223,616.39) for failure to pay TTD benefits, and in the amount of \$5,973.23 (50% of the medical benefits payable at the time of the award, \$11,946.46), for a total of \$117,781.43 in §19(k) penalties.

Section 19(l) Penalties

Respondent's refusal to pay TTD and medical benefits also constitutes an unreasonable delay within the meaning of §19(l) of the Act. Under §19(l), a delay of 14 days creates a presumption of unreasonable delay. 820 ILCS 305/19(l). Just as with penalties under §19(k), the employer bears the burden in justifying the delay in paying compensation under §19(l). *Zitka v. Indus. Comm'n*, 328 Ill.App.3d 844 (1st Dist. 2002). The additional compensation authorized by §19(l) is in the nature of a late fee. *Id.* at 849 citing *McMahan v. Indus. Comm'n*, 183 Ill.2d 499 (1998). If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation under §19(l) is mandatory. *Id.* Unlike attorney's fees under §16 or §19(k) penalties, there is no requirement under §19(l) that the failure to pay benefits be unreasonable, vexatious, or in bad faith. *Jacobo v. Ill. Workers' Comp. Comm'n*, 2011 IL App (3d) 100807WC, ¶¶21-24.

In this case Arbitrator finds Respondent has not shown an adequate justification, or a justification, for the delay in paying TTD benefits, and has failed to show an adequate justification for the failure to pay Petitioner's medical bills, which correspond to treatment Petitioner required for physical therapy, diagnostic testing, and treatments that are causally related to his September 1, 2017 work injury. Petitioner's TTD and medical benefits have been outstanding for many multiples of the 14-day delay contemplated by §19(l). The Arbitrator finds Respondent's refusal to pay TTD and medical benefits was without any basis in the record and constitutes unreasonable delay for purposes of §19(l).

§19(l) provides for penalties of \$30 for every day that benefits are outstanding, with a maximum of \$10,000. Petitioner's benefits have been outstanding for over 2,000 days, since July 28, 2018. As such, the amount Respondent shall pay §19(l) penalties in the amount of \$10,000.00

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033680
Case Name	Bill Kendrick v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0334
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Gregory Keltner

DATE FILED: 8/1/2025

/s/ Amylee Simonovich, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BILL KENDRICK,

Petitioner,

vs.

NO. 19WC033680

KNIGHT HAWK COAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of nature and extent of the permanent disability, modifies the Second Amended Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Second Amended Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects a scrivener's error in the Decision, the age of the Petitioner at the time of injury is corrected from 44 as the records show the Petitioner was 42 at the time of injury.

The Commission strikes the last sentence of the second paragraph of factor (ii), replacing it with: "Because Petitioner was displaced from his preinjury classification as a result of his injuries and Respondent offered a suitable alternative position on 4/12/22, but Petitioner was subsequently given desk work only restrictions on 6/18/24, the Arbitrator gives greater weight to this factor."

The Commission modifies the final paragraph of the Decision, striking the word "partially".

The Commission otherwise agrees with the Arbitrator's analysis of the Section 8.1b(b) factors; however, we disagree with the level of disability awarded. As above, Petitioner was restricted to desk work only. Given the totality of the injuries, the Commission increases the award of 5% loss of use of a person as a whole for incapacitation from the usual and customary line of employment to 20% loss of use of a person as a whole for incapacitation from the usual and customary line of employment. The awards of 35% loss of use of the right leg, 100% loss of use of the right arm plus an additional 17 weeks of permanent partial disability because the amputation was above the elbow, and 5% loss of use of a person as a whole for abdominal injuries, are affirmed and adopted.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 16, 2025, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner the sum of \$836.69/week for the period of 270 weeks because the above elbow amputation of Petitioner's right arm caused 100% loss of use of the right arm, as provided in Section 8(e)10 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner the sum of \$836.69/week for the period of 100 weeks because the injuries sustained incapacitate Petitioner from pursuing the duties of his usual and customary line of employment to the extent of 20% loss of use of a person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner the sum of \$836.69/week for the period of 25 weeks because the abdominal injuries sustained caused an additional 5% loss of use of a person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner the sum of \$836.69/week for the further period of 75.25 weeks because the injuries sustained caused 35% loss of use of the right leg, as provided in Section 8(e)12 of the Act.

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

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.

August 1, 2025

O: 06/10/25

AHS/ps

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033680
Case Name	Bill Kendrick v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Gregory Keltner

DATE FILED: 1/16/2025

*/s/ Jeanne AuBuchon, Arbitrator*_____
Signature**INTEREST RATE WEEK OF JANUARY 14 2025 4.18%**

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
 SECOND AMENDED ARBITRATION DECISION
 NATURE AND EXTENT ONLY**

Bill Kendrick
 Employee/Petitioner

Case # **19WC 033680**

v.

Consolidated cases: **N/A**

Knight Hawk Coal
 Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **December 12, 2024**. By stipulation, the parties agree:

On the date of accident, **October 1, 2019**, 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, the average weekly wage was **\$1,657.75**.

At the time of injury, Petitioner was **44** years of age, ***married*** with **3** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$142,732.38** for TTD, **\$-0-** for TPD, **\$-0-** for maintenance, and **\$-0-** for other benefits, for a total credit of **\$142,732.38**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of \$836.69/week for the period of 270 weeks because the above elbow amputation of Petitioner's right arm caused 100% loss of use of the right arm, as provided in Section 8(e)10 of the Act.

Respondent shall pay Petitioner the sum of \$836.69/week for the period of 25 weeks because the injuries sustained partially incapacitate Petitioner from pursuing the duties of his usual and customary line of work but do not result in impairment of earning capacity to the extent of 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the sum of \$836.69/week for the period of 25 weeks because the abdominal injuries sustained caused an additional 5% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act,

Respondent shall pay Petitioner the sum of \$836.69/week for the further period of 75.25 weeks because the injuries sustained caused 35% loss of use of the right leg, as provided in Section 8(e)12 of the Act,

Respondent shall pay Petitioner compensation that has accrued from October 1, 2019 through December 12, 2024, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

JANUARY 16 2025

Bill Kendrick,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No: 19 WC 033680
	)	
Knight Hawk Coal,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

PROCEDURAL HISTORY

This matter proceeded to trial in Herrin, Illinois on December 12, 2024 pursuant to Section 19 of the Illinois Workers Compensation Act (hereinafter "Act"). The only issue in dispute is the nature and extent of Petitioner's injuries. The parties stipulated to all other issues.

FINDINGS OF FACT

PETITIONER'S TESTIMONY

Petitioner testified that at the time of trial he was 48 years old. On October 1, 2019 he was employed as a coal mine foreman. He sustained an above the elbow amputation of his dominant right arm and injuries to his abdomen and right leg when the roof of the mine caved-in. He was flown to St. Louis University Hospital where he underwent multiple imaging studies and surgeries. He testified that his initial surgeries were amputation of the right arm, bowel resection, and placement of an external fixator on the right leg. Petitioner testified that his right leg injury consisted of a tibial plateau fracture and a fibula fracture. A few days later, he underwent a revision amputation of the right arm and an open reduction and fixation of the right tibial plateau fracture using plates and screws. Petitioner testified that he underwent physical therapy postoperatively.

Petitioner testified that following the abdominal surgery he experienced chronic diarrhea resulting in ten or more bowel movements a day. He eventually saw his primary care physician, Dr. Gunther, who referred him to another physician. He takes Choestyramine powder daily. He denied any bowel issues or chronic diarrhea prior to the accident. Petitioner testified that the bowel issues continued for approximately two years. He said that his symptoms improved dramatically with the Choestyramine. Petitioner said that he now has bowel movements two to three times a day, which he characterized as "normal". Petitioner does not have any pain in the area of the abdominal surgery.

Petitioner saw Dr. Bradley in June, 2024. He reported constant aching with cold weather and sharp pain when walking on uneven surfaces.

Petitioner estimated he is able to walk a quarter of a mile before requiring rest. Kneeling and squatting are painful. He does not know if he can run as he has not tried to do so. He does not take any medication for his leg.

Petitioner said his knee pain increased in the two years prior to the June, 2024 encounter with Dr. Bradley. At that encounter, Dr. Bradley administered a cortisone injection. Petitioner said the injection provided immediate relief and that his knee is still doing well.

Petitioner testified that due to the loss of his dominant right arm, he has had to relearn how to perform activities. He is able to write, but has difficulty washing his left hand. He seldom wears the prosthetic arm because, "It's more of a hindrance than a help".

Petitioner testified that as a result of the amputation, he is limited in what he can lift and carry. His wife assists him with tasks such as trimming his fingernails. He is able to drive and mow grass.

Petitioner testified that he continues to experience phantom pain in the right arm on a daily basis. He said that the symptoms are in the stump of his right arm and that:

It's like your hand is curled up in a ball and you are trying to stretch out your fingers, like they are asleep and tingling.

He said the symptoms are continuous throughout the day. He does not take any medication for the symptoms. When the symptoms occur he lays on the arm or manipulates it. He has difficulty sleeping if he is unable to get his arm in a comfortable position. He is not working.

Petitioner was approved for Social Security Disability in 2024. He said that he was offered a job in 2022 that was within his restrictions. He did not accept the job or make any attempt to return to work for Respondent.

Petitioner testified that when he saw Dr. Bradley on November 22, 2021 he had no symptoms with regard to his right knee. He said that when he saw Dr. Bradley on February 14, 2022 he did not have any significant complaints of pain.

Petitioner testified that on June 18, 2024 he told Dr. Bradley that over the preceding six months he experienced increased pain with weight bearing and repetitive activities. He does not have an appointment to return to Dr. Bradley. Petitioner is to contact Dr. Bradley if his pain returns.

TESTIMONY OF BRENT HAWLEY

Brent Hawley is Respondent's Vice-President of Operations. His job involves overseeing operations of Respondent's mining facilities in Central and Southern Illinois. He was not employed by Respondent at the time of Petitioner's injuries. In early 2022, he was asked by Respondent's President to develop a position that would fit Petitioner's restrictions and would also benefit Respondent due to Petitioner's experience and expertise as a coal miner. Hawley testified that Respondent's interest in returning Petitioner to work was twofold. First, Respondent's business is a family operation and the owners care about the employees. Second, Petitioner was highly regarded and it was believed that his presence would have a positive impact on the culture of the company.

Hawley testified that the job that was eventually crafted for Petitioner was an administrative position. Hawley said that certain components of the job would make use of Petitioner's mining experience. He said that the job was primarily to oversee or assist the personnel in the mine. He said that one aspect of the job was to be a liaison between the face bosses, which was Petitioner's preinjury classification, and the work force to make sure that all the shifts were appropriately staffed. Another aspect of the job would be to assist with management of personal time off.

Hawley testified that a description of the job was developed which listed 10-15 items that would be Petitioner's responsibility. Hawley testified the job was structured so that it could be

modified depending upon Petitioner's restrictions. He said the job would involve overseeing the maintenance and repair of outside facilities at the mine.

Hawley explained that coal mines are required to have a list of responsible persons at the mine at all times so that in the event of an emergency, there is a person available to coordinate activity outside of the mine and direct activity underground. Hawley testified that Petitioner was well suited for such a role due to his credentials.

Hawley testified that the modified job would not require Petitioner to perform any underground work. Hawley said that he was present during Petitioner's testimony. He said that there was nothing in Petitioner's testimony indicating that he would be physically unable to perform the modified job. Hawley testified that the modified job was essentially a desk or sedentary type job.

Hawley testified that Petitioner's compensation in the modified position would be identical to his pre-accident compensation as a foreman. Hawley said that in the modified position, Petitioner would be entitled to any wage increases or additional compensation that he would have received as a foreman.

Hawley testified that Respondent's Exhibit #5 is the job description of the position developed for Petitioner and listed the duties he would be expected to perform.

Hawley testified someone is currently performing the human resource component of the modified job. He said that this person does not, however, perform any component of the modified job that involves mining experience, mining knowledge, mining certification or training. Hawley said the duties and responsibilities set forth in Respondent's Exhibit #5 are currently being performed by multiple individuals and that had Petitioner accepted the job, those tasks would have been consolidated for Petitioner's handling.

SUMMARY OF MEDICAL EVIDENCE

Petitioner was admitted to St. Louis University Hospital on December 1, 2019. (P7). Admission history was that Petitioner was struck on the right side by a falling boulder which resulted in an amputation of his right upper extremity and injury to the right lower extremity. CT scan of the abdomen revealed a mesenteric contusion in the right lower quadrant with associated hemoperitoneum. There was no evidence of solid organ injury. (P1). CT scan of the right knee revealed a comminuted moderately displaced tibial plateau fracture and comminuted moderately displaced fibular head fracture. (P2).

On October 1, 2019, Dr. Carl Freeman and Dr. Michelle Medintz performed a exploratory laparotomy, bowel resection, end to end sutured anastomosis, abdominal closure, and evacuation of hemoperitoneum. Postoperative diagnosis was bucket handle injury of the mesentery in the distal small bowel. (P3).

On October 1, 2019, Dr. Thomas Revak performed a revision amputation of the right upper extremity with elbow disarticulation; irrigation and debridement of open fracture and grossly contaminated wound of the right upper extremity; placement of negative fracture wound VAC therapy; amputation of multi planar external fixator spanning the right knee; closed treatment with manipulation of right bicondylar tibial plateau fracture; irrigation and debridement of right anterior knee wound down to including skin and subcutaneous tissue, and right knee joint challenge with knee aspiration. Postoperative diagnosis was crush injury of the right upper extremity with complete amputation,

grossly contaminated wound, right upper extremity residual limb, right knee laceration without soft tissue degloving, and right bicondylar tibial plateau fracture. (P3).

On October 3, 2019, Dr. Djoldas Kuldjanov performed an irrigation and debridement of the right arm wound, completion of amputation above the elbow joint and wound closure. Postoperative diagnosis was status-post traumatic amputation of the right elbow and application of wound vac. (P4).

On October 7, 2019, Dr. Kuldjanov performed removal of the external fixator from the right lower extremity and open reduction and internal fixation of the right tibial plateau fracture using plates and screws. Postoperative diagnosis was right tibial plateau fracture status-post, status-post external fixator.

X-ray of the right tibia taken on October 7, 2019 revealed post-surgical changes of internal fixation of a tibial plateau fracture without evidence of loosening or failure and a comminuted fracture of the proximal fibula shaft with unchanged alignment. No additional fractures were noted. (P6). Petitioner was discharged from St. Louis University Hospital on October 10, 2019. (P7).

Petitioner's first post-discharge encounter with Dr. Kuldjanov occurred on October 22, 2019. Petitioner reported phantom pain in the right upper extremity and right leg and ankle pain. There were no other orthopedic complaints. X-rays of the right knee revealed good alignment with fixation and interval healing. The hardware was intact with no evidence of loose or broken screws.

On October 22, 2019, Petitioner saw John Wilson at Prosthetic and Orthotic Care, Inc. (P&O). (P10). Petitioner was fitted with a compresso-grip shrinker for the right upper extremity. He was to return in four weeks and in the interim to research upper extremity prosthesis and terminal devices.

On November 6, 2019, Petitioner saw physician's assistant Isaac Roberg. Roberg recommended acute in-patient rehabilitation of three hours of therapy per day, five days per week, and medical management of the co-morbidities. (P10).

Petitioner returned to Dr. Kuldjanov on November 19, 2019. X-ray of the right knee showed good alignment with healing tibial plateau fracture and increased callous. Hardware was intact with no evidence of loose or broken screws.

Petitioner returned to P&O on December 16, 2019. He was noted to be progressing well and was full weight bearing on the right lower extremity. He had full range of motion of the right knee and right shoulder. He was ambulating independently and carrying a retractable straight cane as an assistive device. Since the previous encounter on October 22, 2019, Dr. Kuldjanov issued orders to initiate the process of fitting Petitioner for a right elbow disarticulation prosthesis, including a right myoelectric prosthesis and a right elbow disarticulation body powered prosthesis. Petitioner reported residual pain at 5 on a scale of 1/10. He described the pain as muscle cramping, pinching, and sensitivity at the distal end of his residual limb. (P10). P&O recommended prosthetics consisting of a right custom fabricated elbow disarticulation myoelectric prosthesis and a right body powered type prosthesis that was not myoelectrically controlled.

Petitioner saw Dr. Nathan Kopydlowski on December 31, 2019. (P8). Petitioner was able to abduct/adduct and forward flex the right shoulder. Right lower extremity was unremarkable. X-rays of the right knee showed good alignment with healing tibial plateau fracture, increased callous and intact hardware with no evidence of loose or broken screws. Weight bearing status was modified to as tolerated for both the right upper extremity and right lower extremity. Petitioner was continued off work and instructed to follow-up with Dr. Kuldjanov as needed. (P8).

On January 23, 2020, Petitioner saw Dr. Patricia Hurford pursuant to Section 12 of the Act. (R1 at 1). Petitioner denied phantom sensations and pains in the right upper extremity. He was not using any over-the-counter analgesics on a regular basis, was fully weight bearing in his right lower extremity, and had no restrictions with regard to the right upper extremity. He was using Metamucil for bowel issues. He reported ongoing pain symptoms in the range of 6-10. He said prolonged positions or excessive exercise aggravated his pain. Dr. Hurford recommended a body powered prosthesis. She explained that the exposure to moisture, heat, and dirt negated recommendations for a myoelectric device in light of Petitioner's desire to stay in a very active indoor and outdoor environment involving hunting, fishing, and playing sports with his children. (R1 at 7).

Petitioner saw Dr. Kuldjanov on October 15, 2020. Petitioner reported that his pain was controlled since the last encounter on December 31, 2019. Petitioner reported intermittent phantom pain in the right upper extremity. He said his symptoms were aggravated by nothing and improved with nothing. He was not taking any pain medication. He denied right leg pain. Petitioner was noted to be weight bearing as tolerated of the right upper and right lower extremities since the previous visit. Petitioner said he was fitted with a right upper extremity prosthesis approximately three months prior. As he did not know how to use all of its functions he was only wearing it a few hours each day. There were no other orthopedic complaints. Petitioner reported that Respondent contacted him the previous week and asked him to return to work.

Examination of the right upper extremity was unremarkable. There was no tenderness of the distal stump and shoulder range of motion was intact. Examination of the right lower extremity was unremarkable. There was no tenderness in the knee and range of motion was full and intact. Petitioner's gait was normal and non-antalgic. Plain film x-rays of the right knee showed stable alignment with maturation of callous and fracture lines. The hardware was intact with no evidence of loose or broken screws. Weight bearing status was as tolerated and was continued for the right upper extremity and right lower extremity. Petitioner was to continue use of the right upper extremity prosthesis. Dr. Kuldjanov opined that Petitioner was disabled given his right upper extremity amputation and was unable to return to his manual job as a coal miner. He opined that the right tibial plateau fracture was well-healed, and was causing no issues or limits in function. Dr. Kuldjanov placed Petitioner at maximum medical improvement with regard to the right upper and lower injuries and instructed Petitioner to return on an as needed basis. (P8).

Petitioner returned to Dr. Hurford on November 16, 2020. (R1 at 8). Petitioner reported that he recently obtained an upper limb body prosthesis but no instruction or how to it. He reported no limitations with walking activities, squatting, standing, or traversing stairs. There were no significant pain symptoms in his knee. He reported occasional loose stools but no incontinence. He said he was able to dress himself with occasional assistance from his wife. He was independent with self-care activities of daily living with the exception of cutting that might be required with meals. He reported that mowing and playing with his children had become more tolerable. Petitioner said he was sleeping 6-8 hours a night and that his appetite was good. He was not using pain medications on a regular basis. He reported pain in the range of 2-5 on a 1-10 scale. His pain symptoms were primarily phantom symptoms in the right upper extremity. Dr. Hurford recommended a short course of physical therapy/occupational therapy to maintain existing range of motion. To make use of a prosthetic device a more viable option, she recommended two weeks of pre-prosthetic range of motion and home exercise training followed by 4-6 weeks of prosthetic training with a qualified physical or occupational therapist with the prosthetic device that Petitioner was going to use.

Petitioner returned to Dr. Hurford on March 29, 2021. He had full range of motion at the right shoulder with no phantom limb pain. He had difficulty controlling the terminal device of his prosthesis.

He reported improved balance with the use of the prosthesis. He reported ongoing issues with regard to the harness, terminal device, and skin. Dr. Hurford recommended a work conditioning program for use of the prosthetic device. (R1 at 15).

On November 22, 2021, Petitioner presented to Dr. Matthew Bradley. (P12). Dr. Bradley noted that Petitioner was using a body powered above the elbow prosthesis. Petitioner reported a broken cable in the prosthesis and an ill-fitting socket. He denied any skin breakdown, wounds, infections, or recent injury. Petitioner requested x-rays of his knee. Those revealed retained plates along the medial and anterior aspects. There was good healing of the tibial fracture and mild varus deformity to the proximal tibia. Petitioner denied any symptoms in the right knee. Dr. Bradley told him to continue with a home exercise program and use Tylenol or Ibuprofen as needed. A prescription was provided for repair of the prosthesis and fabrication of a new custom prosthetic socket. Dr. Bradley imposed restrictions of no use of the right upper extremity.

Petitioner returned to Dr. Bradley on February 14, 2022. (P12). Petitioner said his prosthesis was repaired. He denied any significant pain complaints. On examination, the prosthesis was noted to have been repaired and currently had no broken components. Shoulder range of motion was unrestricted with 5/5 strength to the rotator cuff musculature.

Dr. Bradley commented that Petitioner was doing well with his amputation and that the prosthesis was fixed and functional with no modifications or repairs needed. Dr. Bradley imposed permanent restrictions of no lifting overhead with the right upper extremity, five pounds lifting to the chest with the right upper extremity, and no repetitive use of the right upper extremity. Follow-up was as needed. Dr. Bradley placed Petitioner at maximum medical improvement. (P12).

On June 7, 2023, Petitioner began treating with nurse practitioner Gina Gunther. He reported daily use of Metamucil to control diarrhea since the abdominal surgery on October 1, 2019.

Petitioner returned to NP Gunther on August 16, 2023. He said he was seeing a specialist for his chronic diarrhea and was scheduled for a colonoscopy in October 2023. He was still using Metamucil. Assessment was chronic diarrhea and hypertension.

On December 6, 2023, Dr. Faisal performed a colonoscopy with snare polypectomy and endoscopic mucosal resection. Postoperative diagnosis was colon polyps with excision of a polyp located behind the ileocecal valve.

Petitioner returned to NP Gunther on February 6, 2024. He reported treatment with PA Tommy Smith. He said that daily use of Questran improved his diarrhea symptoms. (P14). Petitioner said he was still using Metamucil for chronic diarrhea control.

Plain film x-rays of the right knee taken at SIH Herrin Hospital on April 9, 2024 revealed no focal soft tissue swelling, visible joint effusion, visible acute fractures, or significant marginal osteophyte formation. Retained plate and screws were noted. The hardware was intact with no evidence of loosening or infection. (P14).

Petitioner last saw Dr. Bradley on June 18, 2024. Petitioner said that over the previous six months he began experiencing increasing pain in the medial aspect of the knee with weight bearing and repetitive type activities. Plain film x-rays revealed post-traumatic degenerative disease. Dr. Bradley said that the post-traumatic arthritis was "pretty significant". He anticipated that knee replacement surgery would eventually be necessary. He recommended maximizing any and all non-operative treatment. Petitioner was instructed to avoid impact activities and heavy lifting and to use

anti-inflammatories as necessary. He was also instructed to continue with a home exercise program to maintain range of motion and strength. A corticosteroid injection was administered. Dr. Bradley said viscoelastic supplementation or gel injection might be appropriate in the future to delay knee replacement surgery. Dr. Bradley modified Petitioner's permanent restrictions to no use of the right upper extremity and desk work only. Petitioner was instructed to return as needed. (P12).

Petitioner returned to NP Gunther on August 16, 2024. He reported ongoing use of Metamucil and Questran. He said his chronic diarrhea symptoms were controlled. He said he was scheduled for a repeat colonoscopy in December, 2024. (P14).

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to the nature and extent of the injuries the Arbitrator makes the following findings:

The findings of fact and summary of the medical evidence above are incorporated herein.

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in Section 8.1b(b) of the Act.

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 therefore gives no weight to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that at the time of the accident, Petitioner was employed by Respondent as an underground foreman. As a result of his injuries, Petitioner was unable to return to work in this capacity. Dr. Kuldjanov indicated that Petitioner was incapable of returning to work as a coal miner. Dr. Bradley imposed restrictions of no use of the right upper extremity and desk work only. The parties agree that Petitioner was unable to return to work in his preinjury capacity.

As a result of the permanent restrictions, Respondent created an above ground job for Petitioner. Brent Hawley, Respondent's Vice-President of Operations, testified the position was created for Petitioner due to his experience and expertise as a coal miner and so that job duties assigned to different employees could be handled by Petitioner. The Arbitrator finds Hawley's testimony credible and that the creation of the modified job was a legitimate effort by Respondent to enable Petitioner to return to work. Petitioner testified that he was offered a modified job by Respondent but declined to accept it. The Arbitrator has also considered the evidence submitted by Respondent regarding the modified position. Because Petitioner was displaced from his preinjury classification as a result of his injuries and Respondent offered a suitable alternative position, the Arbitrator gives greater weight to this factor.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 44 years old at the time of the accident. Because Petitioner will have to contend with the sequela from his injuries, and in particular the amputation of his right arm for the remainder of his life, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Hawley's uncontroverted testimony that Petitioner would be paid at the same level in the modified duty position as he was as a underground face boss/foreman and would be entitled to

any additional compensation that he would have received in his preinjury capacity. Because of this, the Arbitrator gives lesser weight to this factor.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner has current restrictions of no use of the right upper extremity and is limited to desk work only. There are no specific restrictions with regard to the right leg, although Dr. Bradley has indicated that right knee replacement surgery may be necessary in the future. The Arbitrator has considered Petitioner's credible testimony that he experiences increased pain in the right knee secondary to changes in the weather and with certain activities. Petitioner's testimony of how the right upper extremity amputation has affected his activities of daily living is credible and consistent with the medical records. Because the Arbitrator finds that Petitioner's current complaints are consistent with the injuries as documented by the treating medical records, 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 35% loss of the right leg, 100% loss of use of the right arm plus an additional 17 weeks of permanent partial disability because the amputation was above the elbow, 5% loss of use of person as a whole because the right arm amputation partially incapacitates Petitioner from pursuing the duties of his usual and customary line of employment but did not result in an impairment of earning capacity, and 5% loss of use of person as a whole because the serious and permanent abdominal injuries sustained are not covered by paragraphs (c) and (e) of Section 8 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030148
Case Name	Alison Hinton v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0335
Number of Pages of Decision	17
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Richard Salmi
Respondent Attorney	Aaron Wright

DATE FILED: 8/4/2025

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALISON HINTON,

Petitioner,

vs.

NO: 19 WC 30148

STATE OF ILLINOIS - CHESTER MENTAL
 HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

I. Causal Connection

The Commission observes that the parties stipulated that on October 1, 2019 Petitioner sustained a work accident that arose out of and in the course of employment. The Commission observes that the Arbitrator found that as a result of the October 1, 2019 work accident, Petitioner sustained a temporary exacerbation of her pre-existing bipolar disorder and awarded TTD and medical benefits through February 29, 2020. Regarding causal connection, the Commission views the evidence differently and finds Petitioner's condition of ill-being, a temporary exacerbation of pre-existing bipolar disorder, is causally related to the October 1, 2019 work accident through August 17, 2020 and not thereafter.

In Illinois, psychological injuries are compensable when the injuries are related to and caused by a physical trauma or injury. Matlock v. Indus. Comm'n, 321 Ill. App. 3d 167, 171, 253 Ill. Dec. 930, 934, 746 N.E.2d 751, 755 (2001); *see also* Chicago Park District v. Industrial

Comm'n, 263 Ill. App. 3d 835, 842, 635 N.E.2d 770, 776, 200 Ill. Dec. 431 (1994) (stating when dealing with the physical-mental category, even a minor physical contact or injury may be sufficient to trigger compensability). The question of whether there is a causal connection between a claimant's injury and his or her employment is uniquely within the province of the Commission and its decision will not be disturbed on review unless it is against the manifest weight of the evidence. City of Springfield v. Indus. Comm'n (B.K.), 291 Ill. App. 3d 734, 739, 226 Ill. Dec. 198, 201, 685 N.E.2d 12, 15 (1997). Likewise, the interpretation of medical testimony is particularly within the province of the Commission. A. O. Smith Corp. v. Indus. Comm'n, 51 Ill. 2d 533, 536-37 (1972).

In this case, the Commission does not find the opinions of the retained experts, Drs. Garland and Sky, to be persuasive as neither doctor evaluated Petitioner until two years after the work accident. Rather, the Commission finds the treating records of Dr. Chalfant and Dr. Amin to be the most reliable and persuasive evidence relating to the issue of causal connection. The medical evidence and Petitioner's testimony indicate that prior to the work accident on October 1, 2019, Petitioner had a history of psychiatric conditions, primarily bipolar disorder. Prior to the work accident on October 1, 2019, Petitioner had treated with Dr. Chalfant for her bipolar condition as recently as September 16, 2019, at which time she also reported depression and anxiety.

After the work accident, Dr. Chalfant *did not* diagnose Petitioner with PTSD, but rather Dr. Chalfant's assessment was that of bipolar disorder with severe depression and generalized anxiety disorder. After the work accident, the Commission finds Petitioner suffered a temporary exacerbation of her bi-polar disorder as evidence by the fact that Dr. Chalfant took Petitioner off work due to her increased symptoms, adjusted her psychiatric medications, and ordered weekly mental health counseling sessions. The Commission does not find the Centerstone discharge summary note dated February 19, 2020 to be significant. The notes lists "stopped attending services" as the reason for discharge. However, Petitioner testified that after her employment with Respondent was terminated, she lost her insurance and could no longer treat with Dr. Chalfant. As such, beginning on January 13, 2020, Petitioner transferred her counseling treatment to Human Service Center, which included psychiatric evaluations by Dr. Amin.

The Commission also notes that after the work accident, Petitioner reported additional familial and personal stressors and trauma to her medical providers. The Commission finds it significant that on August 17, 2020, Dr. Amin noted that Petitioner was doing "okay" since the last visit but had been going through some family issues and due to those family issues, she was not getting the best results from the medications. Dr. Amin also noted Petitioner reported that for the last two weeks, she had been more irritable and had ongoing mild intrusive thoughts. After the August 17, 2020 office visit, there is a five-month gap in treatment until Petitioner is hospitalized in January and February of 2021. Petitioner had been incarcerated for assaulting a police officer and was transferred to a psychiatric hospital after it was determined she was unfit to stand trial. When Petitioner returned to Dr. Amin on March 8, 2021, Dr. Amin noted Petitioner's chief complaint was "I had issues with officer and ended up in jail and then at state hospital." Of additional significance is the fact that Petitioner also reported to Dr. Amin that after the last visit on August 17, 2020 she had "stopped the meds."

Accordingly, based on the medical records of Drs. Chalfant and Amin, the Commission finds that Petitioner's condition of ill-being is related to the October 1, 2019 work accident through August 17, 2020 and not thereafter.

II. TTD benefits

For the reasons discussed above, the Commission finds that Petitioner's condition of ill-being is related to the October 1, 2019 work accident through August 17, 2020 and not thereafter. Accordingly, the Commission awards temporary total disability benefits of \$500.00/week for the period of October 2, 2019 through August 17, 2020.

III. Medical Expenses

For the reasons discussed above, the Commission finds that Petitioner's condition of ill-being is related to the October 1, 2019 work accident through August 17, 2020 and not thereafter. Accordingly, the Commission awards reasonable and necessary medical expenses incurred from October 1, 2019 through August 17, 2020, as provided in Sections 8(a) and 8.2 of the Act.

IV. Permanent Disability

The Commission modifies the Arbitrator's Decision also with respect to the issue of permanent partial disability. For the reasons discussed above, the Commission finds that Petitioner's condition of ill-being is causally related to the October 1, 2019 work accident through August 17, 2020 and not thereafter. The Commission also finds that Petitioner's exacerbation of her bipolar disorder from October 1, 2019 through August 17, 2020 was substantial enough that Petitioner underwent counseling sessions, medication adjustments, and time off work. Accordingly, the Commission modifies the Arbitrator's award and finds Petitioner entitled to permanent partial disability benefits based on the following evaluation of the five factors outlined in Section 8.1b of the Act.

Regarding factor (i) Level of Impairment, the Commission gives no weight to this factor because an AMA rating is not in evidence.

Regarding factor (ii) Occupation, the Commission places some weight on this factor because Petitioner did not return to work for Respondent; however, she testified that she is currently working full duty at a community day services program for adults with developmental disabilities. In addition, Petitioner testified that since the work accident she was able to finish her bachelor's degree in human and family development.

Regarding factor (iii) Age, the Commission places greater weight to this factor because Petitioner was 45 years old at the time of the accident and has many years still to work.

Regarding factor (iv) Earning Capacity, the Commission places some weight on this factor as there was no direct evidence of diminished earnings and Petitioner testified that she is earning at least as much at the new job as she was working for Respondent.

Regarding factor (v) Disability, the Commission places greater weight on this factor,

noting Petitioner underwent counseling and psychiatric treatment, as well as medication adjustment for the exacerbation of her pre-existing bipolar disorder. Petitioner testified that as a result of the work accident she experienced symptoms of hypervigilance, paranoia, sleep issues and intrusive thoughts. Petitioner also testified that she has learned to live with and manage the anxiety. Petitioner's testimony is corroborated by the medical evidence.

Therefore, based on the above factors, and the record taken as a whole, the Commission modifies the Arbitrator's Decision to find that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the person as a whole or \$11,250.00 (25 weeks at a PPD rate of \$450.00) pursuant to Section 8(d)(2) as result of the work injury on October 1, 2019.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated January 2, 2025 is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's condition of ill-being is causally related to the October 1, 2019 work accident through August 17, 2020 and not thereafter.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay temporary total disability benefits of \$500.00/week for the period of October 2, 2019 through August 17, 2020. Respondent shall have credit for amounts paid for temporary disability benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses incurred from October 1, 2019 through August 17, 2020, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for paid medical benefits and shall hold Petitioner's 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 shall pay to Petitioner permanent partial disability benefits of \$450.00/week for a total of 25 weeks representing 5% loss of use of the person as a whole pursuant to Section 8(d)(2) of the Act.

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

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

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.

August 4, 2025

o: 07/23/25

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

19 WC 30148

Page 5

CMD/jjm

045

/s/ Raychel A. Wesley

Raychel A. Wesley

/s/ Frank J. Soto

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030148
Case Name	Alison Hinton v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Richard Salmi
Respondent Attorney	Aaron Wright

DATE FILED: 1/2/2025

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



January 2, 2025

/s/ William Gallagher, Arbitrator

Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF DECEMBER 31 2024 4.14%

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

Alison Hinton
 Employee/Petitioner

Case # 19 WC 30148

v.

Consolidated cases: n/a

State of IL-Chester Mental Health Center
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on November 7, 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 _____

ICarbDec 2/10 100 W. Randolph Street #8-200 Chicago, IL 60601 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On October 1, 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 \$22,462.45; the average weekly wage was \$750.00.

On the date of accident, Petitioner was 45 years of age, married with 2 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of \$2,267.92 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$2,267.92.

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

ORDER

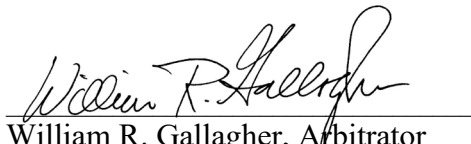
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 10, for medical services provided to Petitioner from October 1, 2019, through February 19, 2020, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall receive a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$500.00 per week for 20 1/7 weeks commencing October 2, 2019, through February 19, 2020, as provided in Section 8(b) of the Act.

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's claim for permanent partial disability benefits is denied.

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

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



William R. Gallagher, Arbitrator

ICArbDec p. 2

JANUARY 2 2025

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on October 1, 2019. According to the Application, Petitioner sustained an injury to her "Face, left hand, left leg, mental injury, MAW" as a result of "Breaking up a fight between Recipients" (Arbitrator's Exhibit 2). This case was tried for a final award and Petitioner sought an award for payment of medical bills, temporary total disability benefits, and permanent partial disability benefits. Respondent stipulated Petitioner sustained a work-related injury on October 1, 2019, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

In regard to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of 102 6/7 weeks, commencing October 2, 2019, through September 20, 2021 (Arbitrator's Exhibit 1). As noted herein, Petitioner claimed the accident caused an aggravation of her previously diagnosed bipolar disorder and caused post traumatic stress disorder (herein after referred to as "PTSD").

Petitioner became employed by Respondent in February, 2019, and worked as a Security Therapy Aide. Petitioner testified her job duties were similar to that of a prison guard. She would monitor/control movement of the patients, keep notes on patient behaviors, and assist the treatment team when necessary. Petitioner stated that 95% of the time, the work was slow/boring, but that the other 5% was intense and dangerous.

Petitioner testified that prior to the accident of October 1, 2019, she was able to perform all of her job duties. She described her work attendance as being "...almost perfect."

On October 1, 2019, Petitioner was observing the patients and saw two of them arguing with each other. The two patients then got physical and Petitioner attempted to separate them. When she did so, she fell to the floor, was hit a couple of times and stepped on. Petitioner stated it felt like a long time before any of her coworkers responded.

The accident was reported to Respondent the same day it occurred. Petitioner was initially seen at Respondent's medical dispensary. At that time, Petitioner advised she had attempted to break up an altercation between two patients and fell landing on her left knee and left hand as well as injuring her chin. Petitioner's blood pressure was elevated and she complained of nausea. Some redness to her chin was noted, but there was no swelling in either the left knee or left hand (Petitioner's Exhibit 2).

Petitioner was subsequently seen in the ER of Chester Memorial Hospital. At that time, Petitioner gave a history of the accident and complained of chin and left knee pain, nausea, as well as increased anxiety. Petitioner was diagnosed with a facial contusion and a knee contusion and discharged (Petitioner's Exhibit 3).

Prior to the accident of October 1, 2019, Petitioner was diagnosed with bipolar disorder and was receiving treatment for same. Petitioner was treated by Dr. Jeffrey Chalfant, a psychiatrist, for a number of years prior to the accident. Petitioner had been seen by Dr. Chalfant on September 16,

2019, (approximately two weeks prior to the accident), for "Medication Management." At that time, Petitioner advised she had experienced some anxiety, depression and hopelessness, but denied any suicidal thoughts. She advised that it had been stressful at work, but liked her job. Dr. Chalfant's record of that date contained a long list of medications Petitioner was taking. He made some adjustments in her medications, four of which were for bipolar disorder, sleeping, depression and anxiety. Petitioner was to follow-up in one month (Petitioner's Exhibit 4). Petitioner testified that she experienced some anxiety prior to the accident, but was never diagnosed with an anxiety disorder. Dr. Chalfant's record of September 19, 2019, was the only record of his for treatment provided to Petitioner which was tendered into evidence at trial.

Prior to the accident of October 1, 2019, Petitioner also received therapy for her bipolar disorder at Centerstone of Illinois. However, the only records of Centerstone of Illinois which were tendered into evidence at trial were for treatment Petitioner received subsequent to the accident of October 1, 2019.

Petitioner was seen by Dr. Chalfant on October 2, 2019. At that time, Petitioner informed Dr. Chalfant of the accident which had occurred the preceding day. Dr. Chalfant again diagnosed Petitioner with bipolar disorder and reviewed her medications. He made an adjustment in her medications and authorized Petitioner to be off work (Petitioner's Exhibit 4).

Dr. Chalfant again saw Petitioner on October 9, 2019, October 31, 2019, November 13, 2019, and December 2, 2019. He continued to treat Petitioner with medications and authorized her to remain off work. When Dr. Chalfant saw Petitioner on December 2, 2019, she advised him that Respondent had terminated her employment because of absences. At that time, Dr. Chalfant recommended Petitioner have a position which did not require her to have face-to-face contact with patients (Petitioner's Exhibit 4).

While Petitioner was being treated by Dr. Chalfant, she also sought treatment/therapy at Centerstone of Illinois. She was initially evaluated there on October 4, 2019, by Lisa Feldmann, a professional counselor. At that time, Petitioner advised Counselor Feldmann of the accident and the treatment she received thereafter. Counselor Feldmann noted Petitioner had been diagnosed with bipolar disorder with severe depression by Dr. Carter (she did not specify when the diagnoses were made or any other information regarding Dr. Carter) and Petitioner met the criteria for generalized anxiety disorder. Counselor Feldmann recommended Petitioner continue psychiatric treatment (Petitioner's Exhibit 5).

Petitioner continued to receive therapy at Centerstone of Illinois in October/November, 2019. When Counselor Feldmann saw Petitioner on November 22, 2019, she described Petitioner as having "Borderline symptoms" and Petitioner described her condition as being "Much Improved." (Petitioner's Exhibit 5). The last medical record from Centerstone of Illinois was dated February 19, 2020. It was not clear if Petitioner was present on that date or not because, at that time, Petitioner was discharged because she stopped attending "services". However, it was noted Petitioner needed to continue psychiatric care and maintain a routine to help her manage her symptoms of bipolar and anxiety disorders (Petitioner's Exhibit 5).

Petitioner was also treated at Human Service Center where she was seen by Lori McAllister, a counselor, on January 27, 2020. At that time, Petitioner advised she experienced anxiety related to her job. She also informed Counselor McAllister that her spouse had recently transitioned from male to female, but continued to reside with her. Counselor McAllister's treatment consisted of the counseling session. When seen by Counselor McAllister again on February 27, 2020, Petitioner advised her daughter was experiencing anxiety and panic attacks. Counselor McAllister treated Petitioner with another counseling session (Petitioner's Exhibit 6).

Petitioner was subsequently hospitalized at Touchette Regional Hospital on April 21, 2020, for psychotic mania, brief reactive psychosis and marijuana use disorder. The hospital record noted Petitioner initially received mental health care in 1994 and this was Petitioner's third psychiatric hospitalization. There was no reference in the record to the accident of October 1, 2019. Petitioner was discharged on April 24, 2020 (Petitioner's Exhibit 7).

Petitioner was again evaluated by Counselor McAllister on May 14, 2020. Petitioner again advised her daughter was experiencing panic attacks. Petitioner also advised that she was attacked by a patient in October, 2019, while working at Chester Mental Health. Petitioner described her symptoms as being hypervigilant, anxious, depressed, fearful, and having difficulties being around children because of the noise/chaos. Counselor McAllister opined Petitioner had PTSD (Petitioner's Exhibit 6).

Petitioner continued to be seen by Counselor McAllister. On May 26, 2020, Counselor McAllister again opined Petitioner had PTSD; however, she informed Petitioner that the diagnosis needed to be made by a medical professional. Petitioner continued to receive counseling at Human Service Center through August, 2020 (Petitioner's Exhibit 6).

Sometime in September, 2020, Petitioner sought treatment at a hospital (identity unknown) and exhibited erratic behavior which apparently caused the hospital staff to call the police. The police responded and Petitioner had a physical confrontation with one of the police officers which caused her to be arrested and charged with assaulting a police officer. Neither the medical records nor the police report were tendered into evidence at trial.

Noted in the Human Service Center record of September 11, 2020, Petitioner was interviewed by a Counsel from Human Service Center while at the Randolph County Jail where she was incarcerated after assaulting a police officer. At that time, Petitioner recalled very little about the assault and arrest. Petitioner had exhibited psychotic behavior during her first week of incarceration, but had improved somewhat afterward, but was still struggling with being isolated and away from her family (Petitioner's Exhibit 6).

Petitioner continued to receive counseling at the Human Service Center through March, 2021. On March 19, 2021, a "Medicaid Comprehensive Assessment of Needs and Strengths" was performed. In this assessment, Petitioner provided a history of being molested and physically abused by her father for two to five years and being manipulated by her mother. Petitioner also advised that she had been hospitalized for mental health issues in 1999 and 2000, and was most recently hospitalized for vaping cannabis, depression and anxiety. She further advised that her spouse's

recent sex change operation has affected her feelings of depression which caused her to withdraw from her children (Petitioner's Exhibit 6).

At the direction of her attorney, Petitioner was examined by Dr. Adam Sky, a psychiatrist, on September 20, 2021. In connection with his examination of Petitioner, Dr. Sky reviewed medical records provided to him by her attorney. In respect to the medical records of Dr. Chalfant, Dr. Sky apparently reviewed some of his records which predated the accident. Dr. Sky noted that from 2014 through late 2019, Dr. Chalfant treated Petitioner for anxiety, sleep disruption and multiple mood disturbances with a variety of medications. Dr. Sky noted that Dr. Chalfant had diagnosed Petitioner with bipolar affective disorder. Dr. Sky also noted Petitioner had been treated several times at Centerstone of Illinois between April, 2018, and February, 2019, where Petitioner was diagnosed with bipolar affective disorder (Respondent's Exhibit 1; Deposition Exhibit 2).

When seen by Dr. Sky, Petitioner informed him of being sexually and physically abused by her father and mentally abused/manipulated by her mother. Petitioner told Dr. Sky she first received psychiatric treatment in 1994 and, in 1999, she was hospitalized twice for mental health issues. It was during the first hospitalization that Petitioner was diagnosed with bipolar affective disorder (Petitioner's Exhibit 1; Deposition Exhibit 2).

Petitioner advised Dr. Sky of the accident of October 1, 2019, and that she was "okay" physically and mentally prior to same. Petitioner described the accident as being "my breaking point" and that she had numerous psychiatric symptoms afterward. These included worrying about her family's safety, other people's "depravity", and a lot of intrusive thoughts of "bad things happening." Petitioner also advised that she had become more aggressive in public places which resulted in her being involved in an altercation and arrested. She also informed Dr. Sky of her spouse undergoing a sex change (Petitioner's Exhibit 1; Deposition Exhibit 2).

Dr. Sky conducted a mental status examination and noted her affect was appropriate and congruent, but Petitioner's mood was anxious/depressed. Petitioner was able to communicate with a logical and coherent manner, her thought content as expressed in her speech was within acceptable limits, she had no delusions or fixed false beliefs and Petitioner denied any suicidal/homicidal ideations. Dr. Sky administered psychological testing and noted Petitioner had test scores indicative of PTSD symptoms including intrusion, mood change, arousal and reactivity. Dr. Sky opined the prevailing cause of Petitioner's PTSD current psychiatric symptoms was the injury she sustained on October 1, 2019, in conjunction with her pre-existing psychiatric issues. He also opined Petitioner was at MMI, but would require psychiatric and psychological treatment to maintain her current level of functioning (Petitioner's Exhibit 1; Deposition Exhibit 2).

At the direction of Respondent, Petitioner was examined by Dr. Marcie Garland, a psychiatrist, on October 18, 2021. In connection with her examination of Petitioner, Dr. Garland reviewed medical records for treatment provided to Petitioner following the accident of October 1, 2019, provided to her by Respondent. At that time, Petitioner informed Dr. Garland of the circumstances of the accident of October 1, 2019, and the treatment she received thereafter. Petitioner also informed Dr. Garland of her first psychiatric contact was in 1999 and was, at that time, diagnosed with bipolar disorder. Petitioner also advised her father was sexually and mentally abusive toward her as well as her spouse undergoing a sex change (Respondent's Exhibit 2).

In respect to her current symptoms, Petitioner advised Dr. Garland she felt anxious, depressed and did not like being in large crowds or going places. Petitioner stated she struggles with performing household tasks and tending to personal hygiene. Petitioner said she had experienced suicidal thoughts and had gained a significant amount of weight.

Dr. Garland's mental status examination of Petitioner had findings consistent with those of Dr. Sky. Dr. Garland opined the primary psychiatric diagnosis was bipolar disorder, currently depressed (Respondent's Exhibit 2).

In respect to causality, Dr. Garland opined there was not a causal relationship between Petitioner's current findings and the accident of October 1, 2019. This was based on Petitioner's long standing history of bipolar disorder, which she described as being a relapsing and remitting illness which includes episodes of mania and major depression (Respondent's Exhibit 2).

At the request of Respondent's counsel, Dr. Garland prepared a supplemental report dated January 28, 2022. Dr. Garland's report of that date was in respect to her review of various medical records which had not been provided to her previously. The records Dr. Garland reviewed at that time included Dr. Chalfant's record for treatment he provided to Petitioner prior to the accident of October 1, 2019, specifically pre-accident records from March 17, 2014, through September 16, 2019. Dr. Garland also reviewed a pre-accident record from Centerstone of Illinois dated December 14, 2018. The aforementioned records contained references to Petitioner's bipolar disorder, anxiety, depression, stress, and sleep issues (Respondent's Exhibit 3).

Dr. Garland reviewed/abstracted various other records regarding Petitioner which included Dr. Sky's report of September 20, 2021. Dr. Garland reaffirmed her prior opinion regarding Petitioner's psychiatric diagnosis as being bipolar disorder, most recent episode depressed. She also reaffirmed her opinions she previously indicated in her report of October 18, 2021 (Respondent's Exhibit 3).

At the request of Petitioner's counsel, Dr. Sky prepared a supplemental report dated October 22, 2022. Dr. Sky's supplemental report was based upon his review of additional records regarding Petitioner's injury; however, the primary record reviewed by Dr. Sky was Dr. Garland's report of September 20, 2021. Dr. Sky reaffirmed his prior opinions regarding Petitioner's psychiatric diagnoses, but added the diagnosis of cannabis use disorder. Dr. Sky also reaffirmed his opinion that Petitioner's psychiatric condition was related to the accident of October 1, 2019. Specifically, Dr. Sky stated he disagreed with Dr. Garland regarding causality and that, while Petitioner had pre-existing bipolar disorder, this condition was "markedly worsened" because of the accident of October 1, 2019. He noted Petitioner had been doing relatively well from a psychiatric standpoint prior to the accident and had not been hospitalized for any psychiatric conditions for 20 years (Petitioner's Exhibit 1; Deposition Exhibit 3).

Dr. Garland was deposed on November 2, 2022, and her deposition testimony was received into evidence at trial. On direct examination, Dr. Garland's testimony was consistent with her medical reports and she reaffirmed the opinions contained therein. Specifically, Dr. Garland testified Petitioner had bipolar disorder which was a long-standing diagnosis as well as depression. In regard to causality, Dr. Garland testified that neither condition was causally related to the accident

of October 1, 2019. This was based on the fact Petitioner was diagnosed with bipolar disorder prior to the accident which overlapped her current symptoms which would be expected with such a diagnosis (Respondent's Exhibit 4; pp 15-16).

On cross-examination, Dr. Garland agreed Petitioner had been able to function in her job prior to the accident of October 1, 2019, and that Dr. Chalfant authorized Petitioner should be off work for several weeks thereafter. Dr. Garland also opined that the only psychiatric diagnosis where a specific accident could be the cause is PTSD; however, she testified that the accident of October 1, 2019, was not such a cause (Respondent's Exhibit 4; pp 26-27).

Dr. Sky was deposed on March 20, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Sky's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, Dr. Sky testified Petitioner had a long history of psychiatric treatment and was previously diagnosed with bipolar affective disorder. He noted Dr. Chalfant had been treating Petitioner prior to the accident of October 1, 2019, and Petitioner's symptoms were relatively under control and Petitioner had gone 20 years without any psychiatric hospitalizations (Petitioner's Exhibit 1; pp 10-13).

In respect to causality, Dr. Sky testified Petitioner's pre-existing condition of bipolar disorder was exacerbated or worsened because of the accident of October 1, 2019. This opinion was based on the fact that, prior to the accident of October 1, 2019, Petitioner's condition was stable, she was working and had not had a psychiatric hospitalization for 20 years. Subsequent to the accident, Petitioner was unable to work, was hospitalized twice and was incarcerated. Dr. Sky reaffirmed his opinion Petitioner had PTSD which he also related to the accident of October 1, 2019 (Petitioner's Exhibit 1; pp 14-16).

On cross-examination, Dr. Sky was questioned about the timeline for developing PTSD symptoms after experiencing trauma. Dr. Sky responded that there was no specific timeline and gave the example of some World War II veterans experiencing PTSD 40 years afterward. When questioned whether other pre-existing dramatic events experienced by Petitioner, such as the childhood sexual and physical abuse, being a contributing factor, Dr. Sky responded that the triggering factor for the symptoms Petitioner was experiencing was the accident of October 1, 2019 (Petitioner's Exhibit 1; pp 30-32).

At trial, Petitioner testified she continues to be hypervigilant and is worried something bad will happen, especially to her children. Petitioner still has anxiety and has difficulties leaving her house, but has learned to live with it. Petitioner continues to have problems being in public around other people and still has sleep issues. Petitioner was able to secure employment sometime in August/September, 2022, at a community service center for adults with developmental disabilities. Petitioner testified she was presently earning as much as she did when she worked for Respondent.

Conclusions of Law

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

The Arbitrator concludes that, as a result of the accident of October 1, 2019, Petitioner sustained a temporary exacerbation of her pre-existing bipolar disorder condition, but that her current condition of ill-being is not causally related to the accident of October 1, 2019.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on October 1, 2019.

Prior to the accident of October 1, 2019, Petitioner had a long history of psychiatric conditions, primarily bipolar disorder, for which Petitioner had been treated by Dr. Chalfant, a psychiatrist, who she saw approximately two weeks prior to the accident.

As a child, Petitioner was sexually and physically abused by her father and mentally abused/manipulated by her mother.

Subsequent to the accident of October 1, 2019, Petitioner continued treatment with Dr. Chalfant, her psychiatrist, who authorized her to be off work in October/November, 2019. Dr. Chalfant last saw Petitioner on December 2, 2019.

While Petitioner was being treated by Dr. Chalfant, she also sought counseling at Centerstone of Illinois, and was seen by Lisa Feldmann, a Professional Counselor, in October/November, 2019. When Counselor Feldmann saw Petitioner on November 22, 2019, Petitioner's symptoms were described as "Borderline" and Petitioner stated her symptoms were "Much Improved."

As noted herein, it was not clear to the Arbitrator if Petitioner was seen at Centerstone of Illinois on February 19, 2020; however, Petitioner was discharged from care at that time.

Subsequent to the accident of October 1, 2019, Petitioner was subjected to additional stress issues including her daughter experiencing panic attacks, her spouse undergoing a sex change and Petitioner assaulting a police officer and thereafter being incarcerated.

When Petitioner was seen by Lori McAllister, a Professional Counselor, on May 14, 2020, Counselor McAllister opined Petitioner had symptoms of PTSD; however, Counselor McAllister subsequently stated that this diagnosis needed to be made by a medical professional.

Petitioner's psychiatrist, Dr. Chalfant, never diagnosed Petitioner with PTSD.

Petitioner's Section 12 examining psychiatrist, Dr. Sky, opined the accident of October 1, 2019, worsened Petitioner's bipolar disorder and caused Petitioner to have PTSD. This was based primarily on Petitioner's relatively stable psychiatric condition before the accident of October, 2019, and the significant psychiatric symptoms she experienced afterward.

When cross-examined about how long PTSD can occur following a traumatic event, Dr. Sky testified there was not a specific timeline and gave the example of some World War II veterans experiencing PTSD 40 years afterward. However, Dr. Sky seemed to discount the sexual and physical abuse Petitioner was subjected to as a child.

Respondent's Section 12 examiner, Dr. Garland, opined there was not a causal relationship between Petitioner's current findings and the accident of October 1, 2019, based primarily on Petitioner's long standing diagnosis of bipolar disorder which she noted was a relapsing or remitting illness.

Based upon the preceding, the Arbitrator is not persuaded by Dr. Sky's opinion regarding causality and finds Dr. Garland's opinion regarding causality to be more persuasive.

The Arbitrator is likewise not persuaded by Dr. Sky's opinion that Petitioner has a diagnosis of PTSD.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes Petitioner is entitled to reasonable and necessary medical services provided to Petitioner from October 1, 2019, through February 19, 2020.

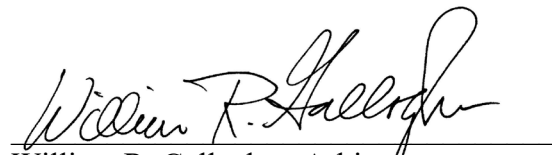
Respondent shall pay reasonable and necessary medical services provided to Petitioner from October 1, 2019, through February 19, 2020, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall receive a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 20 1/7 weeks, commencing October 2, 2019, through February 19, 2020.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes Petitioner is not entitled to an award of permanent partial disability benefits.


 William R. Gallagher, Arbitrator

JANUARY 2 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026398
Case Name	Jenny L. Kosiec v. Decatur Public School District 61
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0336
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Elizabeth Reynolds
Respondent Attorney	Daniel Gaumer

DATE FILED: 8/5/2025

/s/ Maria Portela, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JENNY KOSIEC,

Petitioner,

vs.

NO: 22 WC 26398

DECATUR PUBLIC SCHOOL DISTRICT, #61,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision in regard to causal connection and finds Petitioner failed to prove that her current condition of ill-being was causally related to the work accident subsequent to August 23, 2022. Therefore, the Commission vacates the awards for temporary total disability benefits and modifies the permanent partial disability benefits to an award of 0% loss of person as a whole. The Commission also modifies the award for medical expenses as further outlined below. Lastly, the Commission affirms the denial of penalties.

Petitioner, employed as an assistant principal by the Respondent, alleges that on August 23, 2022, she was repeatedly struck on the shoulders, the back of the neck, sustained injury to her left foot and was pepper sprayed in her eyes while attempting to break up an altercation between two students. (T. 11, 13) Petitioner also alleges she fell to the ground, struck her head, lost consciousness, sustained a laceration to her head and had red marks on her body that she could not explain. (T. 14)

Following the altercation of August 23, 2022, Petitioner was taken from the scene by ambulance to St. Mary's hospital. The ambulance records note that they were dispatched to tend

to a female who had been pepper sprayed. (Rx5) The emergency department records note a chief complaint of chemical exposure and Petitioner's complaints were burning eyes and throat. She denied a change in vision or blurred vision. Overall, the exam was noted to be normal and no notation was made of any other body parts being affected or any other injuries sustained. (Px7) The ER physician determined the chemical exposure did not require work-up.

On August 24, 2022, Petitioner viewed a video of the altercation. The video clearly shows that Petitioner was pepper sprayed in her eyes but it does not show Petitioner's head striking the ground nor does it show she lost consciousness. Moreover, Sergio Reyna, Petitioner's fellow assistant principal, testified that within seconds of the altercation, he walked over to Petitioner who was on the ground. He stated that he spoke with her until paramedics arrived and that he observed nothing that would lead him to believe Petitioner lost consciousness. Mr. Reyna further testified that while he was speaking to Petitioner while she sat on the ground, her only physical complaint was that the pepper spray burned her eyes. (T. 66) Mr. Reyna's testimony correlates with the information contained in the ambulance records (Rx5) as well as the records of the August 23, 2022 visit to St. Mary's Emergency Department. (Rx7)

On August 24, 2022, Petitioner again sought treatment at St. Mary's Emergency Department. At this time, she stated that until she viewed a video of the August 23, 2022 incident prior to this visit, she was unaware that during the course of the altercation on August 23, 2022, she had been kicked in the head several times by a student and had lost consciousness. Petitioner's complaints now included headaches and nausea. (Px7, Rx2, Rx9) Despite Petitioner's chief complaint of headache and nausea, during the course of the examination, she denied visual changes, nausea, vomiting, confusion, disorientation and focal weakness. On exam her head was normocephalic and atraumatic, her eyes were normal, her musculoskeletal exam showed no swelling, tenderness, deformity or signs of injury. Her cervical spine had normal range of motion and her neck was supple. Her skin showed no bruising, erythema, lesion or rash. Her coordination was intact. Her gait was normal. The CTs of her cervical spine and head were normal. (Px7, Rx2, Rx9) Petitioner was diagnosed with a concussion based on her subjective history. She was taken of work with an anticipated return of August 29, 2022. (Px14)

Petitioner's version of events immediately following the incident as well as the testimony of Mr. Reyna and what is depicted in the video do not support Petitioner's account of the incident which changed only after she viewed the video. Additionally, neither the St. Mary's Emergency Room records dated August 23, 2022, nor August 24, 2022, corroborate Petitioner's report that she sustained a head laceration and that she had red marks all over her body. Given the lack of evidentiary support, the Commission finds the Petitioner was not a credible witness and also finds Petitioner failed to meet her burden of proof that her current condition of ill-being was causally connected to the work accident of August 23, 2022.

Although the Commission finds that Petitioner sustained a work accident on August 23, 2022, and that her eyes were pepper sprayed, that condition resolved as of the date of accident. The emergency room records of St. Mary's Hospital dated August 23, 2022, state that although Petitioner reported that her eyes were still burning, the emergency room physician irrigated her eyes and determined she needed no further workup as a result of the chemical exposure to her eyes. (Px7, 8/23/22) Moreover, when Petitioner was seen at the Gailey Eye Clinic on August 30,

2022, it was noted that the pepper spray caused no damage to the eyes. (Px8)

Accordingly, the Commission finds Petitioner failed to prove her current condition of ill-being is causally related to the accident of August 23, 2022, and therefore modifies the permanent partial disability award from 15% loss of the person of a whole to 0% loss of a person as a whole, vacates the temporary total disability award and affirms the denial of penalties.

In support of its finding that the permanent disability award should be reduced from 15% loss of the person as a whole to 0% loss of the person as a whole, the Commission analyzes the permanent partial disability factors in Section 8.1b(b) of the Act as follows:

- (i) No impairment rating was submitted so this factor is given “no weight.”
- (ii) Petitioner’s occupation is an assistant principal. Petitioner has continued to serve in this role, albeit at another school in the district. We give this factor “significant weight.”
- (iii) Petitioner was 52 years of age at the time of her accident. We give this factor “no weight” because there was no medical opinion that Petitioner’s age was a factor in her prognosis.
- (iv) There was no evidence regarding Petitioner’s future earning capacity as a result of the events of August 23, 2022. We give this factor “no weight.”
- (v) We give “significant weight” to the evidence of Petitioner’s disability corroborated by the treating medical records. The Commission finds, and the medical records support, that Petitioner was sprayed with pepper spray to her eyes while attempting to break up a fight between students on August 23, 2022. Petitioner was transferred to St. Mary’s Hospital via ambulance and was treated in the Emergency Department for the irritation to her eyes and throat caused by the pepper spray. Petitioner was discharged after her eyes were irrigated and it was noted that no further workup was needed. Petitioner was seen at the Gailey Eye Clinic on August 30, 2022 where it was noted that the pepper spray did not induce damage to the eyes. The Commission found no other disability, so no other treating records are given weight in relation to this factor.

The Commission also modifies the Arbitrator’s award regarding medical expenses and finds the only outstanding bill related to treatment Petitioner received for injuries causally related to the work accident is the bill from St. Mary’s Hospital Emergency Department corresponding to a date of service of August 23, 2022 in the amount of \$1,148.65.

IT IS THEREFORE ORDERED BY THE COMMISSION that the award for permanent partial disability benefit is modified from 15% loss of person of a whole to 0% loss of person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the award for temporary total disability is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,148.65 for medical expenses related to the August 23, 2022 St. Mary's Emergency Department visit 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 the denial of penalties is affirmed.

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

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

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

August 5, 2025

/s/ Maria E. Portela

Maria E. Portela

MEP/dmm

/s/ Christopher A. Harris

O: 71025

Christopher A. Harris

49

/s/ Marc Parker

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC026398
Case Name	Jenny L. Kosiec v. Decatur Public School District 61
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Robert Javoronok
Respondent Attorney	Daniel Gaumer

DATE FILED: 5/20/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 14, 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

Jenny L. Kosiec

Employee/Petitioner

v.

Decatur Public School District 61

Employer/Respondent

Case # **22** WC **026398**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **3/28/2024**. 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 **Causation, Medical, TTD Penalties, Nature and Extent**

FINDINGS

On **August 23, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$104,000.00**; the average weekly wage was **\$2,000.00**.

On the date of accident, Petitioner was **52** years of age, *single* 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** 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 \$1,333.33/week for 4 4/7 weeks, commencing 8/25/22 through 9/25/23 as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of \$28,786.09, as provided in Sections 8(a) and 8.2 of the Act, subject to reductions under the medical fee schedules and to credit for amounts already paid by the Worker's Compensation carrier.

Respondent shall pay Petitioner the sum of \$998.02/week for a further period of 75 weeks in the amount of \$74,851.50, as provided in Section 8(d)(2) of the Act, because the injuries sustained caused 15% MAW loss of permanent partial disability.

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

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

Edward Lee
Signature of Arbitrator

May 20, 2024

The Arbitrator hereby makes the following Findings of Facts on all issues:

On March 28, 2024, Jenny Kosiec (hereinafter “Petitioner”), testified before the Illinois Workers’ Compensation Commission regarding the events that transpired on August 23, 2022, that form the basis of this resulting worker’s compensation claim. On that day at approximately 3pm, Petitioner was acting in her official scope and capacity as an Assistant Principal at Eisenhower High School, a school ran by Respondent Decatur Public School District #61, in the county of Macon, city of Decatur, and State of Illinois. On the aforementioned date and time, Petitioner was supervising bus duty when she witnessed a fight break out between students (Tx. 9). While still acting within the scope of her official employ, Petitioner attempted to physically deescalate the fight and was the first administrator to respond to the scuffle. Fellow Assistant Principal, Sergio Reyna, was also present and attempted to aid Petitioner in deescalating the altercation (Tx. 9). A video of the altercation was played before the Arbitrator (Tx. 13) and Petitioner testified that as a result of the scuffle she was struck by a student and sustained injuries to the top of her head, the back of her neck, her upper and middle back, her foot, and was subsequently sprayed in the face with pepper spray before falling to the concrete ground (Tx. 10-11).

Following the altercation, Petitioner was taken by ambulance to the emergency room at St. Mary’s Hospital to treat the injuries she sustained to her eyes and nose that had resulted from the discharged pepper spray (Px. 7). Petitioner filled out accident reports as required by the school district and presented those reports to the Commission in what was labeled as Petitioner’s Exhibit 2. Within Petitioner’s Exhibit two were emails that Petitioner had written to her supervisors on August 24, 2022, describing the events that took place the day prior that led to her resulting injuries (Px. 2 pg. 2). Specifically, Petitioner sent this notification to the following individuals: Deane Hillman, HR Director, Dr. Amy Zahm, Principal of Eisenhower High School, and Micheal Curry, the Chief Financial Officer for the school district (Tx. 16-17). Petitioner testified that she notified these individuals that during the altercation she was struck by a student in her head and back and pepper sprayed by a school police officer (Tx. 19). Within these reports, Petitioner had provided written accounts of the injuries she sustained, namely that she was hit by a student in her head and upper back, had feelings of being concussed, and experienced pain and soreness to her back and neck (Tx. 17-19; Px. 2). Petitioner’s Exhibit No 2 contains a copy of the Decatur Public School District No. 61 Assault Report Form that was completed by Petitioner after the alternation occurred. In that document, Petitioner stated that the student who had hit her in the head and back did not stop their assault until they were physically restrained by another staff member (Px. 2 pg. 6). Petitioner further wrote that school police officer Lowery had to use pepper spray to break up the altercation and that the spray had discharged into her face causing her to fall to the ground unable to see and breathe (Px. 2 pg. 6).

Furthermore, Petitioner testified that she had notified Jennifer Sommer, who was in charge of worker’s compensation claims for the school district, of her injuries (Tx. 20; Px. 3). On page three of Petitioners Exhibit No. 3, Petitioner’s email to Ms. Sommer stated that Petitioner was injured while trying to break up a fight and received treatment on two separate occasions in the emergency room resulting in a concussion diagnosis (Px. 3 pg. 3). Ms. Sommer instructed Petitioner to submit her medical bills and outlined the next steps regarding her benefits and payment of wages while being off from work (Tx. 20; Px 3 pg. 2). Petitioner testified that she had submitted her medical bills as instructed by Ms. Sommer, including the emergency room visit from August 23, 2022 (Tx. 21).

Prior to the August 23, 2022, altercation, Petitioner had surgery to her left foot (Tx. 28). After the altercation she began to notice swelling in the same foot and discovered from an X-ray that she sustained a break to the foot in a spot different from the one she had her surgery performed on (Tx. 28). Petitioner testified that she was no longer employed at Eisenhower High School but does provide bus duty services at the middle school. Petitioner further testified that she no longer provides bus duty for city buses due to her fear of going by them and resulting panic attacks attributable to the underlaying work injuries that transpired August 23, 2022 (Tx. 29).

Petitioner testified that after being taken by ambulance to St. Mary's emergency room on August 23, 2022, she returned the following day due to experiencing a severe headache, nausea, and dizziness for the entirety of the day (Tx. 31). Petitioner had notified both Deanne Hillman and Mike Curry of her condition via email around 4:30 in the afternoon and they agreed for her to go back to the hospital (Tx. 31-32). Petitioner returned the ER at St. Mary's that evening and was reevaluated for a head injury. CT scans of her head and spine were taken at the order of attending physician Alison Peddycoat, APRN, who then diagnosed Petitioner with a concussion (Px. 7 pg. 538). Peddycoat provided Petitioner with a return-to-work notice set for 8/29/2022 (Px. 7 pg. 551-552; 558; *see also* Px. 14 pg. 5). Petitioner was discharged with concussion instructions (Px. 7 pg. 559-570).

Petitioner further testified that she experienced post concussive symptoms as of August 24, 2022, and was later diagnosed by her physician, with posttraumatic stress disorder and post concussive syndrome (Tx. 32). Petitioner went to Galley Eye Clinic due to blurred vision and eye pain she was experiencing from the chemical exposure in the pepper spray that was dislodged during the altercation on August 23, 2022 (Tx. 32-33; Px. 9 pg. 2-17). Petitioner's medical records from Galley Eye Clinic indicate that the concussion could have caused the blurry vision that she was experiencing (Px. 9 pg. 5) and that a neurologist should take a second look to address the headaches and dizziness that Petitioner has been having (Px. 9 pg. 11). Petitioner testified that she saw a neurologist through St. Mary's and had not notified worker's comp of that visit due to a lack of communication from Jennifer Sommer as well as the school district (Tx. 33). Petitioner testified that Ms. Sommer's and the school district had stopped answering her emails and would not speak to her (Tx. 33-34).

Petitioner further testified that she saw Dr. Jennifer Stowers at Decatur Memorial Hospital who treated her for neck and back pain along with her mental status (Tx. 34). Additionally, she was referred by her therapist to psychiatrist, Dr. Chopra for PTSD (Px. 13). Furthermore, Petitioner testified that she was treated at HSHS Multispecialty Care in the Neurology Department by nurse Rhinehart (Tx. 34).

Petitioner testified that her life changed in many ways as a result of the incident that transpired on August 23, 2022, at Eisenhower High School (Tx. 35). Petitioner told the Commission that the incident exacerbated her pre-existing anxiety resulting in increased panic attacks, headaches, and neck, and shoulder pain (Tx. 35-36). Petitioner is in looming fear of being struck just as she had been during the midst of the altercation on August 23, 2022 (Tx. 36). Petitioner stated she experiences disturbances to her sleep and wakes up in cold sweats with difficulty breathing and dizziness (Tx. 36; Px. 11 pg. 5). Petitioner has been put on medication to help her sleep at night and to address her mood swings (Tx. 36). The increase in Petitioner's dizziness has caused her to become fearful of falling, a feeling that Petitioner stated she did not experience prior to the incident at Eisenhower High School on August 23, 2022 (Tx. 37). Petitioner's medical records from HSHS Multispecialty Care show that Petitioner has complained of issues with her balance and chronic headaches and dizziness to the point Petitioner feared showering without someone being present (Px. 13 pg. 7).

Petitioner testified that she constantly feels dizzy even when she lays down and that the room appears to be spinning (Tx. 37; Px. 13 pg. 8). Petitioner's medical records from Decatur Neurological show post-concussive syndrome with an element of posttraumatic vestibulopathy (Px. 11 pg. 6). Furthermore, Petitioner's medical records show that after sustaining her concussion following the work-related injury on August 23, 2022, Petitioner experienced headaches with sleep disturbances, anxiety, panic attacks, dizziness that is accompanied by room-spinning episodes that is provoked through head movement, and gait unsteadiness that has failed to improve (Px. 11 pg. 5).

On cross examination, Respondent inquired into several prior injuries and surgeries Petitioner had including surgery to her left foot, bilateral total knee replacement surgery, surgery for carpal tunnel and a broken right wrist (Tx. 38-40). Petitioner testified that all of these injuries had healed prior to the work injury she sustained on August 23, 2022, while working in Respondent's employ (Tx. 40). Respondent asked Petitioner if she had pre-existing issues with her neck or back to which she testified as having typical aches and

pains that come with age and that she was never treated before for anything related to those conditions (Tx. 40). Petitioner testified that prior to the August 23, 2022, work injury, she was not experiencing physical problems of any kind other than swelling to her foot for which she wore a brace and splint and sinus infections from allergies (Tx. 41,44; Px.10 pg. 3). Dr. Edward C. Elliott, DPM, out of Decatur Orthopedic Center had performed petitioner's prior foot surgery on May 18, 2022, and her post-op visit notes from September 20, 2022, indicate that she had transitioned out of her walking boot and into regular shoes without any complications and that X-rays were ordered in four weeks (Px. 10 pg. 7-8). Furthermore, petitioner's medical records from Decatur Orthopedic note the ground-level fall she took when attempted to defuse the altercation on August 23, 202 (Px. 10 pg. 7). On October 10, 2022, an X-ray of petitioner's left foot was taken at Decatur Orthopedic Center by Dr. Edward C. Elliott, DPM, that showed a fracture to her osteotomy site with broken hardware (Px. 10 pg. 16.). Petitioner testified that the injuries that continue to bother her stemmed from the August 23, 2022, work injury and manifest daily in the form of headaches, back pain, neck pain, PTSD, anxiety, and panic attacks (Tx. 41-42).

Petitioner testified that assistant principal Sergio Reyna was present when the fight occurred at Eisenhower High School resulted in her work injuries on August 23, 2022, and that he had stayed with her until the ambulance arrived (Tx. 47). She further testified that Detective Lowry, one of the school's police officers, had discharged the pepper spray that ended up burning her eyes and nasal passages (Tx. 47). It was not until the following day after the August 23, 2022, work injury that Petitioner had realized the extent of her injuries after viewing video footage of the fight she had attempted to stop (Tx. 48). Petitioner stated that this was due to memory loss she experienced after the resulting altercation and fall to the pavement after being struck and pepper sprayed (Tx. 49; Px. 13 pg. 7).

Respondent asked Petitioner as to what she told emergency room staff at St. Mary's after she was taken there by ambulance following the August 23, 2022, incident (Tx. 49). Petitioner stated that she was bleeding from a laceration in her head and told a nurse about this injury along with not being able to breathe from the pepper spray and burning in her eyes (Tx. 50). Respondent commented that petitioner's medical record made no mention of the aforementioned laceration to which Petitioner testified that there was a failure to record on behalf of the ER staff (Tx. 50). Petitioner testified that when she was released from the emergency room at St. Mary's on August 23, 2022, she was not provided with work restrictions and reported to work the next day (Tx. 51). After working the entire day and feeling ill, Petitioner returned to St. Mary's emergency room that evening on August 24, 2022 (Tx. 52).

Respondent referenced page 24 of Petitioner's Exhibit 13, which consisted of her medical records from HSHS Multispecialty Care on February 27, 2024. On that day Petitioner, had a visit with nurse practitioner LeAnne Rhinehart for an injury she sustained to her neck whilst getting a facial when the table upon which she was laying gave way (Tx. 53-54). Petitioner stated she went to St. Mary's ER following the aforementioned incident and then to Decatur Memorial Hospital Urgent Care (Tx. 56).

Testimony of Sergio Reyna:

Respondent presented Mr. Sergio Reyna to testify at arbitration. Mr. Reyna stated that on the day of August 23, 2022, he was an assistant principal at Eisenhower High School in the county of Macon, city of Decatur, and State of Illinois (Tx. 60-61). Mr. Reyna testified that he has worked for the district of Decatur Public School No. 61 for over nineteen years, for seven of which he has known Petitioner (Tx. 61). On the day of Petitioner's injury, both he and Petitioner were outside of the school monitoring the students as they got onto their respective buses (Tx. 61). Mr. Reyna recalled the events that transpired that afternoon that caused the basis of Petitioner's injury claim stating that students had gotten into an altercation and Petitioner was the first to intervene (Tx. 62). He testified that he had approached the scuffle to help Petitioner break up the fight prior to when the school police officer sprayed the pepper spray into the crowd. Mr. Reyna testified that he witnessed Petitioner get sprayed in the eyes by the pepper spray and that he too had gotten some of it on his person (Tx.

63). Mr. Reyna stated that he saw Petitioner fall to the ground and stayed with her up until the paramedics arrived and asked if she was okay since she had undergone foot surgery (Tx. 63). Mr. Reyna stated that Petitioner was conscious and responded she was okay, except for burning in her eyes (Tx. 64). Mr. Reyna testified that he did not personally see Petitioner get struck by the students and the following day remembered that Petitioner came in to work at the school (Tx. 67).

On cross examination, Mr. Reyna testified that he was aware Petitioner was taken to the hospital by ambulance and opinioned that persons do not get transported to the hospital via ambulance unless they have serious injuries (Tx. 71). Mr. Reyna testified he did not have any personal stake in the outcome of this case, but subsequently acknowledged that he had taken over some of petitioner's duties during her absence (Tx. 68,72).

Exhibits Admitted into Evidence:

Respondent stated that he had reviewed all of petitioner's exhibits and only had liability objections for her medical bills. The Arbitrator admitted into evidence Petitioner's Exhibit's Nos. 1-22 as set forth in Arbitrator's Exhibit No. 2, which is petitioner's exhibit list. Petitioner's attorney, Petitioner had no objections as to Respondent's exhibits being admitted into evidence and then and there, the Arbitrator admitted into evidence Respondent's Exhibits Nos. 1-11 as set forth in Arbitrator's Exhibit No. 3, which is Respondent's exhibit list.

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision regarding (F), "is Petitioner's current condition of ill-being causally related to the injury", (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:

There is no dispute Petitioner was injured in an altercation that arose out of and in the course of her employment as assistant principal for Respondent. Petitioner provided credible testimony that on August 23, 2022 she was injured while intervening to break up an altercation between students. There was video evidence of the accident which Petitioner immediately reported to Respondent superiors and medical providers. Petitioner filled out several incident reports the day after the accident for Respondent and also provided Respondent a copy of the video that captured the work accident, that she was given by the driver of the city bus. After watching the video and reviewing the evidence, including testimony, accident reports and medical records, the Arbitrator concludes that Petitioner met her burden of proof on all issues. Further, based upon the video evidence depicting the physical altercation that transpired on August 23, 2022 and the medical records, showing the providers rationale for the services rendered, the Arbitrator finds that the medical expenses incurred through January 31, 2024, were reasonable and necessary in the care and treatment of Petitioner's work injuries.

The Petitioner's testimony regarding the onset of her symptoms and lack of prior similar symptoms, and the initial treatment histories provide a course of events that establish that Petitioner's condition of ill being through at least January 31, 2023, is causally related to the work accident. Petitioner's testimony, consistent reports to her employer and medical provider showed that she suffered injuries to her eyes, head, neck, shoulders, and upper back, which included diagnosed PTSD and post-concussion syndrome. The medical records showed that the treatment provided was for injuries that resulted from the work accident and the Arbitrator finds that Petitioner's current condition of ill-being was causally related to the injury. Respondent presented no medical evidence to rebut the opinions of Petitioner's treating physicians. Petitioner's treating physician opinions regarding her condition of ill being credible and reasonable. Accordingly, the Arbitrator adopts the medical records and diagnoses provided as related to the work accident.

Based upon the video evidence, Petitioner's credible testimony regarding ongoing pain, persistent feelings of disorientation, headaches, and panic attacks experienced subsequent to the work accident, the opinions of the treating doctors that the findings at the time were consistent with the trauma that the Petitioner had suffered, the absence of any contrary medical opinion, and the absence of any evidence of an intervening cause of the Petitioner's complaints, the Arbitrator finds that it is more likely than not that the subsequent course of treatment from August 23, 2022 through January 31, 2023 remain causally related to the Petitioner's work related accident, and that Petitioner's current condition of ill-being testified to during arbitration is related to that accident.

Based on the above findings regarding causal connection, and the medical records, showing the providers rationale for the services rendered, the Arbitrator finds that the medical expenses incurred through January 31, 2023, were reasonable and necessary in the care and treatment of Petitioner's work injuries. The Arbitrator finds that the medical care provided to the Petitioner by HSHS, St. Mary's Hospital, Decatur, Memorial Hospital, Gailey Eye Clinic, Decatur Orthopedic Center, Decatur Neurological Associates, Dr. Chopra, HSHS Multispecialty Care through January 31, 2023 was necessary. Likewise, the Arbitrator finds that the professional charges for the foregoing medical care were reasonable. Accordingly, the Arbitrator finds that Petitioner is entitled to medical benefits as found in Petitioner's Exhibits 16-21 and summarized in Petitioner's Exhibit 15 with exception to the February 27, 2024 HSHS Multispecialty Care bill that the arbitrator does not find related to the work accident. Further, the Arbitrator finds that Respondent has not paid all charges relating to Petitioner's, reasonable and necessary medical care. As such, Respondent shall pay these charges pursuant to the medical fee schedule as provided and Section 8(a) and Section 8.2 of the Act. Respondent shall be given credit for any amount previously paid under Section 8(a) of the Act for medical benefits, and Respondent shall hold Petitioner harmless from any claims made by any providers for the services for which Respondent is receiving this credit, as provided and Section 8(j) of the Act. Further, Respondent shall pay the further sum of \$28,786.09 for necessary medical services, pursuant to the medical fee schedule, as provided in Section 8(a) and 8.2 of the Act, and Respondent shall be given a credit for payments made by the group medical plan, and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of the Arbitrator's Decision relating to K, the Arbitrator finds as follows:

Regarding claimed TTD, Respondent did not pay TTD benefits for the time Petitioner was authorized off work as evidenced in Petitioner's Exhibit 14. The Arbitrator finds the TTD benefits claimed are the responsibility of Respondent. The Arbitrator finds Petitioner was temporarily totally disabled for the period of August 25, 2022 through September, 25, 2023, a period of 4-4/7 weeks. Accordingly, for these 4 4/7 weeks, the Arbitrator awards \$1,333.33 per week, being 2/3 of the earnings that Petitioner would have earned absent the work accident in the amount of \$2,000.00 per week.

In support of the Arbitrator's Decision relating to L, "what is the nature and extent of the injury", the Arbitrator finds as follows:

The Arbitrator's findings with respect to accident and causal connection are incorporated herein. Petitioner's sustained work-related injuries to her eyes, head, neck, shoulders and upper back, which required numerous treatments for which Petitioner still suffers deficits. As Petitioner's accident occurred after September 1, 2011, permanent partial disability (PPD) is assessed using the factors provided by the legislature in Section 8.1b.

Regarding factor (i) of §8.1b(b), the reported level of impairment pursuant to subsection (a), the Arbitrator notes there was no impairment rating performed on this case using the AMA Guides, 6th Edition. The Arbitrator considers this factor but gives no weight.

Regarding factor (ii) of §8.1b(b), the occupation of the injured employee, the evidence shows Petitioner now works as an assistant principal for public middle school and is still subject to physical and mental demands interacting with student altercations as before the accident, but now while battling the residual deficits from the injury. Therefore, the Arbitrator places great weight on this factor in increasing the disability award.

Regarding factor (iii) of §8.1b(b), the age of the employee at the time of injury, Petitioner was 52 years old at the time of the injury and 53 time of arbitration. Petitioner has many work years left, during which time she will need to deal with the residual effects of her injuries, particularly when interacting with disgruntled students. Therefore, the Arbitrator places significant weight on this factor in increasing the disability award.

Regarding factor (iv) of §8.1b(b), the employee's future earning capacity, Petitioner still works as an assistant principal. There was no evidence regarding a reduction in earning capacity for the change in schools. Therefore, the Arbitrator places no weight on this factor.

Regarding factor (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator finds Petitioner's testimony was credible and her complaints of pain and problems are verified by the medical evidence.

Petitioner testified she continues to suffer neck and shoulder pain, along with disorientation and more frequent headaches and severe panic attacks she attributes to the August 23, 2022, work accident. The residual effects of the work injury negatively impact Petitioners daily activities, including her ability to walk, it also negatively impacts her work duties, especially when confronting potentially dangerous interactions with students in her capacity as an assistant principal for Stephan Decatur Middle School. Based on the foregoing, the Arbitrator gives significant weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of the man as a whole pursuant to Section 8(d)(2) of the Act.

Respondent shall pay Petitioner the sum of \$998.02/week for 75 weeks from the date of this decision, because of the injuries sustained caused the 15% loss of use of the man as a whole provided in Section 8(d)(2) of the Act.

In support of the Arbitrator's Decision relating to M, "should penalties or fees be imposed upon Respondent", the Arbitrator finds as follows:

Petitioner seeks penalties because Respondent did not pay the 8/23/22 St. Mary's emergency room bill.

Petitioner testified that that bill was submitted to the Respondent. However, the evidence is conflicting on that point. In Respondent's exhibit 11 the adjuster for the third-party administrator Sedgwick indicates that they have no record of any bill from St. Mary's for date of service 8/23/22. Attached to the letter from the adjuster, Kelli Xerri, is a ledger showing bills which have been paid by Sedgwick with reference to this claim (Respondent's Exhibit 11). That ledger shows that Respondent did pay St. Mary's Hospital bills for dates of service 8/24/22 and 9/2/22. Respondent also paid medical bills to Decatur Orthopedic (Dr. Elliott) for dates of

service 10/18/22 and 4/11/23. Those bills appear to be for treatment of Petitioner's left foot which was initially part of Petitioner's claimed injuries. During the arbitration hearing Petitioner's counsel stipulated that they were no longer making a claim for injuries to Petitioner's left foot. Counsel for Respondent represented to the Arbitrator that he had never seen the 8/23/22 St. Mary's emergency room bill until he received medical bills 3/27/24 from claimant's attorney. That was late in the day before the date of arbitration (T 5). Counsel for Respondent stipulated at arbitration that Respondent would pay the 8/23/22 bill. The Arbitrator finds that there is conflicting evidence on whether the 8/23/22 St. Mary's ER bill was or was not presented to the Respondent for payment. The fact that other later St. Mary's ER bills were paid tends to support Respondent's argument that they were never presented the 8/23/22 St. Mary's ER bill until the day before arbitration. Since Respondent has agreed to pay the 8/23/22 St. Mary's ER bill penalties are not warranted.

Given the conflicting evidence surrounding Petitioner's change in history to the ER between 8/23/22 and 8/24/22 there is conflicting evidence on the issue of TTD. There is no question but that Petitioner was not initially restricted from working following the 8/23/22 ER visit. Petitioner did in fact work her regular job all day on 8/24/22. It was only after Petitioner changed her history and reported that she had received multiple blows to the head, neck, or upper back area followed by a period where Petitioner was knocked unconscious did TTD become an issue. Petitioner was seen at the ER on 8/24/22 and released to work effective 8/29/22. Petitioner did not return on 8/29/22 but saw another medical provider who took her off work following an 8/30/22 exam until 9/26/22. The TTD claim for that extended period of time is directly associated with the later diagnosis of concussion which involves Petitioner's delayed history that she was repeatedly struck in the head and rendered unconscious. In light of the reasonable disputes over Petitioner's changed history and changed diagnosis there are legitimate disputes regarding whether any TTD should have been paid. Petitioner is not entitled to penalties because she did not receive TTD.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031620
Case Name	Anita L. Horne v. Hugs & Snugs Day Care Academy, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0337
Number of Pages of Decision	27
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Philip Blomberg
Respondent Attorney	James Schindler

DATE FILED: 8/5/2025

/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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Anita L. Horne,

Petitioner,

vs.

NO: 22 WC 031620

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 6, 2025, is hereby affirmed and adopted.

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

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

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

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

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

August 5, 2025

MP:yl
o 7/24/25
68

/s/ Marc Parker

Marc Parker

/s/ Maria E. Portela

Maria E. Portela

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031620
Case Name	Anita L. Horne v. Hugs & Snugs Day Care Academy, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Philip Blomberg
Respondent Attorney	James Schindler

DATE FILED: 2/6/2025

/s/William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF FEBRUARY 6 2025 4.16%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ANITA L. HORNE

Employee/Petitioner

v.

HUGS & SNUGS DAY CARE ACADEMY, INC.

Employer/Respondent

Case # **22** WC **031620**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **December 11, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **07/28/2022**, 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 **\$17,173.60**; the average weekly wage was **\$482.79**.

On the date of accident, Petitioner was **59** 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**.

ORDER***Medical benefits***

Respondent shall pay the reasonable and necessary medical services of **Ingalls Memorial Hospital and Insight Hospital and Medical Center Chicago, including Drs. Elakil, Sears and Sagarwala** as provided in Sections 8(a) and 8.2 of the Act. Respondent shall pay the sum of **\$9,438.73**.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **\$321.86** /week for **123** weeks, commencing **08/04/2022** through **12/11/2024**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$0** 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

FEBRUARY 6 2025

STATEMENT OF FACTS

Horne 22wc031620

Testimony of Anita Horne

Anita Horne, hereinafter Petitioner, testified that she is a 61-year-old food manager and cook for Hugs & Snugs Daycare, hereinafter, Respondent, daycare facility since November of 2021 (Tr. pp. 6-7). On July 28, 2022, while delivering food to a classroom, the cart she was using to transport the food had a wheel jam. While attempting to move said cart, Petitioner testified she felt a pop resulting in immediate back and groin pain. (Tr. 10-12). Petitioner had to sit down in a chair and had a brief conversation with the director of the facility Lenora Williams and explained what had just happened. (Tr. 29-30). Petitioner testified she was involved in a prior automobile accident in 2020 and had some treatment for a contusion (TR. 13-15). The records of Ingalls Memorial Hospital (RX1), indicate Petitioner presented with neck, low back and right hip pain on September 21, 2020, following a motor vehicle accident (RX1, p. 54). The records indicate she was not in acute distress (RX1, p. 56). Petitioner was x-rayed and discharged with a contusion (RX1, p.57, 65). She was prescribed acetaminophen-codeine (RX1, p. 69). X-rays of the right hip were negative for acute fracture or dislocation (RX1, p. 79). X-rays of the lumbar spine were negative for acute findings. Degenerative changes are seen at L4-5 and L5-S1 facet joints bilaterally (RX1, p. 80). X-rays of the cervical spine are negative (RX1, p. 85).

On August 01, 2022, two years after the July 28, 2022, automobile accident, Petitioner presented to the emergency room at Ingalls for a urinary tract infection with chronic back pain.

(RX1, pp. 90, 91, 92, 96). Records indicate differential diagnosis was acute and her chronic back pain worsened over the past few days. She was discharged with a prescription for Keflex and Cyclobenzaprine (PX1, pp. 21-14; RX1, p. 99). Lumbar x-rays showed disc space narrowing at L3-4, mild spondylosis and no acute findings (PX1, p. 11; RX1, p. 113).

Petitioner testified that as a result of the auto accident she wore a back brace which wrapped around her waist. (Tr. 43). Petitioner testified she wore it to work for the heavier job duties (Tr. 41). Petitioner testified that prior to the cart injury she never missed time from work. (Tr. 41). Petitioner has not returned to work for the Respondent. (Tr. 15, 16, 40, 41).

Testimony of Tenille Gowans

Ms. Gowans testified she was a teacher's assistant at the time of the accident but did not witness the accident happen. She testified that right after the accident she saw the Petitioner in pain and helped Petitioner to a chair in the kitchen and helped by serving food to the classrooms for Petitioner (Tr. 52-53).

Testimony of LaDonna Lymon

Ms. Lymon testified that she a teacher at the school, she testified that she witnessed the wheel on the cart, petitioner was pushing, lock up and saw the Petitioner stumble over the cart. She testified the incident occurred in her classroom. (Tr. 45)

Testimony of Consuela Mack

Ms. Mack testified she has been a teacher for the Respondent for approximately 20 years. (Tr. 59). During her testimony Ms. Mack observed a picture, (RX 6), and identified it as the cart at issue, and testified she had used the cart herself and said one wheel was a little off. Mack also testified that prior to the accident she had a conversation with the Petitioner regarding prior back problems Petitioner had prior to starting to work for the Respondent. Mack witnessed Petitioner wear a back brace on several occasions. (Tr. 60-64).

Testimony of Lenora Williams

Ms. Williams testified that at the time of the accident she was the Director of the facility. (Tr. 67). She testified that Petitioner's job duties as a cook included cooking, delivering breakfast, lunch and a snack to each classroom. Ms. Williams testified that prior to the accident, Petitioner had complained about the cart's wheel getting stuck (Tr. 72). Ms. Williams testified she became aware of the accident when some employees informed her of the accident and again when Petitioner texted her to inform her of the accident. (Tr. 71).

Though she did not witness the accident, Ms. Williams testified he heard Petitioner stumble pushing the cart (TX, p. 76). Ms. Williams testified that Petitioner, after the accident, Petitioner said her back was hurting and left the building (Tr. 77). Ms. Williams testified that she believed that Petitioner had just stumbled, therefore she never insisted Petitioner come in a file a work accident report but continued texting with Petitioner and was aware the petitioner had

restrictions from picking up heavy objects, which she testified Petitioner could be accommodated with her restrictions. (Tr.72, 79, 80-81).

Testimony of Jacqueline Randle El

Respondent, Ms. Randle El testified that she is the owner of Hugs & Snugs. (Tr. 83). Ms. Randle El testified that she hired Petitioner and was aware of Petitioner's prior back pain. (Tr. 83-84, 91). Ms. Randle El testified she was the one who hired Petitioner in 2020. (Tr. 83-84). Ms. Randle El testified that during the interview, Petitioner stated that she has a sciatic nerve problem from a previous car accident. (Tr. 84). At that time, Petitioner lifted her shirt and showed Ms. Randle El a brace that she wears. (Tr. 84) Ms. Randle El testified that Petitioner was supposed to wear the back brace daily. (Tr. 86-87). Petitioner was ultimately hired as a full-time cook. (Tr.85). As a cook, Petitioner's job duties were to prepare food and bring groceries in after being delivered. And deliver the food to the classrooms. (Tr. 85). Ms. Randle El testified that Petitioner did not report a workplace accident to her. (Tr. 87).

Regarding the cart, Ms. Randle El testified that Respondent only had the one cart at the time, and they had been using it for some time. (Tr. 88). Ms. Randle El confirmed that RX. 6 was the cart Petitioner used. (Tr. 89, RX 6, 456). Ms. Randle El stated that "one wheel [does not stick,] but like you know sometimes you push the cart and one kind of goes to the left, you know, but it's nothing that you can't handle, nothing that you can't push." (Tr. 90). Ms. Randle El has personally used this cart in the past and only experienced one wheel that is wobbly sometimes. (Tr. 90-91).

Ms. Randle El testified that prior to her accident, Petitioner did not miss any time away from work due to her back. (Tr 92). Following the alleged accident, once Petitioner was released to light duty, Ms. Randle El did offer her to come back on light duty. (Tr. 92).

Medical treatment and records

August 1, 2022: Ingalls Memorial; Petitioner presented with low back pain over the past 5 days with radiating pain down right leg. Petitioner notes chronic pain over the past year. Petitioner had a MVA a year ago and since has had back pain. Petitioner states that after standing for long periods of time at work, her back hurts. No new injury noted. An x-ray was performed that demonstrated disc space narrowing at L3-4 with mild spondylosis. Petitioner was assessed with chronic low back pain. (RX 1, 96).

August 4, 2022: Insight Memorial Hospital; Pain Management; Dr. Elakil. Petitioner presented as a 59-year-old female with low back pain “that started after an accident in 2020, her back pain now is 10/10 that radiates to her right thigh up to her knee. Petitioner’s pain has progressively gotten worse where she is not able to work. Petitioner has tried PT and pain management with no help over the past two years. Now, Petitioner notes that in the past three months, she started having progressive worsening weakness in the right side of her lower limb. Petitioner was assessed with degenerative lumbar spondylolisthesis. An MRI is needed. (PX 2, 53).

August 18, 2022: MRI of Lumbar Spine; Spondylotic changes are present as discussed by level in the findings. These are most significant at L4/5 with a diffuse disc bulge and a left paracentral zone disc protrusion resulting in mild spinal canal narrowing. Facet

arthropathy is also present and there is moderate narrowing of the bilateral subarticular zones. Neural foraminal narrowing is also noted and is most significant at L4/5 with moderate neural foraminal narrowing bilaterally. (PX 2, 56-57).

August 24, 2022: Insight Memorial Hospital; Pain Management; Petitioner presented as a new patient. Petitioner's MRI was reviewed. Petitioner was to follow up with Dr. Elakil. (PX 2, 58-60).

August 25, 2022: Insight Memorial Hospital; Pain Management; Petitioner presented with low back pain that started after an accident in 2020, her back pain now is 10/10 and radiates to her right thigh up to her knee. Petitioner was assessed with lumbar stenosis and her MRI of the lumbar spine shows moderate stenosis at the L4-5. Petitioner does not wish to pursue surgical intervention at this time but would like to think about it. Petitioner was to continue PT for 6 weeks and pain management with Dr. Sears. (PX 2, 61-62).

Work Status: Petitioner is to be off work for 6 weeks.

August 29, 2022: Insight Memorial Hospital; Petitioner presented for a follow up after seeing Dr. Elakil. Petitioner was diagnosed with degenerative lumbar spondylosis, lumbar degenerative disc disease, right sided lower extremity pain, lumbar spondylosis, and bilateral neuroforaminal narrowing. (PX 2, 63-64).

September 13, 2022: Insight Memorial Hospital; Petitioner received an epidural steroid injection. (PX 2, 68-69).

September 29, 2022: Insight Memorial Hospital; petitioner presented for a followup following the L4-5 and L5-S1 injection. Petitioner notes her lower

extremity pain is completely gone but still has some low back pain. (PX 2, 70-72).

October 3, 2022: Insight Memorial Hospital; Dr. Elakil. Pain Management: Petitioner's MRI report is contained with that states:

Spondylotic changes are present as discussed by level in the findings. These are most significant at L4/5 with a diffuse disc bulge and a left paracentral zone disc protrusion resulting in mild spinal canal narrowing. Facet arthropathy is also present and there is moderate narrowing of the bilateral subarticular zones. Neural foraminal narrowing is also noted and is most significant at L4/5 with moderate neural foraminal narrowing bilaterally.

Petitioner was assessed with Degenerative lumbar spondylolisthesis. 3 trials on pain injections with PT was recommended. (PX 2, 73-76).

October 11, 2022: Insight Memorial Hospital; Petitioner received another injection to her L5-S1 level. (PX 2, 79-80).

October 25, 2022: Insight Chicago Hospital; Dr. Sears, pain management.

Work Status: Petitioner is unable to lift more than 10 lbs. and must attend PT 2 times per week. (TR 34)

October 27, 2022: Insight Memorial Hospital; Petitioner returned for a follow up. Petitioner noted that the injection helped and she is going through PT. Petitioner was assessed with chronic low back pain, degenerative disc disease, lumbar spondylolisthesis. (PX 2, 81-83)

December 1, 2022: Insight Memorial Hospital; Dr. Sagarwala; Petitioner presented for a routine follow up with a history of lumbar pain with bilateral leg pain. Petitioner has had injections and performed PT. Petitioner continued to complain of bilateral lumbar pain. (PX 2, 84-85).

January 5, 2023: Insight Memorial Hospital; Pain Management; Jessica PA-C. Petitioner presented for a routine follow-up for low back pain stemming from a work accident in 2020. Petitioner was last seen in October with recommendations to see the pain specialist for epidural injections along with PT. Petitioner noted this provided some relief and will continue to PT. Petitioner continues to note numbness and tingling in her legs. (PX 2, 86-87).

January 10, 2023: Insight Hospital and Medical Center Chicago; Dr. Sagarwala; Petitioner presented with a history of a workplace injury with chronic lumbosacral back and right leg pain. Petitioner had an MRI of the lumbar spine that showed moderate foraminal stenosis at L4-5 bilaterally. Petitioner tried PT with limited relief. Petitioner was assess sacroiliac joint dysfunction and lumbar radiculopathy. (PX 2, 88-89).

Work Status: Petitioner can't lift greater than 10 lbs., no bending or lifting. Unable to work until she completed care plan.

February 6, 2023: Insight Hospital and Medical Center Chicago; Petitioner received an injection. (PX 2, 90-91).

February 7, 2023: Insight Hospital and Medical Center Chicago; Petitioner received an injection. (PX 2, 92-93)

February 28, 2023: Insight Hospital; Dr. Sagarwala; Petitioner presented for a routine follow up following an injection. Petitioner notes her right buttock and groin pain started after an injury in July 22. Petitioner is noted

as working as a food manager and was pushing a cart where the wheels would constantly get stuck. Petitioner notes one episode where she pushed the cart and felt abrupt onset of lower back pain that she hadn't experienced before. Petitioner had an evaluation in the ER and since then has undergone PT focusing on her lumbar spine. Petitioner was assessed with sacroiliac joint dysfunction. (PX 2, 94-96).

Work Status: Petitioner is to remain off work until she finishes PT. Then it will be evaluated.

April 7, 2023:

Insight Hospital; Dr. Elakil; Petitioner notes low back pain and right hip pain. However, she said she have very much relief of more than 70% following the injection. Petitioner notes signs and symptoms started after she was pushing a cart at work where the wheels would constantly get stuck. Petitioner was assessed with Lumbar stenosis at L4-5 and SI joint pain. "pain has likely SI joint pain since her injury at work while she was pushing the carts. Its my opinion that this is likely than not the cause of her symptoms." (PX 2, 97-98).

April 27, 2023:

Dr. Wellington Hsu; IME Report; Dr. Hsu diagnosed Petitioner with a pre-existing lumbar spondylosis. Petitioner's description of the accident does not correlate to her medical records. Petitioner did mention a previous injury in 2020 that led to low back pain. She denied any pain leading up to this injury. Dr. Hsu opines that this was not work related. P can return to full duty work. Treatment was reasonable BUT NOT related to the work accident. (RX 2).

May 11, 2023:

Insight Hospital; Petitioner presented with lower back and right side pain. Petitioner has a hx of work place injury (July 22) follow-up for chronic lumbosacral back pain which started after her work place injury. Petitioner is interested in options that can help reduce her reliance on medication and allow her to return to work. (PX 2, 99-101).

June 26, 2023: Insight Hospital & Medical Center; Dr. Sagarwala; Petitioner received an injection to her right sacroiliac joint. (PX 2, 102-04).

July 6, 2023: Insight Hospital & medical Center; (PX 2, 107-08).

Work Status: Petitioner must remain off work at this time.

July 11, 2023: Dr. Sagarwala; Petitioner was assessed with low back pain. Petitioner is noted as a 60 year old female with a history of chronic right gluteal pain starting after work place injury in July 22 who presents for a routine follow up. Petitioner notes her pain is just inferomodeial to the PSIS on the right side that goes in to the groin and posterior thigh. Petitioner most recently had an injection that demonstrated significant relief. Repeat injections were recommended. Petitioner was assessed with SIJ dysfunction. (PX 2, 109-11).

September 12, 2023;; Dr. Sagarwala; Petitioner presented as a 60 year old with history of sacroiliac joint dysfunction for a routine follow up. Petitioner planned to pursue repeat right SIJ injections, these were denied by her insurance company. She has been doing her best to manage with activity. Petitioner continues to experience moderate-severe right gluteal pain with referral into groin and posterior thigh. Petitioner was assessed with sacroiliitis and encouraged to start another round of PT. Possibly more injections and should follow up in 2 to 3 months. (PX 2, 112-14).

October 12, 202: Insight Hospital; Dr. Sagarwala; Petitioner had a chief complaint of low back pain. Brief visit today and saw Dr. Elakil. Continues to have SIJ pain. Petitioner recently started using SI compression belt in addition to cane. Belt has helped when she wears this. Discussed possible repeat SIJ injection but wants to try with continued PT right now. (PX 2, 115-116).

November 14, 2023: Insight Hospital; Dr. Sagarwala; Petitioner presented with a low back complaint. Petitioner has hx of SIJ dysfunction who presents for routine follow-up. (PX 2, 119-21).

November 30, 2023: Dr. Sagarwala; Narrative report:

Dr. Sagarwala notes that Petitioner was first seen on December 1, 2022, for lower back and right leg pain. Petitioner noted that this pain started after a work injury on July 22, 2022. At that time, Petitioner noted she was pushing a cart where the wheels would constantly get stuck. Petitioner further notes that there was one incidence when she pushed the cart and felt abrupt onset of severe functionally incapacitating lower back and right gluteal pain that she had not experienced prior to this. Dr. Sagarwala concludes the report stating that “medicine is as much of an art as it is a science, it is more likely than not that her SIJ dysfunction had started as a result of her workplace injury in July of 2022.” (PX 3).

January 30, 2024: Insight Hospital; Dr. Sagarwala; Petitioner presented with a chief complaint of lower back pain radiating down to right hip and leg, left hip pain is starting. (PX 2, 122-24).

Testimony of Dr. Sagarwala:

Dr. Salman Sagarwala deposition took place on January 15, 2024, via videoconference. (RX 4)

Dr. Sagarwala is board certified in pain medicine. (RX 4, 385).

Prior to Petitioner treating with Dr. Sagarwala, Petitioner had received epidural steroid injections in the lumbar region with Dr. Sears, pain physician who is no longer with Insight

Chicago Hospital. (RX 4, 386-87). Petitioner also sought treatment with Dr. Elakil, neurosurgeon. (RX 4, 387). Dr. Elakil performed an epidural steroid injection on September 12, 2022, at the L4-5 and L5-S1 level. (RX 4, 387). Petitioner also had a transforaminal epidural steroid injection on October 10, 2022, at the L5-S1. (RX 4, 388).

Dr. Sagarwala testified he first saw Petitioner on December 1, 2022. (RX 4, 388). At that time, Petitioner presented with a history of lower back pain into the buttock region. (RX 4, 388). On exam, Petitioner had some increased paraspinal tone in her lower back. (RX 4, 389).

On a visit on February 28, 2023, Petitioner mentioned her pain started “pretty abruptly after she was pushing a cart at work which was in July of 2022.” (RX 4, 392). Prior to this, Petitioner had “mentioned that she had been having pain from a prior injury. But we hadn’t gone into the details what specifically this was.” (RX 4, 392-93). Dr. Sagarwala never asked Petitioner why she did not make any reference to a work injury before this time. (RX 4,393). Dr. Sagarwala prescribed physical therapy. (RX 4, 396). According to Petitioner, Petitioner noted an abrupt onset of severe functionally incapacitating lower back and right gluteal pain. (RX 4, 392). Dr. Sagarwala opines that, because of Petitioner’s clinical history that she provided and chronologically of her onset of symptoms, this is related to the July 28, 2022, work accident. (RX 4, 394).

On May 11, 2023, Petitioner had some relief wearing off, so they discussed another SI joint injection, but one that was purely diagnostic. (RX 4, 397). Petitioner received this second SI injection on June 26, 2023. (RX 4, 397).

On July 6, 2023, Dr. Elakil recommended a TENS unit. (RX 4, 398). Petitioner followed up with Dr. Sagarwala on July 11, 2023, where he continued her therapy and recommended a

repeat SI injection. (RX 4, 398). As of September 12, 2023, Petitioner wanted to do some more physical therapy and she was continuing some anti-inflammatory medicines. (RX 4, 399). Dr. Sagarwala and Petitioner talked about an SI joint fusion. (RX 4, 399-400).

On October 12, 2023, the recommendations were unchanged to continue physical therapy, SI compression belt, and same anti-inflammatory medication. (RX 4, 404). November 14, 2023, visit was the same. Petitioner was scheduled to have an appointment on January 4, 2024, but Petitioner did not make it. (RX 4, 405).

Testimony of Dr. Hsu:

Dr. Wellington Hsu's deposition took place on April 1, 2024, at 4:00 p.m. (RX5, 430). Dr. Hsu is an orthopedic surgeon. (RX 5, 432).

On April 27, 2023, Dr. Hsu performed an Independent Medical Exam (“IME”) of Petitioner. (RX 5, 433-34). At that time, Petitioner told him that “on July 28, 2022, she was pushing a cart with wheels and that cart jammed or held up at some point and she needed to push and pull in order to release it. As a result of that maneuver, she experienced low back and right lower extremity pain.” (RX 5, 436). As part of the IME, Dr. Hsu reviewed a job description for cook, along with medical records spanning from 2015 through 2023. (RX 5, 437). Dr. Hsu reviewed Petitioner’s medical records from September 21, 2020, thru August 1, 2022 5, 438). Dr. Hsu noted that on January 10, 2023, Petitioner presented to Dr. Sagarwala with a “history of a workplace injury” but no specific details were provided. (RX 5, 439).

As part of the IME, Dr. Hsu reviewed MRI images from August 18, 2022, which demonstrated, in Dr. Hsu’s opinion, chronic, age, and genetic related in nature. (RX 5, 440). Dr. Hsu opines that these findings were secondary to lumbar spondylosis and “not in any way related to any trauma.” (RX 5, 440).

Dr. Hsu also performed a physical exam as part of the IME. (RX 5, 440). Based on the physical exam of Petitioner, Dr. Hsu found that the lumbar spine exam showed she had normal range of motion in all planes but did have a positive straight-leg test on the right. (RX 5, 440-41). Petitioner had normal cervical range of motion and proactive maneuvers. (RX 5, 441). At this time, Dr. Hsu diagnosed Petitioner with lumbar spondylosis. (RX 5, 441). Dr. Hsu opined that this diagnosis was not causally related to the July 28, 2022, work accident. (RX 5, 441).

Based upon the job description that was reviewed, Dr. Hsu opined that Petitioner could perform all work duties without restrictions. (RX 5, 443).

With regard to future treatment, Dr. Hsu opined that Petitioner would be a candidate for continued injection therapy including both SI joint and lumbar epidural injections for her lumbar spondylosis. (RX 5, 443). However, Dr. Hsu opined that this was not causally related to the alleged July 28, 2022, work accident. (RX 5, 443).

On January 2, 2024, Dr. Hsu authored a supplemental report to his original, April 27, 2023, IME report. (RX 5, 444). Dr. Hsu reviewed additional information that included a narrative report from Dr. Sagarwala dated November 28, 2023. (RX 5, 444). This narrative report from Dr. Sagarwala did not change any of Dr. Hsu's opinions because none of the facts presented addressed the temporary nature of her complaints found within her prior treatment records. (RX 5, 445).

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial 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). An injury is accidental within the meaning of the Act when it is traceable to a definite time, place, and cause and occurs in the course of employment, unexpectedly and without affirmative act or design of the employee. *Mathiessen & Hegeler Zinc. Co. v. Industrial Board*, 284 Ill.378 (1918).

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 or her evidence worthy of belief. The arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with 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). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill.2d 213 (1980).

After considering the testimony of the Petitioner, the witnesses and the medical records, the Arbitrator finds the Petitioner's testimony to be credible.

(C) DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT:

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).

Petitioner testified that at the time of the accident she was pushing a food cart which was part of her job duties with the respondent. While pushing the cart a wheel locked up at which time Petitioner stumbled over the cart, felt a pop and immediate pain in her back and groin area. The

accident was witnessed by Ladonna Lymon. In addition, there was testimony from various employees who verified that the cart the Petitioner was pushing had issues with its wheel.

Arbitrator considered the fact that the medical records notes indicate that the petitioner did not mention that she was injured at work until sometime later however, Arbitrator finds the witnesses account of events both during and shortly after the accident outweigh the omission in the medical records. Based on the credible testimony of the petitioner which was corroborated by LaDonna Lymon and Tenille Gowan as well as the testimony of Dr. Sagarwala, who relates the Petitioner's injury to the July 28, 2022, Arbitrator concludes that the Petitioner has met her burden and finds the accident arose out of and in the course of her employment.

(E) WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT:

The Arbitrator finds Respondent received sufficient notice of Petitioner's injury and was not unduly prejudiced in these proceedings. Section 6(c) of the Act sets forth the "notice" requirement. It states:

Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. . . No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing. 820 Ill. Comp. Stat. 305/6(c).

Petitioner testified that when the work accident occurred, she was immediately helped by coworker Ladonna Lymon, who witnessed the accident. Petitioner testified that she had a brief conversation with the Lenora Williams, the Director of the facility at the time of the accident and

explained what had happened. Lenora Williams testified she heard the accident occur and witnessed the Petitioner leave the building indicating that her back was hurting. Ms. Williams testified she was aware of the accident through several conversations with employees as well as texts from the Petitioner. In addition, Lenora Williams was aware of the Petitioner's restrictions through those texts. Despite exchanging texts and being aware of Petitioner's restrictions Ms. Williams testified that she did not insist Petitioner to come back to the building to file a work-accident report because Ms. Williams believe the Petitioner had just stumbled over the cart.

Based on the facts taken as a whole, the Arbitrator finds that Respondent was aware of the accident and timely notice was proven by Petitioner consistent with Section 6(c) of the act.

(F) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY:

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to her work accident. A causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident, and inability to perform the same duties following that date. *Pulliam Masonry v. Industrial Comm'n.*, 77 Ill.2d 469,471 (1979).

In reaching said conclusion the Arbitrator considered the medical records taken with the testimony of the Petitioner, Dr. Sagarwal, and Dr Hsu. The arbitrator gives more weight to the testimony and conclusions of Dr. Sagarwala than that of Dr. Hsu.

In his deposition Dr. Sagarwala believed that the Petitioner was sincere and forthcoming when explaining her past back injuries and untimely found her condition to be related to her work accident. (RX4 p. 394). The Arbitrator give less weight to the fact that petitioner did not

initially mention at her various appointments that she hurt her back at work. Arbitrator also notes that the Petitioner had not missed any days of work prior to the work accident which gives the Petitioner's testimony credibility when considering her current condition and her inability to perform her work duties after the accident. Petitioner had no treatment, lost time, or restrictions during her employment with Respondent before the injury on July 28, 2022. Further even though Dr. Hsu believes that Petitioner's condition is not related to her work accident, he does agree that treatment the Petitioner received since her accident and the restrictions placed on her are reasonable given Petitioner's medical condition.

(J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY, AND HAS RESPONDENT PAID ALL APPROPRIATE MEDICAL SERVICES:

Having found Accident and Causation, Arbitrator finds that all medical services provided to the petitioner which are related to her work accident are reasonable and necessary.

Arbitrator finds Respondent shall pay the reasonable and necessary medical services of Ingalls Memorial Hospital and Insight Hospital and Medical Center Chicago, including Drs. Elakil, Sears and Sagarwala as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be responsible for the sum of \$9438.73 which was paid by Medicaid.

(K) IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE:

The Arbitrator relies on the opinion of Dr. Sagarwala and finds that Petitioner is not at maximum improvement. Arbitrator notes that, even though the SEC12 examiner, Dr. Hsu does

not agree with Dr. Sagarwala as to accident and causation he agrees that the Petitioner is not at maximum improvement and could benefit from further treatment.

Arbitrator awards continuing medical services including physical therapy, anti-inflammatories, an SI Compression Belt, lumbar and sacroiliac injections and possible surgery involving SI fusion, pursuant to Section 8(a) of the Act.

(L) WHAT TEMPORARY TOTAL BENEFITS ARE IN DISPUTE:

The Arbitrator finds that Petitioner removed herself from work after the work injury. She currently has work restrictions of ten pounds. As of the date of this hearing Petitioner has not returned to work. Ms. Randle El's testimony is contradicted by the Petitioner's credible testimony, that Petitioner's restrictions could be accommodated. Having nothing in evidence to corroborate the Respondent's contention, and finding her job as a cook exceeds her restrictions, the Arbitrator awards TTD compensation from Petitioner's initial medical restriction on August 04, 2022, through the date of hearing on December 11, 2024, a period of 861 days or 123 weeks, at the rate of \$321.86 per week, in the accrued sum of \$39,588.78, pursuant to Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC015632
Case Name	Sabrina Patrick v. NTN Bearing Corporation
Consolidated Cases	18WC015633
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0338
Number of Pages of Decision	17
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Daniel Klosowski
Respondent Attorney	Michael Doerries

DATE FILED: 8/5/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS

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) SS.

COUNTY OF COOK

)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SABRINA PATRICK,

Petitioner,

vs.

NO: 18WC015632

consolidated with 18WC015633

NTN BEARING CORP,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and notice given to all parties, the Commission, after considering the issues of date of accident, medical expenses, and the 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 thereof.

The Commission strikes the following sentences from the first paragraph on page 13 of the Decision: "It is not that the 4/17/18 injury is necessarily 'intervening' so much as it was an event which Petitioner alleges triggered symptoms that the preponderance of the evidence supports had ended for Petitioner in June 2017, approximately 10 months prior to the alleged 4/17/18 accident. While there is evidence in the PIC records after 4/17/18 that she continued to have back and neck pain, it was clearly at a level where she had been able to work and did not seek further treatment."

The Commission corrects a scrivener's error in the first paragraph of the Order section of the Decision, the date of injury is corrected from March 30, 2023, to March 30, 2017.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

Finally, the Commission observes Petitioner's personal identity information was unredacted from the Exhibits. The Commission cautions the parties to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 7, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical expenses from VNA Healthcare totaling \$112.00, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to credit for any and all awarded medical expenses paid by Respondent prior to the hearing date, 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 shall pay Petitioner permanent partial disability benefits of \$420.50 per week for 30 weeks, because the injuries sustained caused the loss of use of 6% 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$12,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 5, 2025

O: 06/10/25

AHS/ps

051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC015632
Case Name	Sabrina Patrick v. NTN Bearing Corporation
Consolidated Cases	18WC015633;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Michael Doerries

DATE FILED: 10/7/2024

/s/ Paul Cellini, Arbitrator

Signature

THE INTEREST RATE FOR THE 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**

SABRINA PATRICK

Employee/Petitioner

v.

NTN BEARING CORP.

Employer/Respondent

Case # **18** WC **15632**

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 **March 30, 2017**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being *is not* causally related to the accident. The Petitioner's cervical and lumbar conditions of ill-being were causally related to the accident, but the Petitioner reached maximum medical improvement and returned to work with no further treatment until April 17, 2018, the date she claims she sustained a separate work accident, which is the subject of consolidated matter 18 WC 15633.

In the year preceding the injury, Petitioner earned **\$36,443.68**; the average weekly wage was **\$700.84**.

On the date of accident, Petitioner was **33** years of age, *single* 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 **\$4,184.24** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits.

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

ORDER

The Arbitrator finds that the Petitioner's lumbar and cervical conditions of ill-being were causally related to the March 30, 2023 accident. The Petitioner reached maximum medical improvement regarding these conditions on June 9, 2017 and had no significant further problems until an alleged intervening accident of April 17, 2018, the subject of consolidated matter 18 WC 15633.

Respondent shall pay reasonable and necessary medical expenses from VNA Healthcare totaling \$112.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent is entitled to credit for any and all awarded medical expenses paid by Respondent prior to the hearing date, 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 \$420.50 per week for 30 weeks, because the injuries sustained caused the loss of use of 6% 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 **March 30, 2017** 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 7, 2024

STATEMENT OF FACTS

The Arbitrator heard two consolidated matters on 7/10/24 involving the same Petitioner and Respondent, cases 18 WC 15632 and 18 WC 15633, and two separate decisions are being issued.

Petitioner worked for Respondent as a machine operator, which involved supplying supplies to make ball bearings for auto brakes on a factory line. She would measure the supplies, cut some of them, pack, ship, and inspect the parts. The completed bearings would be packed onto pallets. On 3/30/17, Petitioner was working on her #21 line. While packing the parts onto a pallet, she felt immediate pain in her neck and back as she was turning. She reported the incident to her supervisors, Cesar Martin and "Chilo", and was sent to the company clinic, Physicians Immediate Care (PIC), where she said she reported significant low back and neck pain. The 3/30/17 PIC report notes sharp low back pain after lifting bearings in a re-work area, noting her normal work area had "lifters." She denied prior similar symptoms. Thoracic and lumbosacral x-rays were obtained and indicated to be within normal limits. She was diagnosed with a back strain, issued a back brace, given work restrictions. (Px1).

At her primary provider, VNA Healthcare, on 4/1/17, Petitioner complained acute low back pain and noted a 3/30/17 work injury. She also indicated joint pain and muscle aches. Petitioner reported Respondent had her doing her typical type of heavy work and this increased her pain. She was advised to avoid normal physical activity for a few days and to take anti-inflammatories. (Px6). The note does advise Petitioner to see orthopedics, and she testified that VMA referred her to Fox Valley Orthopedics.

At Fox Valley on 4/4/17, Petitioner provided a history of bending and picking up bearings and moving them from one pallet to another on 3/30/17 and complained of 9 out of 10 (9/10) level back pain. Neurologic exam was normal but there was tenderness to palpation and with range of motion. Lumbar x-ray was grossly normal. Petitioner was diagnosed with mid and low back pain and a "fairly severe" lumbar strain. Steroids, Norco, a muscle relaxer, and physical therapy were prescribed, and Petitioner was held off work. On 4/14/17, Fox Valley notes ongoing low back complaints, as well as neck and chest pain. The active problems included right ankle and foot joint pain, left wrist/forearm pain, right ankle sprain, and right cubital tunnel. Dr. Popp continued therapy and provided work restrictions (no lifting/pushing/pulling over 5 pounds, no repetitive bending, and frequent position changes. A pain drawing indicates various types of pain throughout her back from shoulders to waist. On 4/28/17, noting ongoing 7/10 to 9/10 pain and no relief with therapy, Dr. Popp held Petitioner off

work and prescribed a lumbar MRI. This was performed on 5/5/17 and showed no evidence of herniation or stenosis. (Px2; Rx17).

Petitioner testified she attended physical therapy at ATI from 4/11/17 through 5/5/17.

A machine operator's job description was contained within the records of Fox Valley Orthopedics. Physically it included supplying components to hoppers, indexing poles, or conveyors. It also included the possibility of other assigned duties. Specifically relevant to this case, the employee had to stand, walk, reach, climb or balance, stoop, kneel, crouch, or crawl. They also would have to regularly lift/move up to 10 pounds, frequently lift up to 25 pounds, and occasionally lift up to 50 pounds. (Px2).

Petitioner went to the St. Joseph's Hospital ER on 5/15/17 for back pain, complaining that she was out of Norco for her lumbar strain. She was unable to get in touch with Dr. Popp. Norco was prescribed and she was to follow up with Dr. Popp. (Rx5). On 5/19/17, Dr. Popp noted the ER visit, and that the lumbar MRI was unremarkable. He stated: "Because the patient still has this pain recurred narcotic medications from re emergency room and was given narcotic medication, with an MRI of the cervical spine and thoracic spine." The MRIs appear to have been ordered by Dr. Popp. He further opined that if the MRIs were unremarkable, full duty work would be recommended as he did not have a good explanation for her pain level at that point. (Px2).

The 6/1/17 thoracic MRI was essentially normal, while the cervical MRI showed several mild disc bulges and loss of lordosis. (Px2; Rx17). On 6/9/17, Petitioner had ongoing 8/10 pain and Dr. Popp opined she had a lumbar strain without any mechanical or permanent injury and recommended she return to work, initially every other day for two weeks, then to full duty. If she could not do this, a functional capacity evaluation (FCE) would be considered. (Px2). On 6/26/17, Petitioner reported chronic right ankle pain to VNA after falling at home and landing on her right foot. Musculoskeletal complaints also included joint pain and stiffness. Nothing was noted as to the low back. (Px6).

Petitioner testified that her neck and back felt better after this last visit with Dr. Popp and she returned to full work duties, though she also testified she still "had my days." She reported an 8/21/17 right thumb crush work injury and went to PIC. The report notes no back pain. (Px1).

Petitioner testified she was still working as a machine operator on 4/17/18, but now in the "re-work" area, involving reinspecting, fixing, moving, and packing parts. She had to move parts manually from one place to another without the use of a lifter to put them on pallets. She testified she felt great that morning. She testified she began to develop back and neck pain while performing this activity. While similar to her prior job, she was no longer running an assembly line and was dealing with already assembled parts. She testified she asked her supervisors, Chilo and Martin, for a back brace, and that this was "denied" to her. She said the next day, 4/18/18, one of these supervisors told her they no longer had a brace available and that she would have to go to the company clinic to get one. Petitioner completed and signed an injury report that states: "On 4/17/18 I started experiencing some [cross outs] neck and back pain. Pain in my whole back area and my neck when I turn [cross out] I hear a popping sound. I [cross outs] called Chilo to my line at 12:00 to inform him of me being in pain and can I get a back brace he went to safety office and was told that back braces are no longer available that I will have to go to the clinic to receive one." (Rx4). Petitioner was then given a ride to PIC.

Supervisor Martin Cortez's report notes that on 4/17/18 the Petitioner notified Chilo around 12:00 of a work injury: "Employee started experiencing back and neck pain on 4/17/18 during work hours. Employee is not sure what caused the pain to occur. Pain still continued since then." The Arbitrator notes this document is unsigned and undated. Additional documentation appears to refer Petitioner to PIC. (Rx4).

Petitioner worked her full shift on both 4/17/18 and 4/18/18. (Rx10). At PIC on 4/18/18, Petitioner reported neck and back pain since 4/17/18: “she is having neck pan and her entire back is bothering her, Pt. states that she is unsure of what could have caused the injury but she believes that it is from picking up pallets non-stop at work.” Petitioner also reportedly said she was there “with neck and back pain that she states she always has but became worse yesterday at work.” It was noted she worked on an assembly line, and she said she was denied a back brace. Other than loss of lordosis, lumbar and cervical x-rays were normal. Petitioner was advised to use a brace and return to work. (Px3).

Petitioner worked her full shift on 4/19/18 then sought treatment with VNA Healthcare. (Rx10). Petitioner reported a two day history of back pain: “Is a machine operator in a factory, and went to her factory doctor for assessment. Was placed on light duty, but continued to have worsening symptoms.” It was noted her symptoms were likely due to paraspinal muscle spasm. Flexeril was prescribed and she was to follow up in a week. (Px6). Petitioner testified she was given work restrictions, but the Arbitrator did not locate a note to this effect.

Petitioner testified she continued to follow up at both PIC and VNA. On 4/23/18 at VNA, Petitioner reported no improvement after three days off work. Medication and physical therapy were prescribed, and she was referred to orthopedics. No physical work restrictions were referenced. (Px6). At PIC on 4/24/18, Petitioner noted VNA prescribed therapy and an orthopedic evaluation given her 8/10 pain. Petitioner reported left knee pain “when she applies pressure and walks for long periods of time.” She was tearful and wanted several days off work to rest her back. Petitioner advised she wanted to see her own doctor at Fox Valley and requested a discharge. She was released to return to restricted work duties. (Px1). On 5/4/18, Petitioner went back to VNA (Dr. Hashim) with unchanged low back pain (“location all back”) and advised she wanted a second opinion instead of the workers’ compensation doctor. Nabunetone was prescribed along with cervical and lumbar x-rays, and she was to follow up in two weeks. This note also states: “patient has other chronic medical conditions and needs cancer screening so is advised to make an appointment with PCP.” (Px6).

Petitioner believed she returned to restricted work duties at this point in April and May 2018.

Records from Respondent indicate Petitioner was completely off work from at least 5/5/18 through 8/5/18. It appears that she worked a full regular shift on 8/6/18 and then came in late at 11am on 8/7/18, indicating she had court and her car wouldn’t start. The note also indicates something about Petitioner being in a hurry and forgetting to punch in. She then worked full time for the rest of the week, 8/8/18 through 8/10/18.

Petitioner underwent the spinal x-rays requested by Dr. Hashim on 5/9/18, all of which were indicated to be normal. At her 5/18/18 follow up, Dr. Hashim noted the x-rays and lack of improvement and referred Petitioner to orthopedics. (Px3; Px6). Petitioner returned to Dr. Hashim on 6/1/18 with a two day history of left leg pain. Due to concern for deep vein thrombosis (DVT), Petitioner was sent to the ER (Px6), and the Advocate Sherman Hospital report notes venous doppler testing was negative for DVT. Multiple possible etiologies were discussed including a prior back injury or a new sprain/strain. She was discharged with Naproxen. Activity and weightbearing were to be as tolerated and she was to follow up with her primary provider. (Px3).

Petitioner next saw orthopedic surgeon Dr. Koutsky on 6/6/18 with complaints of neck pain with some radiation to the shoulders and low back pain radiating down the left leg to the calf, as well as some numbness and tingling. Petitioner reported her 2017 work related back injury with a few months off work, but after that was doing well until a new work injury on 4/17/18 – “She was lifting boxes of these parts while twisting and bending. She felt a sharp pain in her back and neck with some radiation to the left leg.” Her pain ultimately became very severe with left leg pain, for which she went to the ER. Dr. Koutsky diagnosed cervical and lumbar radiculopathy and ordered MRIs. He prescribed physical therapy and pain management with possible

injections. Tramadol, an anti-inflammatory, and a muscle relaxer were prescribed. Petitioner was held off work. (Px4). Petitioner testified that what she reported to Koutsy was accurate.

On 6/22/18, lumbar MRI reflected a mild diffuse L4/5 bulge without significant canal or foraminal stenosis, and at L5/S1 a diffuse protrusion with annular tear causing mild canal and foraminal stenosis. Cervical films, noting a history of neck pain with work injury, were unremarkable except for a mild diffuse C5/6 bulge without significant stenosis. (Px5).

The history Petitioner provided to pain management on 6/29/18 was that she continued to have symptoms after the 2017 work injury that never fully resolved “and were made much worse by the 4/2018 injury”, with left leg symptoms being the worst symptom. Noting the MRI findings, Dr. Chunduri believed the back symptoms were related to L5/S1 – “There is an annular tear just likely causing inflammation reaction of the nerve roots resulting in left sided radiculopathy.” An epidural was recommended along with a patch and diclofenac gel. (Px4). Petitioner testified she was held off work but there is no reference to work status on Dr. Chunduri’s note.

Petitioner was examined by orthopedic surgeon Dr. Mohan at Respondent’s request on 7/10/18. He recorded a history of Petitioner’s 3/30/17 work injury as: “she has to pick up small car parts, typically less than 10 pounds, but from repeatedly packing these car parts she noticed some back pain.” She was back to full duty in July 2017 but still had back pain, and then on 4/17/18 she had increasing back pain while packing car parts again – “she has noticed this time that she is having pain sitting and standing. She began getting pain with some tingling into her left leg over time and also complained of neck stiffness and stabbing pain into her shoulders with occasional right arm numbness. Dr. Mohan stated that Petitioner’s job involved lifting 5 to 9 pounds all day long for 8 hours per day, 6 days a week. He identified multiple Waddell signs on exam, noting pain to tenderness throughout Petitioner’s back with symptom magnification. After a review of Petitioner’s medical records, Dr. Mohan opined that the subjective complaints did not correlate to any definitive clinical diagnosis, referencing her complaints of pain “all over.” He opined that the complaints did not correlate on exam or to any organic diagnostic problems. Dr. Mohan did not believe there was any cervical or lumbar condition of ill-being that was caused or aggravated by either work accident. He opined there was preexisting degenerative disc disease. He noted evidence of symptom magnification in multiple prior exams in 2017 and 2018 “as evident by tenderness to palpation and 8/10 to 9/10 pain on repeated examinations which do not correlate to the symptoms of claimant that is ambulating without difficulty in the office. There is no evidence of a temporary or other form of injury that has occurred in these incidents.” Dr. Mohan opined that only rest and anti-inflammatories were reasonable treatment, while therapy and MRIs were not reasonably necessary. Petitioner had reached maximum medical improvement (MMI), needed no further treatment and was capable of returning to full duty employment. (Rx6).

On 7/24 and 7/27/18, Dr. Chunduri continued to recommend lumbar epidural. Petitioner reported 9/10 pain on the 24th and advised that none of the medications helped her. She specifically requested Norco but was advised this would only be prescribed for post-surgical pain. Petitioner declined other offered medications and she was continued off work. She again asked for better medications on 7/27/18. At that point she was reporting financial difficulties without weekly benefits, so Dr. Chunduri released her to restricted duties and prescribed a left leg EMG/NCV. (Px4).

Respondent sent an 8/1/18 letter to Petitioner indicating that, based on the information she provided, it was determined that she did not sustain an injury which arose out of and in the course of her employment, and that any alleged injury wasn’t related to her claim, and thus benefits were denied. (Rx7).

On 8/11/18, Illinois Orthopedic Network (ION) noted Petitioner could no longer see Dr. Chunduri due to her work hours and would start treating with Dr. Murtaza. Petitioner reported she had returned to work on 8/6/18 and wanted to continue working. Dr. Murtaza found some left lower extremity weakness on exam and believed

EMG was indicated. Petitioner advised she was told her lumbar MRI from the prior year was normal, but the new one showed an annular tear and disc protrusion at L5/S1 “which is likely causing her current symptoms.” He prescribed Tramadol and work restrictions. (Px4). On 8/15/18, Dr. Koutsky noted complaints of neck and back pain into all four extremities. He wanted to review the MRIs and the EMG, continuing medication, therapy, and light duty in the meantime.

Petitioner’s attendance records indicate on 8/17/18 she called in around 3:45 a.m. indicating her daughter had a doctor’s appointment and she would be in at 11 a.m., but she never showed up. The next week, on 8/20/18, Petitioner’s cousin called stating Petitioner was in the hospital with back spasms. (Rx10). On 8/20/18, Respondent provided Petitioner with a notice of attendance incidents between 8/21/17 and 8/20/18. This document references multiple attendance points in December 2017 through April 2018, including absences, tardiness and leaving early, and that Petitioner as subject to termination. She was to contact the Human Resources Director. There are many entries referencing “ABS expiring” which could reference an absence but are not self-explanatory. On 8/21/18, it was noted Petitioner came in to discuss her attendance issues and notified them she had been in a car accident the day before. She was sent home by Human Resources pending “attendance point verification.” (Rx10).

On 8/20/18, Petitioner appeared at Sherman Hospital with generalized neck and back pain after an onset 4 months prior. She was scheduled for EMG the next day. She was to continue her medications with the addition of Flexeril. She was advised to follow up with her primary provider. (Px3). She returned to Dr. Hashim and saw his NP, Annie Kluch. Noting Petitioner’s history of back pain and work injuries, she asked Kluch to complete an FMLA leave form based on her 5/4/18 exam. She also reported her orthopedic filled out the forms based on the 5/4/18 visit when she was taken off work. (Px6). The Arbitrator did not note any work restrictions indicated in Dr. Hashim’s 5/4/18 report.

The 8/20/18 EMG report notes a history of pain, intermittent numbness and tingling in the legs, left greater than right. The history continues that Petitioner injured her low back “lifting a heavy object.” The impression was of radiculopathy minimally involving the left L5/S1 nerve roots. There was evidence of possible early peripheral polyneuropathy with a possible differential diagnosis of tarsal tunnel syndrome. (Px4; Px8).

On 8/21/18, Petitioner testified she was rear ended in a motor vehicle accident. Petitioner declined an ambulance but drove herself to the ER with the car she had been in the accident with. She testified her back and neck were a little bit “agitated” after the car accident, and she also had pain in her left wrist. She testified that a few months later her neck and back pain went back down to the level she was at prior to the car accident. The Arbitrator did find any ER report from after the car accident in the evidentiary record. Respondent submitted some records from this visit as Rx16, but no progress notes are included. There is a discharge reference to a motor vehicle accident and upper body pain with left wrist discomfort. It appears she was prescribed cyclobenzaprine, Ibuprofen 600, and 12 Norco tablets. She was advised to return to work on 8/23/18 and she was to follow up with her family doctor. (Rx16).

Petitioner saw Dr. Patel on 8/22/18, who appears to be a family physician. She reported low back, neck, and right wrist pain after a motor vehicle accident. Petitioner was diagnosed with sprains of these body parts plus the shoulder, and she was referred to physical therapy. She was held off work for a week but a follow up wasn’t scheduled as Petitioner planned to follow up with ION. (Rx14; Rx15).

On 8/27/18, Petitioner advised Dr. Koutsky she had been rear ended by a vehicle traveling 30 to 35 miles per hour while she had been slowing down (“In addition to this new motor vehicle accident and in addition to aggravating her cervical and lumbar radiculopathy, she also injured her left wrist.”). The 6/22/18 cervical and lumbar MRI results were noted. Dr. Koutsky diagnosed C5/6, L4/5, and L5/S1 radiculopathy, noting her

symptoms had been aggravated in the car accident. She remained off work while awaiting the previously recommended injections and physical therapy, with possible updated MRIs. (Px4).

New 10/16/18 lumbar MRI films were read to show L4/5 disc bulge with associated mild neuroforaminal stenosis, mild spondylosis with facet effusions from L4 to S1, and loss of lordosis related to sprain versus strain. Cervical films reflected no herniations or stenosis, multilevel spondylosis from C3 to C7, shallow annular bulges, and loss of lordosis related to spasm versus strain. (Px4). On 11/5/18, Dr. Koutsky noted Petitioner's neck and back diagnoses "after being involved in both work-related injury as well as a motor vehicle accident." Petitioner was taking over the counter medications as needed. She remained off work. (Px4). Petitioner testified she was in therapy at ATI at this point. (Px4).

On 12/4/18, Dr. Mohiuddin (pain management) noted the EMG reflected left L5/S1 radiculopathy. Given this and the MRI findings, he performed an L5/S1 epidural injection on 12/13/18. He also prescribed Celebrex and tizanidine and continued physical therapy. He advised Petitioner to continue to work and "we will address her neck issues after treating her low back pain." On 12/10/18, Dr. Koutsky refilled Petitioner's Tramadol and advised she should remain off work. (Px4).

Petitioner testified she felt improved following the epidural, but again still had good and bad days. On 1/14/19, she told Dr. Koutsky she had radiculopathy improvement with the epidural. She had completed therapy and was performing home exercise, and she had been off work. Cervical injection was pending, and Dr. Koutsky released Petitioner to a 10 pound lift/push/pull restriction. The cervical injection was performed by Dr. Murtaza on 2/14/19 at C5/6. Under "epidurogram and interpretation", Dr. Murtaza stated: "There was noted nerve impingement at the C6 level with nerve impingement at C6." The 10 pound restriction was continued. (Px4).

On 2/18/19, Petitioner indicated her cervical and lumbar radiculopathy were "a little bit better." Dr. Koutsky ordered additional cervical and lumbar injections and modified her work restriction to a 20 pound limitation. (Px4). The Petitioner testified she did not return to work at this time. On 3/20/19, Petitioner indicated her symptoms were about the same and requested a full duty release, which was provided as of 3/26/19. (Px4). At follow ups with Dr. Koutsky on 4/17/19 and 5/16/19, he continued to recommend the repeat injections and full work duty, and he refilled prescriptions. (Px4).

Petitioner testified she asked to be released to regular work because Respondent had no light duty work available and she could only return to work if she was full duty. Petitioner testified she contacted Respondent to return to work and was told to come in, but when she got there she was told she had been terminated in October 2018.

On 6/5/19, Dr. Koutsky's NP, Christine Koutsky, ordered a functional capacity evaluation (FCE). The report states: "For now we are going to hold off on any additional requests for injections, although it is likely she will need intermittent physical therapy and pain management services going forward for the pathology that she does continue to have." (Px4).

The FCE was completed on 6/27/19 at ATI Physical Therapy. The report was noted to be valid. It appears the therapist did not have a written job description but that the DOT code for Petitioner's job indicated a medium duty job, with Petitioner describing standing, bending, stooping, twisting, lifting bearings and packaging them and loading pallets for shipping. Petitioner's testing determined she was at the light duty level, which fell below the noted DOT level for the job. The report states: "During the assessment, the client had reports and/or associated behaviors regarding pain in her low back, fatigue, and soreness in her neck. She demonstrated some issues with Balancing, Bending/Stooping, Crouching, Squatting, and R & L foot rep. motion – these activities are recommended as "occasional" for daily activity tolerance recommendations. She also demonstrated some

issues with prolonged standing and prolonged sitting, during the Assessment. She states she had physical therapy as well as work conditioning/hardening for her injury. She also states she has gained about 30 lbs. since the injury and feels out of shape. Please see the Whole Body Overview and Narrative for further specifics regarding demonstrated abilities and recommendations.” Lifting restrictions ranged from 25 to 35 pounds depending on the level of the lift, and she was to sit for 5 hour durations, stand for 2:20 durations, and walk for 4 to 5 hour durations. (Px4; Px7).

On 7/1/19, Petitioner continued to report neck and back discomfort but advised Dr. Koutsky that she did not wish to pursue further pain management – “She is at (MMI) for this injury. It is likely though that she will need intermittent physical therapy or pain management services going forward.” Petitioner was released per the FCE restrictions, and her medications were refilled. On 9/5/19, Petitioner reported “a little bit of pain that does flare up on occasion in her low back primarily”, for which she was taking medications, which were again refilled. At the last visit with Dr. Koutsky on 10/3/19, he refilled the prescriptions and ordered chronic pain management to take over management of her medications, after which she would no longer need to follow up with him. (Px4).

Petitioner initially found employment after her release with Cheese Merchant Factory in Bartlett in May 2019. She currently works at the Aldi Distribution Center as a warehouse associate, packing approximately 5 pound boxes of potato chips on pallets. She does no lifting beyond the FCE restrictions. Her neck is significantly improved but she continues to have good and bad days with her neck and back. She uses heat, ibuprofen, Motrin, and sometimes even Tylenol 3 for relief. She has a 2 year old child and her pain can get aggravated with lifting the child. She denied any prior neck or back problems before her work accidents.

On cross-examination, Petitioner acknowledged having a severe 2016 motor vehicle accident but did not specifically recall seeing Dr. Razvi on 1/28/17. Her right foot did get stuck under the seat after multiple rollovers, and she treated at both PIC and Fox Valley. While she complained of right foot pain, she agreed an EMG and lumbar MRI were ordered in January 2017 but were never performed prior to the initial 3/30/17 work accident. She also agreed she declined a back injection at that time.

Petitioner testified she on cross that she could not recall if the parts she was working with on 3/30/17 weighed between 6 and 9 pounds but agreed that the 3/30/17 restrictions from PIC were accommodated by Respondent. When Fox Valley took her off work on 4/4/17, she received TTD. She was again released with restrictions on 4/14/17. As to the ATI therapy records indicating her only visit was the initial evaluation and that she canceled 7 or 8 visits between 4/13/17 and 4/27/17, Petitioner testified she could not recall this but would not disagree with what the records indicated. She agreed she then told Dr. Popp on 4/28/17 that therapy made her symptoms worse. She did not recall canceling 4 therapy visits in May 2017 and being discharged for non-attendance. She agreed, if the records supported, she went to the ER on 5/15/17 and asked for Norco. She agreed Dr. Popp took lumbar, thoracic, and cervical MRIs and indicated they were unremarkable. He felt she had no mechanical injury, diagnosed mid and low back strains, and released her to a gradual return to full duty work, which she did. She was advised to return if she worsened and never did. She was working regular duty as of June 2017, which she believed included overtime, and had no further treatment into 2018. Petitioner testified that the re-work area was just as strenuous as her job had been on the line. In rework, the bearings/parts are of various sizes, some up to 12 pounds, while the parts were all the same on her old line. In re-work, some parts were on a table, and some were on pallets where she could sit and do her work. Re-work could involve cleaning, repairing, or replacing parts, and a variety of tools were used. Some re-work was done seated and some standing, but other work involved moving parts from pallet to pallet.

On further cross, as to the 4/17/18 claim, she spoke to Chilo and she believed Martin the next morning (4/18/18). She did not recall if Gary Sergeant was present, but he was a supervisor. As to conversation with Chilo and/or Martin regarding when her pain began, she didn’t recall discussing persistent back pain since the

birth of her child. She agreed the accident report she completed stated she had neck and back pain on 4/17/18 when she turned and heard a popping sound. She was lifting a part at the time. She believed she was initially examined at PIC on 4/18/18, when she also underwent drug and alcohol testing. She did not recall indicating she was unsure what caused her back and neck pain. After PIC released her with a 25 pound restriction, she did then tell Respondent she wanted to see her own doctor. She couldn't recall if Respondent accommodated the PIC restrictions or if she returned to work or not. If she did, she agreed it was on her regular shift at her regular pay. Petitioner left work early on 4/30/18 due to death in the family. She worked light duty through 5/4/18, then stopped working and started to receive short (STD) and long term disability (LTD) benefits via the Respondent. When Petitioner's primary provider referred her to orthopedics in May 2018 with chronic back pain, she went to Dr. Koutsky at her attorney's recommendation instead of returning to Dr. Popp.

Petitioner agreed she advised Dr. Mohan that she lifted 5 to 9 pounds all day long at work, 48 hours per week. She received the letter indicating her claim was denied after this exam. When Dr. Koutsky released her to light duty on 7/7/18, Respondent accommodated her restrictions as of 8/6/18 and she was assigned to re-work under Chris Kuznieski. She worked her regular shift at her regular pay rate. She agreed she first reported to work on 8/7/18, not 8/6/18, and then didn't arrive until 11 a.m. due to car trouble. She worked with restrictions from 8/8/18 to 8/14/18. As to her telling Dr. Koutsky on 8/15/18 that she had been in therapy, Petitioner did not recall if she had been in therapy at that time or not. She did not disagree that she may have called in to Respondent on 8/17/18 indicating she would be late due to daughter's doctor visit and then didn't come in at all. She didn't report to work on 8/20/18 due to going to the Sherman Hospital ER. She was sent home from work on 8/21/18 after a discussion about her attendance issues pending review of her attendance points.

As to the 8/21/18 motor vehicle accident, she testified on cross that she was at a stop when she was rear ended and did not recall how fast the other vehicle was going. The reference to 30-35 mph in the medical record referenced the speed limit on the road. She drove herself to the ER. She agreed that Dr. Patel diagnosed lumbar and cervical strains and sprains of the left shoulder and wrist on 8/22/18 and advised her she could return to work on 8/29/18. She then indicated she planned to seek further care with ION. She saw Dr. Koutsky on 8/28/18, reported the car accident, and he held her off work. On 10/1/18, she reported significant back pain radiating to left lower extremity and right leg pain to Dr. Koutsky. She didn't recall advising her physical therapist at the initial 10/10/18 evaluation of her injury being due to a car accident. She wouldn't disagree if the therapy records indicate she canceled multiple visits in October and November 2018 and was consequently discharged. Petitioner received LTD from 11/14/18 through 4/1/19. She didn't recall if she advised Dr. Mohaddin on 12/4/18 that her pain was exacerbated in the motor vehicle accident. Her claim for that accident was settled but she didn't think it exceeded \$20,000, which may have included monies towards medical expenses.

After Dr. Koutsky's 3/20/19 full duty release and learning she had been terminated by Respondent, Petitioner initially worked full time for Cheese Merchant Factory starting in May 2019, which she testified involved packing cheese into a bag. After a few months there, she then didn't work for a while until getting a full-time job with Mapei as an operator, which involved putting buckets on a line to catch glue – someone else down the line would take the bucket down. She did work on her feet in this job and earned about \$20 or \$21 per hour while working there for about 2-1/2 years. She did have a two month maternity leave while working for Mapei starting in July 2021 following a c-section birth. She last saw Dr. Koutsky on 10/3/19 and hasn't had any further neck or back treatment at ION after 2019. Petitioner began working for Aldi in February 2023. She started at \$18+ per hour with varied hours. She does work 5 days a week there, but the hours vary based on the work required. She currently earns \$19.75 per hour plus \$2 incentive pay. She testified she has had orthopedic or pain management care since starting with Aldi but could not recall the name of who she saw - it was not Koutsky, or Popp – and she has no current appointments scheduled. Again, her back and neck are improved, but she still has her bad days.

On redirect, Petitioner testified her right leg pain after the 2016 rollover car accident was radiating up from the right foot, not down from her back. Her initial 4/17/18 visit to PIC after her second work accident noted worse neck and back pain at work the prior day - 8/10 neck pain and 7/10 back pain.

Respondent submitted evidence of Petitioner having been in a February 2016 car accident where her car flipped over multiple times. A 1/26/17 report of Dr. Rizvi notes Petitioner's right foot got caught under the seat, she had not been recommended for surgery but had ongoing right foot pain at 8/10 to 9/10 level. She was diagnosed with chronic regional pain syndrome. Dr. Rizvi also recommended a lumbar nerve block, bilateral lower extremity EMG, lumbar MRI. Petitioner advised she did not want to proceed with the block. (Rx1).

Petitioner's Exhibit 9 contains a number of what appears to be 2019 drug tests on referral from Dr. Murtaza. The cover letter indicates "drug testing is related and appropriate as part of medication monitoring and assessment plan. The purpose of the drug screen was to determine the presence of other substances prior to initiating pharmacological treatment, detect the presence of illicit drugs, and monitor adherence to the plan of care." Tests were performed on 1/22/19 and 3/4/19. The billing for these tests was \$3,263.66 for each date, or \$6,527.32. (Px9).

Respondent submitted evidence of payments it was seeking credit for payments of TTD (Rx2, totaling \$4,184.24 for payments between 4/3/17 and to 6/26/17 pay periods), medical expenses (Rx3, \$833.78), short-term disability (Rx8), long-term disability (Rx9), and Section 8(j) group health benefits (Rx18). Petitioner testified that while off work from April 2018 to March 2019, she received short and long term disability benefits through the Respondent.

Respondent's Exhibit 13, an 8/21/18 traffic crash report, was objected to based on hearsay and rejected.

CONCLUSIONS OF LAW

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

The Arbitrator finds that the stipulated 3/30/17 work injury caused injury to the Petitioner's lumbar, thoracic, and cervical spine. The treating physician at Fox Valley, Dr. Popp, concluded that the injury did not cause any mechanical or permanent injury to the Petitioner. On 6/9/17, he opined that Petitioner had reached MMI, needed no further treatment, and was capable of returning to full work duties. As noted above, this matter is consolidated with a separate claim from Petitioner that she injured her back and neck at work on 4/17/18, which was consolidated with this matter and also heard on 7/10/24.

There is no evidence that the Petitioner had any spinal complaints prior to the 3/30/17 accident, which has been stipulated. The chain of events, supported by the histories contained in the PIC, VNA, and Fox Valley Orthopedics records, supports that the spinal complaints were the result of the 3/30/17 accident. No conflicting evidence was presented by Respondent.

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

Based on the Arbitrator's findings regarding causation, the Arbitrator finds that the Respondent is liable for a \$112.00 bill from VNA Healthcare (See Px6) pursuant to Sections 8(a) and 8.2 (Medical Fee Schedule) of the Act. Respondent is entitled to credit for any payments made towards this bill prior to the hearing date, and if such payments were made shall hold Petitioner harmless with regard to this bill.

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 machine operator at the time of the accident and returned to that job, though she testified she returned to the re-work area instead of her regular line. This factor carries some weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 33 years old at the time of the accident. Neither party has submitted evidence which would tend to show how the Petitioner's age impacts any permanent disability sustained as a result of the 3/30/17 accident. 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 she returned to her regular shift and hours per week following this injury and reaching maximum medical improvement. There was no evidence presented to indicate Petitioner suffered a diminished earning capacity as a result of this accident. This factor carries minimal 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 the Petitioner testified she still had some bad days after her 6/9/17 release. The evidence supports that she was able to return to her full work duties on 6/24/17 and sought no further treatment after 6/24/17 until after the alleged 4/17/18 incident occurred. She did move to a different area, but it sounded similar to her prior position with Respondent. Dr. Popp opined that Petitioner did not sustain any mechanical or permanent injury as a result of the 3/30/17 accident. It is not that the 4/17/18 injury is necessarily “intervening” so much as it was an event which Petitioner alleges triggered symptoms that the preponderance of the evidence supports had ended for Petitioner in June 2017, approximately 10 months prior to the alleged 4/17/18 accident. While there is evidence in the PIC records after 4/17/18 that she continued to have back and neck pain, it was clearly at a level where she had been able to work and did not seek further treatment. It appears to the Arbitrator that the 3/30/17 accident aggravated Petitioner’s spine in the form of strains/sprains, which was ultimately the diagnosis of Dr. Popp. The Arbitrator also notes that the main thrust of the treatment was directed to the Petitioner’s low back, and that while she had neck complaints, this appeared to be significantly secondary to the lumbar complaints.

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 6% 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 Arbitrator notes that while the parties stipulated to a \$4,184.24 TTD credit, this credit is applicable to the agreed TTD period from 4/4/17 through 6/23/17 and is not applicable against the medical and permanency awards made in this decision.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC015633
Case Name	Sabrina Patrick v. NTN Bearing Corporation
Consolidated Cases	18WC015632
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0339
Number of Pages of Decision	24
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Daniel Klosowski
Respondent Attorney	Michael Doerries

DATE FILED: 8/5/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS

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) SS.

COUNTY OF COOK

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☐ 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)
☐ Modify Choose direction	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SABRINA PATRICK,

Petitioner,

vs.

NO: **18WC015633****consolidated with 18WC015632**

NTN BEARING CORP

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner and notice given to all parties, the Commission, after considering the issues of accident, causal connection, reasonableness and necessity of medical expenses, duration and causation of temporary disability, and nature and extent of the permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

As of April 17, 2018, Petitioner was a five-year employee of the Respondent employed to inspect, fix, pack, and move car parts. T. 24. After her prior injury in 2017, she had returned to the full demands of her employment with Respondent and was capable of working overtime. T. 68.

Petitioner was working in the rework area and doing her normal duties moving car parts when she began experiencing pain in her back and neck. T. 26. RX 4. She approached a supervisor requesting a back brace, was not provided one, and continued to work the remainder of her day. T. 27. Rx 4. She returned to work the next day, April 18, and continued to experience pain. She spoke with her supervisor again and was told that she would need to go to the company clinic if she wished to receive a back brace. T. 29. RX 4.

Later that day, Petitioner was seen at Physicians Immediate Care ("PIC"). She complained of constant back pain of the posterior neck and back, which occurred the day before at work. Petitioner admitted to back pain prior to work followed by the pain becoming worse at work yesterday. Neck pain was an eight out of ten. Back pain was a seven out of ten and all over. She reported having iced her back and neck overnight without relief. The diagnoses were sprain of the

lumbar spine and pelvis, and strain at neck level. She was restricted to wearing a back brace. PX 1.

On April 19, 2018, Petitioner completed her full shift and then was seen at VNA Healthcare. She reported a two-day history of back pain and intermittent neck pain. She was deemed to have a paraspinal muscle spasm. PX 6.

On April 23, 2018, Petitioner was seen at VNA Healthcare. She had a history of back strain and was presenting for lower back pain follow up. Her pain had persisted and was a seven out of ten. PX 6.

On April 24, 2018, Petitioner returned to PIC. She reported an increase in neck pain and back pain. She was unsure what caused the injury, but believed it was from picking up pallets non-stop at work. She had already seen her primary care physician and been referred to an orthopedic specialist. Petitioner was placed on modified duty and to see her own providers. PX 1.

On May 4, 2018, Petitioner was seen at VNA Healthcare, for follow-up on back pain. It was dull, mild, and worse with movement. X-ray of the lumbar spine was ordered. PX 6. The X-rays took place on May 9, 2018, and included studies of the cervical spine, thoracic spine, and lumbar spine. All were normal. PX 3.

On May 18, 2018, Petitioner was seen for follow-up on her x-ray results. She gave a history of back pain, not improved since last visit. Her x-rays were deemed within normal limits. She was referred to orthopedics to discuss her chronic back pain. PX 6.

On June 1, 2018, Petitioner was seen at VNA Healthcare for a 2-week follow-up, with complaints of left leg pain for two days. It was noted that she was not moving as much due to the injury. Due to the pain and the risk for DVT, she was referred to the emergency room. PX 6.

Later that day, Petitioner was seen at Advocate Sherman Hospital complaining of left leg pain for two days. She had a back injury on April 17 while lifting, and an onset of leg pain on May 30. She underwent a left lower extremity venous ultrasound to rule out DVT. Multiple etiologies were discussed including radiating leg pain and or another sprain/strain. She was prescribed rest, ice, and elevation, with weightbearing as tolerated. PX 3.

On June 6, 2018, Petitioner was seen at Illinois Orthopedic Network/Elmhurst Orthopaedics by Dr. Koutsky for an initial visit. She complained of neck pain with radiation to the shoulders and lower back pain radiating down the left leg to the posterior calf. She reported she had suffered a back injury in 2017 followed by a period off work before having a new work-related injury on April 17, 2018. She claimed a history of lifting boxes of parts while twisting and bending. On examination, Petitioner had good strength in the extremities but had some numbness in the posterolateral left lower leg. On palpation Dr. Koutsky found paralumbar and paracervical tenderness and spasm with altered range of motion. She was diagnosed with cervical and lumbar spine pain, with radiculopathy. She was placed off work. PX 4.

On June 22, 2018, Petitioner was seen for an MRI of the cervical spine. The impression was a mild diffuse bulge at C5-6, without foraminal narrowing. A lumbar spine MRI taken that day resulted in an impression of diffuse protrusion of L5-S1 with annular tear causing mild

narrowing bilaterally, and a diffuse bulge of L4-5. PX 4.

On June 29, 2018, Petitioner was seen by Dr. Chunduri at Illinois Orthopedic Network, for follow up on her low back pain, leg pain, and neck pain. Symptoms were worst in her lower back at L5-S1. The MRIs were reviewed: cervically she had a C4 - C5 disc bulge without stenosis; in the lumbar spine she had a 2mm L4-5 bulge without stenosis, and a 3mm L5-S1 protrusion resulting in mild stenosis. The L5-S1 finding was deemed an annular tear and likely causing inflammatory reaction of the nerve roots. Her extensive treatment with therapy and NSAIDs having not improved her, she was recommended an TFESI. She was kept off work. PX 4.

On July 10, 2018, Petitioner was examined at Respondent's request pursuant to §12 of the Act by Dr. Vivek Mohan. Dr. Mohan examined the Petitioner and reviewed the medical records. Dr. Mohan was also provided surveillance information and footage of the Petitioner. Based upon his examination and the review of the materials provided to him, Dr. Mohan opined that the Petitioner's subjective complaints did not correlate to any definitive clinical diagnosis. Dr. Mohan diagnosed the Petitioner with pre-existing degenerative disc disease, denying any aggravation of that disease had occurred. RX 6.

On July 27, 2018, Petitioner was seen again with complaints of pain eight out of ten radiating down her leg. Because she was not receiving benefits and because her treatment had not been approved, Dr. Chunduri returned her to work with restrictions for light duty due to financial stressors. PX 4.

On August 6, 2018, according to time stamp records introduced by Respondent, Petitioner was approved to return to work, and had punched in at 6:50am, and out at 3:20pm. On August 7, 2018, she called in late for work due to car trouble, but punched in at 11am, and out at 3:13pm. On August 8, 9, 10, 13, 14, and 16, she worked 8 hours of regular work. RX 10.

On August 11, 2018, Petitioner was seen by Dr. Murtaza at ION due to calendar conflicts with Dr. Chunduri. She had returned to work as of August 6, 2018. Petitioner rated her pain as a nine out of 10, without relief from medication. Her pain was aggravated with sitting or standing for long periods of time and was alleviated with ice, lying down, and mild relief with tramadol. Her left lower extremity motor exam was noted as 4+/5 with ankle plantar flexion. An EMG/NCV study was recommended, and PT was prescribed. Her exam showed tenderness to palpation of the lumbar spine, but no spasm on palpation. Her work status was continued as: "carrying and lifting no more than five pounds, pushing and pulling no more than 10 pounds and limiting bending and squatting," PX 4.

According to her time sheets, on August 15, 2018, Petitioner was recorded to have worked 5:50 hours, which had been pre-arranged with HR. RX 10.

That same day, Petitioner was seen at Elmhurst Orthopaedics for follow up with significant pain. She was neurologically unchanged, and a refill on tramadol was provided. A work status form was prepared for "no heavy lifting 5 pounds maximum, minimum bending or stooping, no push/pull greater than 10 pounds, and sedentary work only." PX 4.

According to her time sheets, on August 17, 2018, she called in late planning to attend at work at 11am, but did not attend work. RX 10.

On August 20, 2018, Petitioner's cousin called her out of work as she was seeing doctors. RX 10. Medical records show Petitioner presented to Advocate Sherman Hospital for complaints of generalized back pain and neck pain with onset four months prior. On exam, she had no cervical tenderness and only generalized neck pain and back pain without any midline cervical, thoracic, or lumbar tenderness. She had no weakness in her bilateral upper or lower extremities. Her diagnosis was chronic cervical, thoracic, and lumbar back pain, and she was to follow up with her primary care. PX 3.

Later that day, Petitioner was seen for electrodiagnosis, and bilateral peripheral NCS were performed. The impression was lumbosacral radiculopathy minimally involving the left L5-S1 nerve roots. PX 4.

On August 22, 2018, Petitioner was seen at Presence St. Joseph with a chief complaint of a motor vehicle accident on August 21 and back pain, neck pain, headache, and left side wrist pain. She gave a history of driving a car at 10:45 a.m. the day prior when she was hit from the rear. A prior visit to the ER is noted, but not included in submitted evidence. She had tenderness over the lower lumbosacral region and over the neck area and over the left-shoulder. RX 14.

That same day, Petitioner went to work unscheduled and discussed her attendance with her employer and notified them of her car accident. This note was entered on August 27, 2018, and backdated to the 21st, and then an addendum was added about the car accident happening on August 22. RX 10.

On August 27, 2018, Petitioner was seen by Dr. Koutsky for follow up, and reported a new motor vehicle accident. She was a restrained driver and was rear-ended. The assessment was that she had an aggravation of symptoms from her cervical and lumbar radiculopathy, and a new left wrist injury, due to the MVA. On examination, she had numbness in the posterolateral aspect of her left lower leg, and paralumbar and paracervical tenderness with spasm to palpation. She was taken off work. PX 4.

On October 1, 2018, Petitioner was seen at Elmhurst Orthopaedics for follow-up on pain resulting from both her work injury and her motor vehicle accident. She continued to have pain in her neck and low-back which was radiating into both lower extremities. PX 4.

On October 10, 2018, Petitioner was seen at ATI for an initial evaluation. She presented with decreased ROM, strength, joint mobility, soft tissue mobility, and increased pain. She reported both an injury working on the line, and an MVA making her pain worse. PX 7.

On October 15, 2018, MRI of the cervical spine resulted in the impression of multi-level spondylotic changes from C3-7, shallow annular bulges impinging the ventral thecal sac from C3-6, and cervical straightening. The MRI of the lumbar spine showed disc bulging in the lower lumbar spine at L4-5, mild spondylotic changes L5-S1, and straightening of the lumbar lordosis. PX 4.

On November 5, 2018, Petitioner was seen again at Elmhurst Orthopaedics for her complaints of neck and back pain. Authorization for treatment was still sought, and Petitioner was off work. PX 4.

On November 9, 2018, ATI discharged the Petitioner at her own request having demonstrated independence with HEP for her left wrist, and also for lack of attendance. On November 20, 2018, Petitioner was seen again for an initial evaluation/plan of care for PT at ATI. PX 7.

On December 4, 2018, Petitioner was seen at Elmhurst Orthopaedics for evaluation of her neck and back pain with radiation that was deemed to have been exacerbated by the MVA. Reviewing the EMG and the MRI, the assessment was of an L5-S1 bulge and the plan was for a left paramedian L5-S1 LESI. Treatment of the neck issues was deferred for treatment of the back. PX 4.

On December 10, 2018, Petitioner was seen at Elmhurst Orthopaedics and had been participating in physical therapy and was taking medications as needed. She was off work, and prescriptions for pain medication were refilled. PX 4.

On December 13, 2018, Petitioner underwent a lumbar epidural steroid injection at L5-S1. PX 4.

On December 26, 2018 Petitioner discharged from PT at ATI per patient request. PX 7.

On January 14, 2019, Petitioner reported to Dr. Koutsky that her lumbar radiculopathy had been doing better since she had received her first injection. She had been off work and was encouraged to continue with a home exercise program. PX 4.

On February 14, 2019, Petitioner returned to Elmhurst Orthopaedics with complaints of cervical spine pain and cervical radiculopathy worse on the left anterior artery with upper extremity pain. CESI at C5-6 was performed. PX 4.

On February 18, 2019, Petitioner returned to Elmhurst Orthopaedics and reported that her cervical and lumbar radiculopathies were doing better. She continued to have a 10lb lifting restriction, which was increased to 20lbs. PX 4.

On March 20, 2019, Petitioner was seen by Dr. Koutsky for follow up and was noted to be waiting for authorization for pain clinic management for the second cervical and lumbar injections. At Petitioners request she was given a full duty release starting March 2, 2019. PX 4.

On April 17, 2019, Petitioner was seen at Elmhurst Orthopedics with no change in her symptoms. Authority for additional lumbar and cervical injections was still needed. Petitioner had completed physical therapy and was doing her home exercise program. PX 4.

On May 16, 2019, Petitioner returned to Dr. Koutsky and was doing the same as before. She was given medication, and injections were noted to be pending approval. PX 4.

On June 5, 2019, Petitioner returned to Elmhurst Orthopedics for examination. The decision was made to hold off on further requests for injection care. Petitioner was noted to have a potential future need for intermittent physical therapy and pain management. An FCE was recommended. PX 4.

An ATI FCE of 6/27/19 of the Petitioner was deemed valid and Petitioner was found capable of light duty. PX 4.

On July 1, 2019, Petitioner was seen for follow up by Dr. Koutsky. She reported working in a full duty capacity despite residual pain. Medication was taken as needed. Dr. Koutsky declared her at MMI. PX 4.

On September 4, 2019, Petitioner returned to Dr. Koutsky with complaints of flare-ups of neck and low back pain. However, she was working in a full duty capacity. She was given a refill of medication used for chronic pain. PX 4.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Arbitrator found that the Petitioner failed to prove she sustained accidental injury arising out of and in the course of her employment on April 17, 2018. The Commission views the evidence differently and finds the Petitioner has met her burden of proof of an accident arising out of and in the course of her duties for Respondent.

Petitioner alleged that on April 17, 2018, she developed low back and neck pain while performing her job duties as a machine operator. Her job duties on that date required manually moving parts from one cage to another. In order to be compensable under the Act, the injury complained of must be one "arising out of and in the course of" her employment. 820 ILCS 305/2. An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995).

Here the evidence supports a finding that Petitioner had a history of prior injury in 2017 and occasional pain prior to the April 17, 2018, accident date. This pain was acutely made worse while lifting pallets non-stop during her employment for the Respondent on April 17, 2018. This finding is based on the credible testimony of Petitioner and the history reported to Physicians Immediate Care on April 18 and April 24, 2018.

The Petitioner was in the course of her duties when she was lifting pallets, as per her un rebutted testimony describing her job duties. She has thereby met her burden of proof that she was in the course of her employment when injured.

Similarly, the Petitioner finds that the Petitioner met her burden that her injury arose out of her employment. 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, 203, 797 N.E.2d 665, 672 (2003) Categorizing the Petitioner's risk, the Commission finds that the Petitioner was performing acts which she was instructed to perform by her employer, an employment risk under *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, 181 N.E.3d 656 (2020).

The Commission has considered the §12 opinion of Dr. Vivek Mohan but does not find it persuasive. Dr. Mohan notes having reviewed the records including those of April 17, 2018, and May 4, 2018, but not April 18, April 23, or April 24, 2018. Dr. Mohan also does not indicate to

having knowledge of Petitioner's prior treatment with Illinois Pain Institute in January of 2017. 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). The Commission considers the records not provided to Dr. Mohan to be relevant to his determination that no aggravation of Petitioner's degenerative disk disease was caused by the work incident of April 17, 2018, and finds that determination inconsistent with the Petitioner's pre-injury ability to work and her onset of increased pain on April 17, 2018. His opinion being inconsistent with the employment and treatment histories, the Commission weighs the opinions of the doctors involved and finds Dr. Mohan's to be not persuasive.

For these reasons, we reverse the Arbitrator's denial of accident, and find Petitioner suffered from a work accident which arose out of and in the course of her employment on April 17, 2018, when she had an acute on-set of back and neck pain while manually lifting pallets.

The Arbitrator's Decision mooted the issue of the causal connection of the present condition of ill-being. The Commission now finds that the Petitioner suffered an aggravation or exacerbation of her prior back and neck complaints, but that the causal connection was terminated prior to her reaching MMI when she was reinjured by the motor vehicle accident on August 21, 2018.

Immediately prior to the motor vehicle accident on August 21, Petitioner's medical condition was known to permit her to perform her work duties. As of August 6, 2018, Petitioner had returned to work and had performed her full work duties on seven days and had been delayed arriving at work due to car trouble for an eighth day. On August 11, physical examination showed no spasm on palpation. On August 15 she was examined and continued on at work with light duty restrictions. On August 20, Petitioner presented to Advocate Sherman Hospital and on exam she had no cervical tenderness and only generalized neck pain and back pain without any midline cervical, thoracic, or lumbar tenderness. She had no weakness in her bilateral upper or lower extremities.

The motor vehicle accident is known to have occurred on August 21, 2018. Subsequent to that date the Petitioner was seen on August 22 at Presence St. Joseph where she presented with back pain, neck pain, and headache with tenderness over the lower lumbosacral, neck area, and the left shoulder. On August 27, she had paralumbar and paracervical tenderness with spasm to palpation. She was then taken off work by Dr. Koutsky.

The Commission finds that the Petitioner had an increase in tenderness to palpation, new spasm on palpation, and a change in her work status from working with restrictions to off work. In addition, she went on to complain of new radiculopathy down the right lower extremity, and Dr. Koutsky states in his records that the motor vehicle accident aggravated her cervical and lumbar radiculopathy. The motor vehicle accident was an intervening accident which altered her subjective symptoms, objective findings, and work status and was sufficient to break the causal chain. The Commission finds that the causal connection between the work injury and the need for neck and back treatment terminated on August 21, 2018.

Consistent with the findings on accident and causation, the Commission now awards the Petitioner with TTD from May 4, 2018, through August 5, 2018, a period of 13-3/7 weeks. At the

Petitioner's rate of \$467.23 per week, that amounts to \$6,274.43. The Respondent is awarded a period credit for the payment of short-term disability benefits made consistent with the parties' stipulations.

Furthermore, the medical bills are found to have been reasonable and related to the accident, and the Commission awards medical treatment from April 18, 2018, through August 20, 2018. The Respondent is to pay all reasonable and related treatment at the lesser of the fee schedule or negotiated rate consistent with §8(a) and §8.2 of the Act.

In considering the issue of the permanent partial disability, the Commission incorporates our findings regarding the intervening accident above. A PPD award must be based upon the actual outcome of treatment and the Petitioner's degree of impairment after they reach MMI. The Commission awards no PPD in this claim as Petitioner had not reached MMI and all impairment retained after August 21, 2018, was either the result of the motor vehicle accident or Petitioner's accident of March 30, 2017.

Finally, the Commission observes Petitioner's personal identity information was unredacted in the parties' Exhibits. The Commission cautions Counsel to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 7, 2024, is reversed and benefits are awarded for the reasons stated above.

IT IS FURTHER FOUND BY THE COMMISSION that the Petitioner was accidentally injured on April 17, 2018, and that such accident arose out of and in the course of her employment with Respondent.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's condition of ill-being in her cervical and lumbar spine were causally related to the accident, but that such causal connection was terminated by the intervening accident on August 21, 2018.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the unpaid bills for reasonable and necessary medical services from April 17, 2018, through August 20, 2018, as set forth in Petitioner's Exhibits for causally related treatment, at the fee schedule or the lesser rate as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$467.23/week for 13-3/7 weeks, commencing on May 4, 2018, and continuing through August 5, 2018, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive a period credit for the payment of short-term disability benefits made for the period of May 4, 2018, through August 5, 2018, consistent with the parties' stipulations and §8(j) 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 \$20,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 5, 2025

O: 06/10/25

AHS/ps

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC015633
Case Name	Sabrina Patrick v. NTN Bearing Corporation
Consolidated Cases	18WC015632;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Michael Doerries

DATE FILED: 10/7/2024

/s/ Paul Cellini, Arbitrator

Signature

THE INTEREST RATE FOR THE 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**

SABRINA PATRICK

Employee/Petitioner

v.

NTN BEARING CORP.

Employer/Respondent

Case # **18** WC **15633**

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 17, 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 not* sustain an accident that arose out of and in the course of employment.

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

In the year preceding the injury, Petitioner earned **\$36,443.68**; the average weekly wage was **\$700.84**.

On the date of accident, Petitioner was **34** 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** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$19,420.72** for payment of non-occupational disability benefits.

Respondent is entitled to a credit of **\$2,441.78** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner has failed to prove that she sustained accidental injuries arising out of and in the course of her employment on April 17, 2018.

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

October 7, 2024

STATEMENT OF FACTS

The Arbitrator heard two consolidated matters on 7/10/24 involving the same Petitioner and Respondent, cases 18 WC 15632 and 18 WC 15633, and two separate decisions are being issued.

Petitioner worked for Respondent as a machine operator, which involved supplying supplies to make ball bearings for auto brakes on a factory line. She would measure the supplies, cut some of them, pack, ship, and inspect the parts. The completed bearings would be packed onto pallets. On 3/30/17, Petitioner was working on her #21 line. While packing the parts onto a pallet, she felt immediate pain in her neck and back as she was turning. She reported the incident to her supervisors, Cesar Martin and “Chilo”, and was sent to the company clinic, Physicians Immediate Care (PIC), where she said she reported significant low back and neck pain. The 3/30/17 PIC report notes sharp low back pain after lifting bearings in a re-work area, noting her normal work area had “lifters.” She denied prior similar symptoms. Thoracic and lumbosacral x-rays were obtained and indicated to be within normal limits. She was diagnosed with a back strain, issued a back brace, given work restrictions. (Px1).

At her primary provider, VNA Healthcare, on 4/1/17, Petitioner complained acute low back pain and noted a 3/30/17 work injury. She also indicated joint pain and muscle aches. Petitioner reported Respondent had her doing her typical type of heavy work and this increased her pain. She was advised to avoid normal physical activity for a few days and to take anti-inflammatories. (Px6). The note does advise Petitioner to see orthopedics, and she testified that VMA referred her to Fox Valley Orthopedics.

At Fox Valley on 4/4/17, Petitioner provided a history of bending and picking up bearings and moving them from one pallet to another on 3/30/17 and complained of 9 out of 10 (9/10) level back pain. Neurologic exam was normal but there was tenderness to palpation and with range of motion. Lumbar x-ray was grossly normal. Petitioner was diagnosed with mid and low back pain and a “fairly severe” lumbar strain. Steroids, Norco, a muscle relaxer, and physical therapy were prescribed, and Petitioner was held off work. On 4/14/17, Fox Valley notes ongoing low back complaints, as well as neck and chest pain. The active problems included right ankle and foot joint pain, left wrist/forearm pain, right ankle sprain, and right cubital tunnel. Dr. Popp continued therapy and provided work restrictions (no lifting/pushing/pulling over 5 pounds, no repetitive bending, and frequent position changes. A pain drawing indicates various types of pain throughout her back from shoulders to waist. On 4/28/17, noting ongoing 7/10 to 9/10 pain and no relief with therapy, Dr. Popp held Petitioner off work and prescribed a lumbar MRI. This was performed on 5/5/17 and showed no evidence of herniation or stenosis. (Px2; Rx17).

Petitioner testified she attended physical therapy at ATI from 4/11/17 through 5/5/17.

A machine operator’s job description was contained within the records of Fox Valley Orthopedics. Physically it included supplying components to hoppers, indexing poles, or conveyors. It also included the possibility of other assigned duties. Specifically relevant to this case, the employee had to stand, walk, reach, climb or balance, stoop, kneel, crouch, or crawl. They also would have to regularly lift/move up to 10 pounds, frequently lift up to 25 pounds, and occasionally lift up to 50 pounds. (Px2).

Petitioner went to the St. Joseph’s Hospital ER on 5/15/17 for back pain, complaining that she was out of Norco for her lumbar strain. She was unable to get in touch with Dr. Popp. Norco was prescribed and she was to follow up with Dr. Popp. (Rx5). On 5/19/17, Dr. Popp noted the ER visit, and that the lumbar MRI was unremarkable. He stated: “Because the patient still has this pain recurred narcotic medications from emergency room and was given narcotic medication, with an MRI of the cervical spine and thoracic spine.” The

MRIs appear to have been ordered by Dr. Popp. He further opined that if the MRIs were unremarkable, full duty work would be recommended as he did not have a good explanation for her pain level at that point. (Px2).

The 6/1/17 thoracic MRI was essentially normal, while the cervical MRI showed several mild disc bulges and loss of lordosis. (Px2; Rx17). On 6/9/17, Petitioner had ongoing 8/10 pain and Dr. Popp opined she had a lumbar strain without any mechanical or permanent injury and recommended she return to work, initially every other day for two weeks, then to full duty. If she could not do this, a functional capacity evaluation (FCE) would be considered. (Px2). On 6/26/17, Petitioner reported chronic right ankle pain to VNA after falling at home and landing on her right foot. Musculoskeletal complaints also included joint pain and stiffness. Nothing was noted as to the low back. (Px6).

Petitioner testified that her neck and back felt better after this last visit with Dr. Popp and she returned to full work duties, though she also testified she still “had my days.” She reported an 8/21/17 right thumb crush work injury and went to PIC. The report notes no back pain. (Px1).

Petitioner testified she was still working as a machine operator on 4/17/18, but now in the “re-work” area, involving reinspecting, fixing, moving, and packing parts. She had to move parts manually from one place to another without the use of a lifter to put them on pallets. She testified she felt great that morning. She testified she began to develop back and neck pain while performing this activity. While similar to her prior job, she was no longer running an assembly line and was dealing with already assembled parts. She testified she asked her supervisors, Chilo and Martin, for a back brace, and that this was “denied” to her. She said the next day, 4/18/18, one of these supervisors told her they no longer had a brace available and that she would have to go to the company clinic to get one. Petitioner completed and signed an injury report that states: “On 4/17/18 I started experiencing some [cross outs] neck and back pain. Pain in my whole back area and my neck when I turn [cross out] I hear a popping sound. I [cross outs] called Chilo to my line at 12:00 to inform him of me being in pain and can I get a back brace he went to safety office and was told that back braces are no longer available that I will have to go to the clinic to receive one.” (Rx4). Petitioner was then given a ride to PIC.

Supervisor Martin Cortez’s report notes that on 4/17/18 the Petitioner notified Chilo around 12:00 of a work injury: “Employee started experiencing back and neck pain on 4/17/18 during work hours. Employee is not sure what caused the pain to occur. Pain still continued since then.” The Arbitrator notes this document is unsigned and undated. Additional documentation appears to refer Petitioner to PIC. (Rx4).

Petitioner worked her full shift on both 4/17/18 and 4/18/18. (Rx10). At PIC on 4/18/18, Petitioner reported neck and back pain since 4/17/18: “she is having neck pan and her entire back is bothering her, Pt. states that she is unsure of what could have caused the injury but she believes that it is from picking up pallets non-stop at work.” Petitioner also reportedly said she was there “with neck and back pain that she states she always has but became worse yesterday at work.” It was noted she worked on an assembly line, and she said she was denied a back brace. Other than loss of lordosis, lumbar and cervical x-rays were normal. Petitioner was advised to use a brace and return to work. (Px3).

Petitioner worked her full shift on 4/19/18 then sought treatment with VNA Healthcare. (Rx10). Petitioner reported a two day history of back pain: “Is a machine operator in a factory, and went to her factory doctor for assessment. Was placed on light duty, but continued to have worsening symptoms.” It was noted her symptoms were likely due to paraspinal muscle spasm. Flexeril was prescribed and she was to follow up in a week. (Px6). Petitioner testified she was given work restrictions, but the Arbitrator did not locate a note to this effect.

Petitioner testified she continued to follow up at both PIC and VNA. On 4/23/18 at VNA, Petitioner reported no improvement after three days off work. Medication and physical therapy were prescribed, and she was referred

to orthopedics. No physical work restrictions were referenced. (Px6). At PIC on 4/24/18, Petitioner noted VNA prescribed therapy and an orthopedic evaluation given her 8/10 pain. Petitioner reported left knee pain “when she applies pressure and walks for long periods of time.” She was tearful and wanted several days off work to rest her back. Petitioner advised she wanted to see her own doctor at Fox Valley and requested a discharge. She was released to return to restricted work duties. (Px1). On 5/4/18, Petitioner went back to VNA (Dr. Hashim) with unchanged low back pain (“location all back”) and advised she wanted a second opinion instead of the workers’ compensation doctor. Nabunetone was prescribed along with cervical and lumbar x-rays, and she was to follow up in two weeks. This note also states: “patient has other chronic medical conditions and needs cancer screening so is advised to make an appointment with PCP.” (Px6).

Petitioner believed she returned to restricted work duties at this point in April and May 2018.

Records from Respondent indicate Petitioner was completely off work from at least 5/5/18 through 8/5/18. It appears that she worked a full regular shift on 8/6/18 and then came in late at 11am on 8/7/18, indicating she had court and her car wouldn’t start. The note also indicates something about Petitioner being in a hurry and forgetting to punch in. She then worked full time for the rest of the week, 8/8/18 through 8/10/18.

Petitioner underwent the spinal x-rays requested by Dr. Hashim on 5/9/18, all of which were indicated to be normal. At her 5/18/18 follow up, Dr. Hashim noted the x-rays and lack of improvement and referred Petitioner to orthopedics. (Px3; Px6). Petitioner returned to Dr. Hashim on 6/1/18 with a two day history of left leg pain. Due to concern for deep vein thrombosis (DVT), Petitioner was sent to the ER (Px6), and the Advocate Sherman Hospital report notes venous doppler testing was negative for DVT. Multiple possible etiologies were discussed including a prior back injury or a new sprain/strain. She was discharged with Naproxen. Activity and weightbearing were to be as tolerated and she was to follow up with her primary provider. (Px3).

Petitioner next saw orthopedic surgeon Dr. Koutsky on 6/6/18 with complaints of neck pain with some radiation to the shoulders and low back pain radiating down the left leg to the calf, as well as some numbness and tingling. Petitioner reported her 2017 work related back injury with a few months off work, but after that was doing well until a new work injury on 4/17/18 – “She was lifting boxes of these parts while twisting and bending. She felt a sharp pain in her back and neck with some radiation to the left leg.” Her pain ultimately became very severe with left leg pain, for which she went to the ER. Dr. Koutsky diagnosed cervical and lumbar radiculopathy and ordered MRIs. He prescribed physical therapy and pain management with possible injections. Tramadol, an anti-inflammatory, and a muscle relaxer were prescribed. Petitioner was held off work. (Px4). Petitioner testified that what she reported to Koutsky was accurate.

On 6/22/18, lumbar MRI reflected a mild diffuse L4/5 bulge without significant canal or foraminal stenosis, and at L5/S1 a diffuse protrusion with annular tear causing mild canal and foraminal stenosis. Cervical films, noting a history of neck pain with work injury, were unremarkable except for a mild diffuse C5/6 bulge without significant stenosis. (Px5).

The history Petitioner provided to pain management on 6/29/18 was that she continued to have symptoms after the 2017 work injury that never fully resolved “and were made much worse by the 4/2018 injury”, with left leg symptoms being the worst symptom. Noting the MRI findings, Dr. Chunduri believed the back symptoms were related to L5/S1 – “There is an annular tear just likely causing inflammation reaction of the nerve roots resulting in left sided radiculopathy.” An epidural was recommended along with a patch and diclofenac gel. (Px4). Petitioner testified she was held off work but there is no reference to work status on Dr. Chunduri’s note.

Petitioner was examined by orthopedic surgeon Dr. Mohan at Respondent’s request on 7/10/18. He recorded a history of Petitioner’s 3/30/17 work injury as: “she has to pick up small car parts, typically less than 10 pounds,

but from repeatedly packing these car parts she noticed some back pain.” She was back to full duty in July 2017 but still had back pain, and then on 4/17/18 she had increasing back pain while packing car parts again – “she has noticed this time that she is having pain sitting and standing. She began getting pain with some tingling into her left leg over time and also complained of neck stiffness and stabbing pain into her shoulders with occasional right arm numbness. Dr. Mohan stated that Petitioner’s job involved lifting 5 to 9 pounds all day long for 8 hours per day, 6 days a week. He identified multiple Waddell signs on exam, noting pain to tenderness throughout Petitioner’s back with symptom magnification. After a review of Petitioner’s medical records, Dr. Mohan opined that the subjective complaints did not correlate to any definitive clinical diagnosis, referencing her complaints of pain “all over.” He opined that the complaints did not correlate on exam or to any organic diagnostic problems. Dr. Mohan did not believe there was any cervical or lumbar condition of ill-being that was caused or aggravated by either work accident. He opined there was preexisting degenerative disc disease. He noted evidence of symptom magnification in multiple prior exams in 2017 and 2018 “as evident by tenderness to palpation and 8/10 to 9/10 pain on repeated examinations which do not correlate to the symptoms of claimant that is ambulating without difficulty in the office. There is no evidence of a temporary or other form of injury that has occurred in these incidents.” Dr. Mohan opined that only rest and anti-inflammatories were reasonable treatment, while therapy and MRIs were not reasonably necessary. Petitioner had reached maximum medical improvement (MMI), needed no further treatment and was capable of returning to full duty employment. (Rx6).

On 7/24 and 7/27/18, Dr. Chunduri continued to recommend lumbar epidural. Petitioner reported 9/10 pain on the 24th and advised that none of the medications helped her. She specifically requested Norco but was advised this would only be prescribed for post-surgical pain. Petitioner declined other offered medications and she was continued off work. She again asked for better medications on 7/27/18. At that point she was reporting financial difficulties without weekly benefits, so Dr. Chunduri released her to restricted duties and prescribed a left leg EMG/NCV. (Px4).

Respondent sent an 8/1/18 letter to Petitioner indicating that, based on the information she provided, it was determined that she did not sustain an injury which arose out of and in the course of her employment, and that any alleged injury wasn’t related to her claim, and thus benefits were denied. (Rx7).

On 8/11/18, Illinois Orthopedic Network (ION) noted Petitioner could no longer see Dr. Chunduri due to her work hours and would start treating with Dr. Murtaza. Petitioner reported she had returned to work on 8/6/18 and wanted to continue working. Dr. Murtaza found some left lower extremity weakness on exam and believed EMG was indicated. Petitioner advised she was told her lumbar MRI from the prior year was normal, but the new one showed an annular tear and disc protrusion at L5/S1 “which is likely causing her current symptoms.” He prescribed Tramadol and work restrictions. (Px4). On 8/15/18, Dr. Koutsky noted complaints of neck and back pain into all four extremities. He wanted to review the MRIs and the EMG, continuing medication, therapy, and light duty in the meantime.

Petitioner’s attendance records indicate on 8/17/18 she called in around 3:45 a.m. indicating her daughter had a doctor’s appointment and she would be in at 11 a.m., but she never showed up. The next week, on 8/20/18, Petitioner’s cousin called stating Petitioner was in the hospital with back spasms. (Rx10). On 8/20/18, Respondent provided Petitioner with a notice of attendance incidents between 8/21/17 and 8/20/18. This document references multiple attendance points in December 2017 through April 2018, including absences, tardiness and leaving early, and that Petitioner as subject to termination. She was to contact the Human Resources Director. There are many entries referencing “ABS expiring” which could reference an absence but are not self-explanatory. On 8/21/18, it was noted Petitioner came in to discuss her attendance issues and notified them she had been in a car accident the day before. She was sent home by Human Resources pending “attendance point verification.” (Rx10).

On 8/20/18, Petitioner appeared at Sherman Hospital with generalized neck and back pain after an onset 4 months prior. She was scheduled for EMG the next day. She was to continue her medications with the addition of Flexeril. She was advised to follow up with her primary provider. (Px3). She returned to Dr. Hashim and saw his NP, Annie Kluch. Noting Petitioner's history of back pain and work injuries, she asked Kluch to complete an FMLA leave form based on her 5/4/18 exam. She also reported her orthopedic filled out the forms based on the 5/4/18 visit when she was taken off work. (Px6). The Arbitrator did not note any work restrictions indicated in Dr. Hashim's 5/4/18 report.

The 8/20/18 EMG report notes a history of pain, intermittent numbness and tingling in the legs, left greater than right. The history continues that Petitioner injured her low back "lifting a heavy object." The impression was of radiculopathy minimally involving the left L5/S1 nerve roots. There was evidence of possible early peripheral polyneuropathy with a possible differential diagnosis of tarsal tunnel syndrome. (Px4; Px8).

On 8/21/18, Petitioner testified she was rear ended in a motor vehicle accident. Petitioner declined an ambulance but drove herself to the ER with the car she had been in the accident with. She testified her back and neck were a little bit "agitated" after the car accident, and she also had pain in her left wrist. She testified that a few months later her neck and back pain went back down to the level she was at prior to the car accident. The Arbitrator did find any ER report from after the car accident in the evidentiary record. Respondent submitted some records from this visit as Rx16, but no progress notes are included. There is a discharge reference to a motor vehicle accident and upper body pain with left wrist discomfort. It appears she was prescribed cyclobenzaprine, Ibuprofen 600, and 12 Norco tablets. She was advised to return to work on 8/23/18 and she was to follow up with her family doctor. (Rx16).

Petitioner saw Dr. Patel on 8/22/18, who appears to be a family physician. She reported low back, neck, and right wrist pain after a motor vehicle accident. Petitioner was diagnosed with sprains of these body parts plus the shoulder, and she was referred to physical therapy. She was held off work for a week but a follow up wasn't scheduled as Petitioner planned to follow up with ION. (Rx14; Rx15).

On 8/27/18, Petitioner advised Dr. Koutsky she had been rear ended by a vehicle traveling 30 to 35 miles per hour while she had been slowing down ("In addition to this new motor vehicle accident and in addition to aggravating her cervical and lumbar radiculopathy, she also injured her left wrist."). The 6/22/18 cervical and lumbar MRI results were noted. Dr. Koutsky diagnosed C5/6, L4/5, and L5/S1 radiculopathy, noting her symptoms had been aggravated in the car accident. She remained off work while awaiting the previously recommended injections and physical therapy, with possible updated MRIs. (Px4).

New 10/16/18 lumbar MRI films were read to show L4/5 disc bulge with associated mild neuroforaminal stenosis, mild spondylosis with facet effusions from L4 to S1, and loss of lordosis related to sprain versus strain. Cervical films reflected no herniations or stenosis, multilevel spondylosis from C3 to C7, shallow annular bulges, and loss of lordosis related to spasm versus strain. (Px4). On 11/5/18, Dr. Koutsky noted Petitioner's neck and back diagnoses "after being involved in both work-related injury as well as a motor vehicle accident." Petitioner was taking over the counter medications as needed. She remained off work. (Px4). Petitioner testified she was in therapy at ATI at this point. (Px4).

On 12/4/18, Dr. Mohiuddin (pain management) noted the EMG reflected left L5/S1 radiculopathy. Given this and the MRI findings, he performed an L5/S1 epidural injection on 12/13/18. He also prescribed Celebrex and tizanidine and continued physical therapy. He advised Petitioner to continue to work and "we will address her neck issues after treating her low back pain." On 12/10/18, Dr. Koutsky refilled Petitioner's Tramadol and advised she should remain off work. (Px4).

Petitioner testified she felt improved following the epidural, but again still had good and bad days. On 1/14/19, she told Dr. Koutsky she had radiculopathy improvement with the epidural. She had completed therapy and was performing home exercise, and she had been off work. Cervical injection was pending, and Dr. Koutsky released Petitioner to a 10 pound lift/push/pull restriction. The cervical injection was performed by Dr. Murtaza on 2/14/19 at C5/6. Under “epidurogram and interpretation”, Dr. Murtaza stated: “There was noted nerve impingement at the C6 level with nerve impingement at C6.” The 10 pound restriction was continued. (Px4).

On 2/18/19, Petitioner indicated her cervical and lumbar radiculopathy were “a little bit better.” Dr. Koutsky ordered additional cervical and lumbar injections and modified her work restriction to a 20 pound limitation. (Px4). The Petitioner testified she did not return to work at this time. On 3/20/19, Petitioner indicated her symptoms were about the same and requested a full duty release, which was provided as of 3/26/19. (Px4). At follow ups with Dr. Koutsky on 4/17/19 and 5/16/19, he continued to recommend the repeat injections and full work duty, and he refilled prescriptions. (Px4).

Petitioner testified she asked to be released to regular work because Respondent had no light duty work available and she could only return to work if she was full duty. Petitioner testified she contacted Respondent to return to work and was told to come in, but when she got there she was told she had been terminated in October 2018.

On 6/5/19, Dr. Koutsky’s NP, Christine Koutsky, ordered a functional capacity evaluation (FCE). The report states: “For now we are going to hold off on any additional requests for injections, although it is likely she will need intermittent physical therapy and pain management services going forward for the pathology that she does continue to have.” (Px4).

The FCE was completed on 6/27/19 at ATI Physical Therapy. The report was noted to be valid. It appears the therapist did not have a written job description but that the DOT code for Petitioner’s job indicated a medium duty job, with Petitioner describing standing, bending, stooping, twisting, lifting bearings and packaging them and loading pallets for shipping. Petitioner’s testing determined she was at the light duty level, which fell below the noted DOT level for the job. The report states: “During the assessment, the client had reports and/or associated behaviors regarding pain in her low back, fatigue, and soreness in her neck. She demonstrated some issues with Balancing, Bending/Stooping, Crouching, Squatting, and R & L foot rep. motion – these activities are recommended as “occasional” for daily activity tolerance recommendations. She also demonstrated some issues with prolonged standing and prolonged sitting, during the Assessment. She states she had physical therapy as well as work conditioning/hardening for her injury. She also states she has gained about 30 lbs. since the injury and feels out of shape. Please see the Whole Body Overview and Narrative for further specifics regarding demonstrated abilities and recommendations.” Lifting restrictions ranged from 25 to 35 pounds depending on the level of the lift, and she was to sit for 5 hour durations, stand for 2:20 durations, and walk for 4 to 5 hour durations. (Px4; Px7).

On 7/1/19, Petitioner continued to report neck and back discomfort but advised Dr. Koutsky that she did not wish to pursue further pain management – “She is at (MMI) for this injury. It is likely though that she will need intermittent physical therapy or pain management services going forward.” Petitioner was released per the FCE restrictions, and her medications were refilled. On 9/5/19, Petitioner reported “a little bit of pain that does flare up on occasion in her low back primarily”, for which she was taking medications, which were again refilled. At the last visit with Dr. Koutsky on 10/3/19, he refilled the prescriptions and ordered chronic pain management to take over management of her medications, after which she would no longer need to follow up with him. (Px4).

Petitioner initially found employment after her release with Cheese Merchant Factory in Bartlett in May 2019. She currently works at the Aldi Distribution Center as a warehouse associate, packing approximately 5 pound

boxes of potato chips on pallets. She does no lifting beyond the FCE restrictions. Her neck is significantly improved but she continues to have good and bad days with her neck and back. She uses heat, ibuprofen, Motrin, and sometimes even Tylenol 3 for relief. She has a 2 year old child and her pain can get aggravated with lifting the child. She denied any prior neck or back problems before her work accidents.

On cross-examination, Petitioner acknowledged having a severe 2016 motor vehicle accident but did not specifically recall seeing Dr. Razvi on 1/28/17. Her right foot did get stuck under the seat after multiple rollovers, and she treated at both PIC and Fox Valley. While she complained of right foot pain, she agreed an EMG and lumbar MRI were ordered in January 2017 but were never performed prior to the initial 3/30/17 work accident. She also agreed she declined a back injection at that time.

Petitioner testified she on cross that she could not recall if the parts she was working with on 3/30/17 weighed between 6 and 9 pounds but agreed that the 3/30/17 restrictions from PIC were accommodated by Respondent. When Fox Valley took her off work on 4/4/17, she received TTD. She was again released with restrictions on 4/14/17. As to the ATI therapy records indicating her only visit was the initial evaluation and that she canceled 7 or 8 visits between 4/13/17 and 4/27/17, Petitioner testified she could not recall this but would not disagree with what the records indicated. She agreed she then told Dr. Popp on 4/28/17 that therapy made her symptoms worse. She did not recall canceling 4 therapy visits in May 2017 and being discharged for non-attendance. She agreed, if the records supported, she went to the ER on 5/15/17 and asked for Norco. She agreed Dr. Popp took lumbar, thoracic, and cervical MRIs and indicated they were unremarkable. He felt she had no mechanical injury, diagnosed mid and low back strains, and released her to a gradual return to full duty work, which she did. She was advised to return if she worsened and never did. She was working regular duty as of June 2017, which she believed included overtime, and had no further treatment into 2018. Petitioner testified that the re-work area was just as strenuous as her job had been on the line. In rework, the bearings/parts are of various sizes, some up to 12 pounds, while the parts were all the same on her old line. In re-work, some parts were on a table, and some were on pallets where she could sit and do her work. Re-work could involve cleaning, repairing, or replacing parts, and a variety of tools were used. Some re-work was done seated and some standing, but other work involved moving parts from pallet to pallet.

On further cross, as to the 4/17/18 claim, she spoke to Chilo and she believed Martin the next morning (4/18/18). She did not recall if Gary Sergeant was present, but he was a supervisor. As to conversation with Chilo and/or Martin regarding when her pain began, she didn't recall discussing persistent back pain since the birth of her child. She agreed the accident report she completed stated she had neck and back pain on 4/17/18 when she turned and heard a popping sound. She was lifting a part at the time. She believed she was initially examined at PIC on 4/18/18, when she also underwent drug and alcohol testing. She did not recall indicating she was unsure what caused her back and neck pain. After PIC released her with a 25 pound restriction, she did then tell Respondent she wanted to see her own doctor. She couldn't recall if Respondent accommodated the PIC restrictions or if she returned to work or not. If she did, she agreed it was on her regular shift at her regular pay. Petitioner left work early on 4/30/18 due to death in the family. She worked light duty through 5/4/18, then stopped working and started to receive short (STD) and long term disability (LTD) benefits via the Respondent. When Petitioner's primary provider referred her to orthopedics in May 2018 with chronic back pain, she went to Dr. Koutsky at her attorney's recommendation instead of returning to Dr. Popp.

Petitioner agreed she advised Dr. Mohan that she lifted 5 to 9 pounds all day long at work, 48 hours per week. She received the letter indicating her claim was denied after this exam. When Dr. Koutsky released her to light duty on 7/7/18, Respondent accommodated her restrictions as of 8/6/18 and she was assigned to re-work under Chris Kuznieski. She worked her regular shift at her regular pay rate. She agreed she first reported to work on 8/7/18, not 8/6/18, and then didn't arrive until 11 a.m. due to car trouble. She worked with restrictions from 8/8/18 to 8/14/18. As to her telling Dr. Koutsky on 8/15/18 that she had been in therapy, Petitioner did not recall

if she had been in therapy at that time of not. She did not disagree that she may have called in to Respondent on 8/17/18 indicating she would be late due to daughter's doctor visit and then didn't come in at all. She didn't report to work on 8/20/18 due to going to the Sherman Hospital ER. She was sent home from work on 8/21/18 after a discussion about her attendance issues pending review of her attendance points.

As to the 8/21/18 motor vehicle accident, she testified on cross that she was at a stop when she was rear ended and did not recall how fast the other vehicle was going. The reference to 30-35 mph in the medical record referenced the speed limit on the road. She drove herself to the ER. She agreed that Dr. Patel diagnosed lumbar and cervical strains and sprains of the left shoulder and wrist on 8/22/18 and advised her she could return to work on 8/29/18. She then indicated she planned to seek further care with ION. She saw Dr. Koutsky on 8/28/18, reported the car accident, and he held her off work. On 10/1/18, she reported significant back pain radiating to left lower extremity and right leg pain to Dr. Koutsky. She didn't recall advising her physical therapist at the initial 10/10/18 evaluation of her injury being due to a car accident. She wouldn't disagree if the therapy records indicate she canceled multiple visits in October and November 2018 and was consequently discharged. Petitioner received LTD from 11/14/18 through 4/1/19. She didn't recall if she advised Dr. Mohaddin on 12/4/18 that her pain was exacerbated in the motor vehicle accident. Her claim for that accident was settled but she didn't think it exceeded \$20,000, which may have included monies towards medical expenses.

After Dr. Koutsky's 3/20/19 full duty release and learning she had been terminated by Respondent, Petitioner initially worked full time for Cheese Merchant Factory starting in May 2019, which she testified involved packing cheese into a bag. After a few months there, she then didn't work for a while until getting a full-time job with Mapei as an operator, which involved putting buckets on a line to catch glue – someone else down the line would take the bucket down. She did work on her feet in this job and earned about \$20 or \$21 per hour while working there for about 2-1/2 years. She did have a two month maternity leave while working for Mapei starting in July 2021 following a c-section birth. She last saw Dr. Koutsky on 10/3/19 and hasn't had any further neck or back treatment at ION after 2019. Petitioner began working for Aldi in February 2023. She started at \$18+ per hour with varied hours. She does work 5 days a week there, but the hours vary based on the work required. She currently earns \$19.75 per hour plus \$2 incentive pay. She testified she has had orthopedic or pain management care since starting with Aldi but could not recall the name of who she saw - it was not Koutsky, or Popp – and she has no current appointments scheduled. Again, her back and neck are improved, but she still has her bad days.

On redirect, Petitioner testified her right leg pain after the 2016 rollover car accident was radiating up from the right foot, not down from her back. Her initial 4/17/18 visit to PIC after her second work accident noted worse neck and back pain at work the prior day - 8/10 neck pain and 7/10 back pain.

Respondent submitted evidence of Petitioner having been in a February 2016 car accident where her car flipped over multiple times. A 1/26/17 report of Dr. Rizvi notes Petitioner's right foot got caught under the seat, she had not been recommended for surgery but had ongoing right foot pain at 8/10 to 9/10 level. She was diagnosed with chronic regional pain syndrome. Dr. Rizvi also recommended a lumbar nerve block, bilateral lower extremity EMG, lumbar MRI. Petitioner advised she did not want to proceed with the block. (Rx1).

Petitioner's Exhibit 9 contains a number of what appears to be 2019 drug tests on referral from Dr. Murtaza. The cover letter indicates "drug testing is related and appropriate as part of medication monitoring and assessment plan. The purpose of the drug screen was to determine the presence of other substances prior to initiating pharmacological treatment, detect the presence of illicit drugs, and monitor adherence to the plan of care." Tests were performed on 1/22/19 and 3/4/19. The billing for these tests was \$3,263.66 for each date, or \$6,527.32. (Px9).

Respondent submitted evidence of payments it was seeking credit for payments of TTD (Rx2, totaling \$4,184.24 for payments between 4/3/17 and to 6/26/17 pay periods), medical expenses (Rx3, \$833.78), short-term disability (Rx8), long-term disability (Rx9), and Section 8(j) group health benefits (Rx18). Petitioner testified that while off work from April 2018 to March 2019, she received short and long term disability benefits through the Respondent.

Respondent's Exhibit 13, an 8/21/18 traffic crash report, was objected to based on hearsay and rejected.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Petitioner has failed to prove she sustained accidental injury arising out of and in the course of her employment on 4/17/18.

Ultimately, the problem in this case for Petitioner are the initial reports and medical histories where she indicates she did not know what caused her to develop spinal symptoms. Petitioner testified that she was working on 4/17/18 performing her usual job duties and started to have spinal symptoms. She went to a supervisor, Chilo, and asked him for a back brace. She did not report a specific work injury nor describe any work activities as a cause of her complaints. She completed her shift and the next day, 4/18/18, she was advised that back braces were no longer available and she would have to go to the clinic to get one. She completed an accident report that day indicating she started to experience some neck and back pain, and when she asked for a brace, she was told a back brace was not available and she would have to go to the clinic for one. Supervisor Martin Cortez, who Petitioner indicated was also involved in this conversation, completed an Initial Report of Incident Instructions and Forms indicating Petitioner notified Chilo on 4/17/18 at about noon that she started experiencing back and neck pain during work hours and was "not sure what cause[sic] the pain to occur." There was no description of any particular activity she was performing when she developed pain. It appears she then completed her full shifts on 4/18 and 4/19/18.

When Petitioner visited both PIC and VNA Healthcare she did not describe a specific work injury. At PIC on 4/18/18, they recorded that she is unsure of what could have caused the injury, but she believed it was from picking up pallets "non-stop at work." She also reportedly said she was there "with neck and back pain that she states she always has but became worse yesterday at work." Neither this report nor her testimony indicated in any detail what she was doing at work that day, what she was specifically doing when she developed pain, or how repetitive her activities may have been that day. When she went to VNA on 4/19/18, she reported a two day history of back pain and that she was a machine operator, but she did not describe any particular activity she was doing when she felt pain. That facility believed her symptoms were due to muscle spasms. There is nowhere where Petitioner specified what she meant by picking up pallets "non-stop", or with any additional detail about exactly what she was doing when she felt pain. This also appears to conflict with what she told Dr. Koutsky, noted below.

Dr. Mohan, Respondent's section 12 examiner, Petitioner indicated she had increasing back pain while packing parts. He identified multiple Waddell signs on exam and symptom magnification, noting in particular the level of pain complaints she had been making. Her pain was essentially all over her back and the subjective

complaints did not correlate to any definitive clinical diagnosis. The first indication of left leg complaints was to Dr. Hashim on 6/1/18, which he believed could have been due to DVT, which was ultimately ruled out.

Petitioner then saw Dr. Koutsky with complaints of neck pain with some radiation to the shoulders and low back pain radiating down the left leg to the calf, as well as some numbness and tingling. This was the first time the Arbitrator notes any complaints of the shoulders or any indication of numbness and tingling. It was also the first history which indicated that Petitioner was lifting boxes of parts while twisting and bending and felt a sharp pain in her back and neck with some radiation to the left leg.

These histories are confusing in the Arbitrator's view in terms of what may have caused Petitioner's symptoms. They also indicate to the Arbitrator that the Petitioner was unsure of what caused her symptoms. As noted, significantly greater symptoms seemed to all of a sudden be mentioned only after she saw Dr. Koutsky, which was about two months after 4/17/18.

The Arbitrator finds guidance in the Appellate Court's decision in *First Cash Financial Services v. Indus. Comm'n.*, 367 Ill.App.3d 102, 853 N.E.2d 799 (2006). There, claimant failed to sustain her burden of proof that her fall in a bathroom at work arose out of her employment since the circumstantial evidence tendered failed to support an inference that the employment premises, particularly a bathroom floor, was dirty and caused her fall. Claimant testified she slipped and fell on the ceramic tile floor of an employee bathroom. She did not know why she fell, and no one witnessed the fall. Witnesses testified to probable hair on the floor but did not observe any debris or water on the floor the day of claimant's fall. Thus, there was no direct evidence to explain the cause of her fall. In reversing, the award of compensation, the court noted the Commission had improperly shifted the burden of proof to the employer to disprove the existence of a defect in the floor at the time of the fall. *Id* at 853 N.E. 2d at 864. The court noted that where the evidence allows for the inference of the nonexistent fact to be just as probable as its existence, the conclusion that the fact exists is a matter speculation, surmise and conjecture, and the inference cannot reasonably be drawn to support an award. *Id* at 853 N.E.2d at 804. While it was possible to infer that the floor was dirty at the time of the fall, and equally possible to infer that it was not as the witness testimony was that they did not observe anything on the bathroom floor at the time of the fall and claimant could not show more than a mere possibility that the floor was dirty and the cause of her fall. Thus, there was no reasonable certainty that claimant's injury stemmed from a risk associated with her employment. Consequently, as claimant failed to provide any evidence to establish the cause of her fall, she failed to prove that her injury arose out of her employment. *Id* at 853 N.E.2d @ 805.

While this case does differ from *First Cash* in that the Petitioner was performing work when she developed symptoms, she did not describe any particular activity as causative of her pain, and she did not describe what exactly she was doing that day sufficiently to support an accident finding. She was doing her regular work activities on the alleged accident date, as well as for the next two days. It is unclear if she even would have sought treatment but for the Respondent not providing her with a brace. The Arbitrator believes that while it is always possible the Petitioner may have sustained an accidental injury within the meaning of the Act on 4/17/18, she did not prove this by the preponderance of the evidence, i.e. she did not show it was more likely than not. The Arbitrator has some questions regarding Petitioner's credibility in this matter, even if this is due in large part to being a poor historian. While she may have been claiming a repetitive trauma, there is no indication she had any symptoms until 4/17/18, and she does not describe her activities sufficiently, either in testimony or in her medical histories, to support an accident finding in this fashion.

The Arbitrator finds that the Petitioner has failed to prove she sustained accidental injuries arising out of and in the course of her employment with Respondent on 4/17/18. As such, benefits are denied.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

While the Arbitrator has determined that the Petitioner has failed to prove an accidental injury which arose out of and in the course of her employment, should this matter be reviewed, it is clear that the Petitioner provided proper notice of the alleged 4/17/18 injury to Respondent, given her testimony and the accident report.

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

Based on the Arbitrator's findings with regard to the issue of accident, this issue is moot.

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

Based on the Arbitrator's findings with regard to the issue of accident, this issue is moot.

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

Based on the Arbitrator's findings with regard to the issue of accident, this issue is moot.

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

Based on the Arbitrator's findings with regard to the issue of accident, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC009370
Case Name	Katliyn Weathers v. State of Illinois - Murray Developmental Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0340
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	James Keefe Jr
Respondent Attorney	Kenton Owens

DATE FILED: 8/6/2025

/s/ Frank Soto, Commissioner

Signature

24 WC 09370

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Katliyn Weathers,
 Petitioner,

vs.

NO: 24 WC 09370

State of Illinois - Murray Developmental Center,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability benefits, and medical expenses both current and prospective, 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, 399 N.E.2d 1322.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 04, 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.

24 WC 09370

Page 2

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. 820 ILCS 305/19(f)(1) (West 2013). Therefore, no appeal bond is set in this case.

August 6, 2025

O: 07/23/25

FJS/as

046

/s/ Frank J. Soto

Frank J. Soto

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC009370
Case Name	Katlyn Weathers v. State of Illinois - Murray Developmental Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	James Keefe Jr
Respondent Attorney	Kenton Owens

DATE FILED: 10/4/2024

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



October 4, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 1 2024 4.215%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Katilyn Weathers

Employee/Petitioner

v.

Murray Developmental Center

Employer/Respondent

Case # **24 WC 9370**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **8/20/24**. 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, **8/20/24**, 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 **\$3,531.82**; the average weekly wage was **\$882.95**.

On the date of accident, Petitioner was **29** years of age, *married* with **3** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services listed in Petitioner's Exhibit 3, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act, and Respondent shall hold Petitioner harmless for any claims made by the group medical plan for which it receives credit.

Respondent shall authorize and pay for prospective treatment as recommended by Dr. Schergen, including left ankle surgery.

Respondent shall pay Petitioner temporary total disability benefits of \$588.63/week for 20-3/7 weeks, commencing 3/31/24 through 8/30/24, as provided in Section 8(b) of the Act.

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

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

OCTOBER 4 2024

PROCEDURAL HISTORY

This matter proceeded to trial on August 20, 2024, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's left ankle 3) payment of medical expenses; 4) entitlement to temporary total disability (TTD) benefits; and 5) prospective medical treatment.

The parties stipulated that the Respondent would pay the medical bills directly to the provider(s) if they are awarded by the Arbitrator.

FINDINGS OF FACT

On March 30, 2024, the Petitioner was employed by the Respondent as a mental health technician trainee and had arrived at work that morning, parking in a lot across the street from the building in which she was working but as close to the building as possible. (T. 11-12) She said she was in the grass and crossed over the sidewalk that goes to the building and entered through the dock doors. (Id.) She said she was required to park in that area and be as close to the cottage where she was working. (T. 13) She said she had a sticker on her car that allowed her to park on the facility grounds. (T. 13-14)

The Petitioner testified that after arriving, she checked in with her supervisor/T-II, Jolene Kitowski, to get an overview of what she was doing that day. (T. 15) She then asked Ms. Kitowski if she could walk out to her car real quick because she had a sudden headache. (Id.) After getting permission, she walked out of the laundry room doors, which were closest to the day room. (T. 16) She said she walked into the grass to stay off the road because she was told in training to stay off the road so as to not create a hazard. (T. 16-17) She said there was not a sidewalk available

there. (T. 17) She said that although it was not pitch black out, it wasn't fully light. (T. 18) She said the route was the shortest to her car, and she was trying to quickly get back so that the staff didn't run behind. (T. 35-36) She said she was on the grass area and stepped down into an impression or uneven surface, felt a crunch and pain shoot from her ankle into her knee. (T. 21)

The Petitioner marked her path on a photo. (T. 19-21, PX4) She said that she had walked that path before – every break and lunch. (T. 24) She said she took her breaks and lunch with her T-II and followed her in and out of the building and into the grassy area where she was injured. (Id.) She said she went to her car when she took breaks. (T. 35) She said she was not told that she was not supposed to use the laundry doors nor walk in the grassy area. (T. 34, 56)

Mary Tibbs, residential service supervisor for the Respondent, testified that the dock and laundry doors are service doors, and employees are not supposed to go in and out of the service doors. (T. 37-38, 40) When asked if employees are taught not to use the service doors, Ms. Tibbs stated: “You’re not supposed to use those doors to go down the drive.” (T. 40) She said one is not supposed to walk on the service drive but there are roads where one drives around the outer circle and a road going up to the dock doors upon which one can walk. (T. 41)

When asked on cross-examination if she ever saw an employee walk in the grassy area, Ms. Tibbs said: “They get in trouble if they do.” (T. 44) She said that if somebody was walking in an area in which they were not supposed to, they would be asked not to or get a “failure to perform,” meaning not listening to a supervisor. (T. 45) They could get a written reprimand or termination if they kept doing it. (Id.) She did not know of the Petitioner ever being given a written reprimand for walking in the grassy area. (Id.)

Ms. Kitowski testified on the day of the accident, the Petitioner asked if she had a minute to go out and take care of something, and she said “sure.” (T. 48) She went down the hall to speak

to coworkers about the day events and heard the Petitioner outside saying “ow.” (T. 48-49) She said she enters and leaves the cottage through the dock doors. (T. 49) She agreed there was a prohibition of using the laundry doors to exit and enter the cottage for safety purposes. (T. 50) She did not know what door the Petitioner was going to use when she exited the building. (Id.)

On cross-examination, Ms. Kitowski stated that she had been in and out of the laundry doors before and probably had been in the grassy area. (T. 51) She said that when she let the Petitioner leave, she “absolutely” expected her to get back as quickly as she could. (T. 54)

Incident reports submitted by the Respondent stated that the accident occurred when the Petitioner was walking off the unit and her left foot stepped into the pothole. (RX1) None of the reports appeared to have been prepared by the Petitioner. (Id.) A Supervisor’s Report of Injury or Illinois, which was signed by supervisor Lisa McDonald, stated she was told by phone that the Petitioner had fallen in the grass. (RX2)

Following the accident, the Petitioner went to the emergency room at SSM Health St. Mary’s-Centralia and reported falling in a pothole, injuring her left ankle. (PX1) X-rays showed an acute fracture along the lateral talar dome with soft tissue swelling. (Id.) She was given a walking boot and pain medication and was referred to Dr. Robert Schergen, a podiatrist at SSM Health Medical Group. (Id.)

The Petitioner returned to the emergency room on April 2, 2024, with a concern about swelling around her toes. (Id.) She was instructed to follow up with podiatry. (Id.)

On April 4, 2024, the Petitioner saw Dr. Schergen, who diagnosed acute left ankle pain, left foot pain, dislocation of the left ankle joint, tear of tendon of left ankle, gait instability and localized edema. (PX2) He ordered an MRI and excused the Petitioner from work until further notice. (Id.)

The MRI was performed on April 17, 2024, and showed: multifocal areas of presumed post-traumatic bone edema within the distal tibia, medial malleolus and talus with no displaced fracture; a high-grade partial tear of the anterior talofibular ligament with loss of definition of the calcaneofibular ligament; no tendon tear or tendon sheath fluid collection; and moderate volume ankle joint effusion with superficial soft tissue edema medially and laterally. (Id.)

At a follow-up visit on April 30, 2024, Dr. Schergan diagnosed tear of the tendon of the left ankle, dislocation of the left ankle joint, syndesmotic disruption of the left ankle, closed fracture of the left foot, acute left ankle pain and localized edema. (Id.) He discussed with the Petitioner the potential need for surgery, noting that the Petitioner had not been progressing well with conservative therapy. (Id.) The Petitioner returned to Dr. Schergan on May 14, 2024, and wanted to proceed with surgery, which was held off because she was pregnant with twins. (Id.)

The Petitioner testified that she has not been released to work full duty. (T. 27) She said she is not weight-bearing and has to use crutches or a knee scooter. (Id.) She said she can't keep her ankle stable or turn it, let alone support her own weight. (T. 29) She said the pain is so bad that she is constantly sweating and on the verge of tears almost consistently. (Id.) She said the Respondent did not accommodate her restrictions and fired her in June 2024. (T. 27-28)

The Petitioner stated that now that she is no longer pregnant, she wants to undergo the surgery. (T. 30)

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?

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 124848, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. A compensable injury occurs in the course of employment when it is sustained while a claimant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.*

In this case, the Petitioner had checked in with her supervisor when she was given permission to go to her car due to a sudden headache – giving rise to the issue of whether the course of the Petitioner's employment was broken by this activity or whether the activity fell under the "personal comfort doctrine." Under this doctrine, the course of employment is not considered broken by certain acts relating to the personal comfort of the employee. *Eagle Discount Supermarket v. Industrial Com.*, 82 Ill. 2d 331, 339, 412 N.E.2d 492, 45 Ill. Dec. 141 (1980). The Court in *Eagle Discount* found an injury during a lunch break to be compensable. *Id.* at 340. Other acts during a break time in the employment besides eating have also been held to be acts of personal comfort. (See, e.g., *Sparks Milling Co. v. Industrial Com.* (1920), 293 Ill. 350 (getting fresh air); *Union Starch v. Industrial Com.* (1974), 56 Ill. 2d 272 (seeking relief from heat); *Scheffler Greenhouses, Inc. v. Industrial Com.* (1977), 66 Ill. 2d 361 (seeking relief from heat and humidity))

The Arbitrator finds the act of going to her car to be an act of personal comfort and, therefore in the course of her employment.

The personal comfort doctrine does not answer the whole question of compensability because it addresses only the "in the course of" requirement; the "arising out of" requirement must be met independently. *Circuit City Stores, Inc. v. Ill. Workers' Comp. Comm'n*, 391 Ill.App.3d 913, 921, 909 N.E.2d 983, 330 Ill.Dec. 961 (2nd Dist. 2009) Examples of "personal comfort" activities found to not be arising out of employment include: dancing at a picnic (*Karastamatis v. Industrial Comm'n*, 306 Ill. App. 3d 206, 713 N.E.2d 161, 238 Ill. Dec. 915 (1st Dist. 1999)) and automobile mechanic working on his own vehicle (*Orsini v. Industrial Com.*, 117 Ill. 2d 38, 509 N.E.2d 1005, 109 Ill. Dec. 166 (1987)),

The "arising out of" component is primarily concerned with causal connection. *McAllister*, 2020 IL 12484, at ¶ 36. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk 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.

The first category of risks includes the obvious kinds of industrial injuries and occupational diseases and are universally compensated. *Id.* at ¶40. Examples include tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site. *Id.* The Arbitrator finds that the Petitioner falling in a pothole or depression in the grass is one such risk. Although there are differing reports of whether the Petitioner fell in a pothole or a hole in the grass, the Arbitrator does not find that this difference affects the inquiry herein. Nor does it render the Petitioner not credible. The Petitioner's testimony and reports were otherwise consistent, and no witnesses testified to rebut her version of the accident. Therefore, the Arbitrator finds that the Petitioner's injury arose out of her employment.

Lastly, there is a question in this case as to whether a violation of safety rules took the Petitioner out of the scope of her employment. Where the violation of a rule or order of the employer takes the employee entirely out of the sphere of his employment and he is injured while violating such rule or order, it cannot be then said that the accident arose out of the employment, and in such a case no workers' compensation can be recovered. *Saunders v. Industrial Commission*, 189 Ill.2d 623, 628, 727 N.E.2d 247 (2000). An employee's conscious violation of a safety rule that is purely for his own personal convenience and in no way is required by or benefits his employer does not arise out of his employment. *Id.* at 631-632.

In *Saunders*, the claimant was injured when riding with someone else on a forklift – “riding double.” *Id.* at 625. In that case, there was a specific safety rule against riding double on a forklift that was published in the employer's employee handbook and regularly communicated to employees through training sessions and monthly safety contacts. *Id.*

The instant case is distinguishable from *Saunders* in that the safety rule at issue there specifically referred to riding double on a forklift. The safety rule here was more general in nature – prohibitions on using certain doors, walking on various roadways/driveways and walking in grassy areas. These rules were not written, and there was no evidence that the Petitioner was specifically informed of such rules other than not walking in the roadway. Ms. Tibbs did not answer the questions as to whether employees are taught to not use the service doors or whether she saw anyone walk through the grassy area. Although Ms. Kitowski agreed there was a prohibition of using the laundry doors to exit and enter the cottage for safety purposes, she herself and used the laundry doors and “probably” had been in the grassy area in the past.

Courts have looked at whether employers have enforced safety rules in finding injuries compensable when employees violate rules. See e.g. *Kropp Forge Co. v. Industrial Comm'n*, 225

Ill. App. 3d 244, 587 N.E.2d 1095, 167 Ill. Dec. 480 (1st Dist. 1992) The Arbitrator herein finds that the Respondent acquiesced to the Petitioner and others not following the rules regarding what doors to use and where to walk. This, combined with the vagueness of the rules show that it was reasonably foreseeable that employees would traverse through the laundry doors and across the driveway and grassy area.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injury occurred in the course of and arose out of her employment.

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

Based on the findings above regarding accident and there being no evidence that the Petitioner's injury was due to anything but the fall, the Arbitrator finds that her current condition is causally related to the work accident.

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

Based on the findings above and no contrary evidence that the medical services provided were not reasonable and necessary, the Arbitrator finds the medical expenses as listed in Petitioner's Exhibit 3 were reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 3 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 Manufacturing Co. v. Industrial Commission*, 294 Ill.App.3d 705 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Manufacturing Co. v. Industrial Commission*, 325 Ill. App. 3d 527 (2001).

The Arbitrator finds that additional treatment is reasonable and necessary to diagnose, relieve or cure the effects of the injury the Petitioner sustained. Therefore, the Respondent shall authorize and pay for the prospective treatment recommended Dr. Schergen, including surgery.

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

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. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Based on the findings above and the medical records, the Arbitrator finds that the Petitioner was temporarily totally incapacitated from work and entitled to TTD benefits from March 31, 2024, through August 30, 2024.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027505
Case Name	Christopher Nosalik v. State of Illinois - Sheridan Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0341
Number of Pages of Decision	8
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Thomas Owen

DATE FILED: 8/8/2025

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER NOSALIK,

Petitioner,

vs.

NO: 23 WC 27505

STATE OF ILLINOIS – SHERIDAN CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 20, 2025, is hereby affirmed and adopted.

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

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

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

23 WC 27505

Page 2

August 8, 2025

O080625

FJS/ldm

046

/s/ *Frank J. Soto*

Frank J. Soto

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027505
Case Name	Christopher Nosalik v. State of Illinois - Sheridan Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Valarie Owino

DATE FILED: 3/20/2025

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



March 20, 2025

/s/ Gerald Granada, Arbitrator

Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF MARCH 18 2025 4.10%

STATE OF ILLINOIS)
)SS.
 COUNTY OF **LA SALLE**)

☐	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**

Christopher Nosalik

Employee/Petitioner

v.

State of Illinois - Sheridan Correctional Center

Employer/Respondent

Case # **23** WC **027505**

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 Granada**, Arbitrator of the Commission, in the city of **Ottawa**, on **February 21, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/5/23**, 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 **\$72,000.24**; the average weekly wage was **\$1,384.62**.

On the date of accident, Petitioner was **42** years of age, *married* with **1** dependent children.

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

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

Respondent shall be given a credit of **\$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 **\$11,539.92** under Section 8(j) of the Act.

ORDER

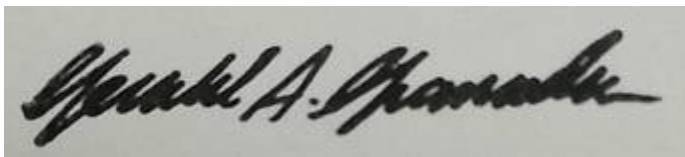
Respondent shall pay for all reasonable and related medical services, as set forth in Petitioner's exhibits at the lower of the Fee Schedule or any negotiated rate, as provided in Section 8(a) of the Act. Respondent shall receive a credit for any medical expenses it has already paid and shall hold Petitioner harmless for any expenses paid for which Respondent is seeking a credit under Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$830.77 per week for 37.5 weeks because the injury sustained caused 7.5% loss of the person as a whole as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$830.77/week for 13 weeks, because the injuries sustained caused the disfigurement of the face, as provided in Section 8(c) of the Act.

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

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



MARCH 20 2025

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Christopher Nosalik, who alleges to have sustained injuries while working for Respondent State of Illinois – Sheridan Correctional Center on October 5, 2023. Respondent disputes Petitioner's claim, with the issue being: 1) causation; 2) medical expenses; and 3) nature and extent.

On October 5, 2023, Petitioner was working for Respondent as a correctional officer when he was assaulted by an inmate, who punched Petitioner in the right side of his face above his right eye. Petitioner did not lose consciousness, but temporarily lost vision his right eye. He also sustained a laceration above his eye requiring 13 stitches.

On October 5, 2023, At Valley West Community Hospital, he was evaluated in the emergency department, where a 3.5 cm T-shaped jagged laceration was identified above and through the right eyebrow, extending inferiorly. A second 1.5 cm laceration was also present photos of which are present in the record as testified to by Petitioner. A CT scan of the brain and facial bones showed no acute fractures or intracranial injuries, though soft tissue swelling and edema were noted. The lacerations were treated with suturing under local anesthesia and antibiotics were prescribed. He was discharged in stable condition with instructions for follow-up care.

At OSF Medical Group - Mendota, with Dr. Matheis-Soliman, Nosalik underwent multiple follow-up visits for persistent post-concussive symptoms including headaches, right eye discomfort, light sensitivity, and pressure over his right eye and head. On October 10, 2023, he was referred to ophthalmology and remained off work due to ongoing symptoms. By October 12, 2023, his sutures were removed, and healing was progressing well of the cut despite his continuing concussion symptoms.

Over the next several weeks, he continued to experience headaches, tenderness over the scar, eye watering, and intermittent visual disturbances. On October 23, 2023, he was cleared to return to work as tolerated without inmate contact. By November 1, 2023, he requested a release to return to work without restrictions. However, on November 13, 2023, he returned to his doctor and reported recurring headaches, neck tightness, muscle stiffness, and popping in his neck, prompting a physical therapy referral. He was again taken off work at that time.

Beginning on January 24, 2024, Nosalik started physical therapy at City Center Physical Rehabilitation due to persistent post-concussion syndrome, cervical spine pain, and vestibular dysfunction. Symptoms included daily headaches, neck tightness, fatigue with prolonged focus, eye strain, dizziness, and right upper extremity weakness. Over multiple sessions, manual therapy and vestibular exercises were implemented to address speech issues, memory issues, cervical spine mobility, muscle tightness, and postural control.

Throughout February and March 2024, Nosalik showed gradual improvement in headache frequency, eye strain, and neck mobility, though some tenderness and right-sided tightness persisted. By March 1, 2024, he reported that his pain had decreased from 4/10 to 2/10, headaches were less intense, and he had increased tolerance for physical activity. By March 20, 2024, he had attended 15 PT sessions, demonstrating improved strength and mobility, with reduced light sensitivity and vestibulo-ocular symptoms. Continued PT was recommended.

On March 25, 2024, his physician noted significant symptom improvement and recommended finishing his PT sessions to determine if further treatment was necessary. By June 27, 2024, Nosalik reported complete resolution of neck pain, no visual deficits, and a return to full-duty work and normal activities. He denied ongoing headaches, light sensitivity, or other neurological concerns. His physician determined that he had

reached Maximum Medical Improvement (MMI) and officially released him from care with no restrictions.

Petitioner testified that he currently has occasional headaches and experiences both anxiety and fear. He denied any current issues with his vision and any neck pain.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's un rebutted testimony and the medical evidence, which all show Petitioner sustained head injuries following his assault at work, resulting in a facial laceration and concussion. There was no evidence offered to rebut Petitioner on this issue. Therefore, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally connected to his undisputed October 5, 2023 work accident.

2. Regarding the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment related to his October 5, 2023 work accident has been reasonable and necessary in addressing his work-related conditions. This finding is based on the Petitioner's un rebutted testimony and the preponderance of the medical evidence. Accordingly, the Arbitrator hereby orders Respondent to pay any unpaid, related medical expenses as set forth in Petitioner's exhibits, 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, including any medical expenses paid through group insurance for which Respondent shall hold Petitioner harmless pursuant to Section 8(j) of the Act.

3. Regarding the issue of nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was submitted into evidence and the Arbitrator gives no weight and relevance to this factor; (ii) Petitioner was an correctional officer who was released to return to work with no restrictions following this accident - a factor to which the Arbitrator gives significant weight and relevance; (iii) Petitioner was 42 years old at the time of injury - a factor to which the Arbitrator gives some weight and relevance; (iv) there was no evidence of future earnings being impacted due to this injury and the Arbitrator gives no weight and relevance to this factor; (v) there was evidence of disability which show that the Petitioner sustained a facial laceration requiring 13 stitches and a concussion, for which he underwent care in the form of physical therapy from which Petitioner still has occasional complaints of headaches and a 2 inch scar above his right eye- the Arbitrator gives great weight and relevance to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 7.5% loss of use of the person as a whole and 13 weeks of disfigurement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006851
Case Name	Juan Hernandez v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0342
Number of Pages of Decision	25
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Nicholson
Respondent Attorney	Elaine Newquist

DATE FILED: 8/8/2025

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Juan Hernandez,
Petitioner,

VS.

NO: 22 WC 6851

City of Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, maintenance, 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 writes additionally to correct a clerical error in the Order section of the Arbitrator's Decision, which awards permanent partial disability benefits for the duration of the disability. The Commission corrects the Arbitrator's Decision to order that pursuant to Section 8(d)1 of the Act, for accidental injuries that occur on or after September 1, 2011, an award for wage differential under this subsection shall be effective only until the employee reaches the age of 67 or 5 years from the date the award becomes final, whichever is later.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 7, 2025, is corrected as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits, commencing February 1, 2024, of \$338.67 per 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 earnings, as provided in Section 8(d)1 of the Act.

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

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

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

August 8, 2025

O: 08/06/25

CMD/kcb

045

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC006851
Case Name	Juan Hernandez v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Nicholson
Respondent Attorney	Elaine Newquist

DATE FILED: 1/7/2025

/s/ Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 7, 2025 4.11%

WSTATE 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**

Juan Hernandez

Employee/Petitioner

v.

City of Chicago

Employer/Respondent

Case Number: **22 WC 006851**Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was electronically mailed to each party. The matter was heard by the Honorable Joseph Amarilio, Arbitrator of the Commission, in the city of Chicago, on August 28, 2024, September 23, 2024 and October 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

- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary?
Has Respondent
paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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?

FINDINGS

On 10/15/2021, 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 \$81,848.00; the average weekly wage was \$1,574.00.

On the date of accident, Petitioner was 46 years of age, married with 3 dependent children.

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

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

Respondent shall be given a credit of \$102,064.22 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$102,064.22.

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

ORDER

ISSUE F: Petitioner's current condition of ill-being to his lower back and right knee are causally related to the accident of October 15, 2021. The Arbitrator further finds that in addition to the lower back injury, Petitioner sustained a left shoulder injury from which Petitioner was at maximum medical improvement by June 15, 2022.

ISSUE J.: Respondent is not required to pay the medical services of Arbor Eye Care in the amount of \$640.00 due to a failure of proof.

ISSUE K: Respondent shall pay Petitioner temporary total disability benefits of \$1,049.60 per week for 74-6/7th weeks, commencing 10/16/2021 through 3/23/2023, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner maintenance benefits of \$1,049.60 per week for 44-6/7th weeks, commencing 3/24/2023 through 1/31/2024, as provided in Section 8(a) of the Act. The total TTD and maintenance due is \$125,652.11. Respondent is entitled to a credit of \$102,064.22.

ISSUE L: Respondent shall pay Petitioner permanent partial disability benefits, commencing 2/1/2024 in the amount of \$338.67 per week for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

ISSUE M. Penalties under Section 19(k), Section 19(l) and attorney fees under Section 16 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.

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

January 7, 2025

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ATTACHMENT TO ARBITRATION DECISION**

JUAN HERNANDEZ v. CITY OF CHICAGO 22 WC 006851

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Juan Hernandez ("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.* (West 2014)). Petitioner alleged that he sustained an accidental injury on October 15, 2021, while employed by the City of Chicago. ("Respondent"). Hearings were held on August 28, 2024, September 23, 2024 and October 29, 2024.

The parties jointly submitted a completed Request for Hearing Form ,which was submitted into evidence as Arbitrator Exhibit 1, identifying the follow issues in dispute: (1) Whether Petitioner's current condition of ill-being is causally related to the injury, (2) Whether Respondent is liable to pay a certain unpaid medical bill. (3) Whether Petitioner is entitled to temporary disability benefits. (4) The nature and extent of Petitioner's injury. And (5) Whether Respondent is liable to pay Section 19 (l). and Section 19 (k) penalties and attorney fees under Section 16 of the Act. The parties jointly requested a written decision in accordance with the provisions of the Act.

Petitioner Exhibits 1- 11 were admitted into evidence without objection.
Respondent's Exhibits 1-9 were admitted into evidence without objection.

II. FINDINGS OF FACT

Prior back injuries

The Respondent submitted as Group Exhibit 1 a memorandum summarizing its review of the Commission's website, which lists eight claims filed by the Petitioner, including the present case. The exhibit also contains a printout of case details but does not include a copy of the approved Lump Sum Settlement Contract for the cases that have been settled.

Respondent's Exhibit 2 is the trial transcript in the matter of *Juan Hernandez v. National Power Rodding*, 19WC 013042 involving a cervical and shoulder injuries.

Respondent's Exhibit 3 is the Commission Decision dated 11/29/2022 in *Juan Hernandez v. National Power Rodding*, 19WC 013042 wherein the Commission reduced the Arbitrator's award of 15% of a person to 2% of a person for Petitioner's cervical injury and affirmed the Arbitrator's award of 20% of a person for Petitioner's right shoulder injury. Petitioner underwent arthroscopic surgery with internal metal fixation for a right shoulder rotator cuff tear with rotator cuff tendinopathy. Of note, the arbitrator noted two prior back injury cases which required a lumbar fusion, 07 WC 9213 and 08 WC 52601 and found the prior back injury cases to irrelevant. (*Hernandez v. Lambrecht*). Neither the Arbitration Decision nor the Commission decision mentions that the back injury was settled as a compromised wage differential claim for \$250,000.00 since the back was not at issue and, therefore, deemed not relevant.

The Arbitrator notes that the award in the *National Power Rodding* is under Section 8(d)2 different parts of the body than the case at bar.

In the case at bar, Petitioner was employed by Respondent as a garbage truck driver. (T.12) He had initially been hired in 2017 or 2018 as a seasonal driver but testified that for at least a year before October 15, 2021 work injury he had been working full time. (T.49) Accident is not in dispute. (Arb.X 1).

Petitioner admitted to multiple prior back injuries going back to 2001 while working for Heick Die Casting, including a back injury in 2003 which resulted in surgery (T.50 – 51) The Commission shows four filings for Petitioner between 2001 and 2003, two of which are for low back injuries, (RX 1)

On February 1, 2007, and November 27, 2008, the Petitioner suffered two new low back injuries while working with TJ Lambrecht (T.52). Following these injuries, 283 weeks of Temporary Total Disability (TTD) benefits were paid, and the cases were settled for \$250,000.00 on a disputed wage loss basis (RX 1).

During the current trial, the Petitioner acknowledged that he had permanent restrictions resulting from those injuries. However, he could not recall the specific nature of those restrictions (T.53-54). With the assistance of cross examination, his memory was refreshed and recalled that the restriction was a 10-pound lifting limit (T.56).

On May 22, 2014, Petitioner injured his low back and left shoulder moving a couch while working for EZ Movers. (T.54) That injury claim was settled for \$10,000.00. (RX 1)

Hernandez v. National Power Rodding, 19 WC 13042; Petitioner then took a job with National Power Rodding and suffered a new injury to the neck and shoulder

on April 15, 2019. (T.55) That case proceeded to trial on January 28, 2022, after the October 15, 2021 accident which is in issue here. (T.56)

On April 15, 2019 Petitioner was injured while employed by National Power He was cleaning sewer 15 feet underground when he slipped and fell while pulling a piece of broken concrete. (RX 2, pp 15 -20), 22 (T.57) He sustained injuries to his neck and right shoulder resulting in shoulder surgery (RX 2, p. 47). At the time of the trial on January 26, 2022, Petitioner denied having any complaints to his right shoulder, upper back and neck. (RX 2, p. 57). He testified that he made a full recovery from his April 15, 2019 accident with National Power Roding. (RX 2, p. 65), During the January 28, 2022 trial, while demonstrating what had occurred, Petitioner stood up out the witness chair, bent over and extended this right arm about knee level without noted difficulty. (PX2, p. 77). Petitioner also admitted that no one at National Power knew he had permanent restriction as a result his low back injury while working at TJ Lambrecht. He could not recall if he received permanent restrictions as a result of his low back injury. He did not recall if a functional capacity examination (FCE) recommended permanent restrictions his low back injury nor could he recall if he a prior surgical recommendation for shoulder surgery from an EZ Movers work injury. (RX2, pp. 82, 85, 87, 89)). Petitioner did not recall being in a motor vehicle accident nor appearing twice before Respondent's Section 12 examiner, Dr. Troy in the National Power Case. His attorney stipulated that he did appear for both examinations. (RX2) He could not remember he was again released to the same 10 lb. restriction. (T.58)

Accident 10/15/2021 and Medical Treatment

The Arbitrator notes that both Petitioner and Respondent submitted into evidence the reports of Dr. Jay Levin, dated June 15, 2022 (RX 5), March 21, 2023 (RX 6), and May 15, 2023 (RX 7). Dr. Levin examined the Petitioner at the Respondent's request pursuant to Section 12 of the Act. In these reports, Dr. Levin offers a thorough review of the medical records, records not submitted into evidence, The Arbitrator incorporates Dr. Levin's summary of the medical records as though fully included herein.

The case at bar involves an accident that occurred on October 15, 2021. Petitioner, who was employed by Respondent as a garbage truck driver, crashed his truck into a wall. He lost control of the truck when the gas pedal became stuck, causing the truck to move forward uncontrollably. After the truck stopped, Petitioner and his helping laborer quickly exited the truck as it began to smoke, fearing a fire would ignite. (T. 10-13). He struck his right knee. (Id.)

He was taken by ambulance to Norwegian Hospital complaining of low back pain and right knee pain. (T.14, RX 5, p. 4)) He had follow-up care at Concentra Medical

Center. (T.15) He underwent physical therapy for his right knee, as well as care for his low back and left shoulder. (T.15 - 16) He was diagnosed with contusions and strains. An MRI of the lumbar spine taken on November 2, 2021 showed post-surgical changes at L5-S1, a protrusion at L4-5 and a bulge at T11-12. A MRI of the left shoulder showed post traumatic rotator cuff tendonitis and/or bursitis involving the supraspinatus tendon. (PX7, p.26) .

An MRI taken at Oakbrook Radiology on November 2, 2021 of the right knee was ordered by Dr. Kristin Houseknecht. It was interpreted by Radiologist George G. Kuritza to reveal significant posttraumatic bone bruising and/or even trabecular microfractures involving the medial femoral condyle as well as the proximal and medial aspect of the tibia. Dr. Kuritza also found a medial meniscal tear involving the free edge region of the posterior horn, extending to the midbody as well as joint effusion. (PX7, p. 31).

An MRI taken at Oakbrook Radiology on November 2, 2021 of the lumbar spine e was ordered by Dr. Kristin Houseknecht. Radiologist George G. Kuritza noted postsurgical changes at L5-S1 level with an intradiscal spacer. At the L4-L5 level there is a 2-3 mm posterior disk protrusion which indents the thecal sac with some mild generalized neuroforaminal narrowing, exacerbated by ligamenta flava hypertrophy and mild facet arthrosis. At the T11-T12 level there is 1-2 posterior annular disk bulge which indents the thecal sac. (PX7, p. 32).

On November 18, 2021, Petitioner was seen by Dr. Sean Salehi for initial consultation regarding his work accident of October 15, 2021 upon referral from Concentra Medical Center for his low back pain.

On November 20, 2021, Petitioner was seen by Dr. Craig Westin regarding the right knee. The MRI of November 2, 2021, showed significant medial bone bruise in the medial femoral condyle and a medial meniscus tear. (RX 5, p. 4).

On December 9, 2021, an MRI of Petitioner's right wrist performed at Oakbrook Radiology as ordered by Dr. Gary Racette was interpreted by Radiologist George G. Kuritza to show mild soft tissue swelling on the dorsum of the writ, possibly from soft tissue bruising . (PX7, p. 30).

When seen at Concentra February 11, 2022 he reported right knee pain as well as low back pain. He advised he was returning to Dr. Salehi who had done his prior lumbar fusion for current low back complaints and was also seeing Dr. Westin for the right knee. (PX1)

He then sought care on his own with Dr. Williams at Swedish Hospital. (T.17) Petitioner testified he had therapy and an injection for his right knee. (Id.) He also

claimed Dr. Williams discussed surgery for the right knee but Petitioner has not had it done. (T.18)

The records of Humboldt Park Health records that on April 19, 2022, Petitioner was seen in the ER with chief complaint of right knee pain. Petitioner reported that he fell down three (3) stairs the day before, caught his fall with his left hand and has right knee pain and left-hand pain, mostly the left 4th finger. (PX 2, p. 12). X-ray of the right knee and left hand were negative for fracture and dislocation. (PX2, pp.15, 22))

On April 22, 2022, Petitioner was seen by Dr. Murtaza for follow up of his continuing low back and right symptoms. Petitioner complained of having difficulty with ambulation and significant pain and discomfort with any type of range of motion of the lumbar spine. Dr. Murtaza agreed with Dr. Salehi that Petitioner would benefit from prognostic medica blocks eventually leading to a rhizotomy. (RX 5, p. 7).

Dr. Williams records reflect he saw Petitioner May 25, 2022 for report of bilateral shoulder and low back pain as well as that his “entire body” was hurting. He reported he was seeking care in the emergency room on April 19, 2022 after falling 3 steps, landing on left knee and wrist and reported difficulty extending left ring (4th) finger. (PX 4, pp. 125, 128)) landing on his left knee and left wrist. He also had cervical symptoms. (PX 4, 128). At trial Petitioner admitted he also received care from Dr. Williams for other conditions including to his neck and right shoulder. (T.63) He admitted these were preexisting conditions for which he had received care in the past. (T.64)

On May 26, 2022, Dr. Gary Shapiro, an orthopedic surgeon at Illinois Bone & Joint in his To Whom it may concern letter, opined that Petitioner should remain off work pending a new MRI of the lumbar spine. Dr. Shapiro sought requested authorization for posterior spinal decompression and fusion at L4- L5. (PX 6, p. 3).

On June 1, 2022, Petitioner underwent a left 4th finger extensor tendon ultrasonography upon referral of Dr. Williams for an extensor tendon work injury reported by Petitioner. (PX 4, p. 117).

On June 8, 2022, Petitioner was seen by Dr Williams for bilateral shoulder pain with history of right shoulder cuff repair. Petitioner reported that injured his back and other body parts in a motor vehicle work accident on October 15, 2021. Petitioner reported that the prescribed Gabapentin and physical therapy not authorized by insurance adjuster. (PX 4,p. 106).

On June 15, 2022, Petitioner appeared before Dr. Jay Levin for a Section 12 examination at the request of Respondent. Dr Levin noted that Petitioner reported

low back and right knee pain with giveaway weakness in the right knee. Dr. Levin could make no findings in the right knee at all, found no evidence of tearing, and declared Petitioner had been at maximum medical improvement within four weeks of the work accident, thus by November 15, 2021. With reference to the low back Dr. Levin opined that a discectomy at L4-5 and hardware removal at L5-S1 was reasonable and related to the work accident. It should be noted. (RX 5)

On June 16, 2022, Petitioner was seen by Dr. Salehi through US MedGroup of Illinois for continuing low back pain radiating down both legs, right worse than left. He uses a cane due to pain. Denies any falls since his April fall. After reviewing the April 6, 2022 MRI of the lumbar spine, Dr. Salehi, he continued to recommend surgical intervention in for form of a right L3-5 transforaminal lumbar interbody fusion, left L4-L5 facetectomy and hardware removal at L5-S1. Dr. Salehi explained that the reason for including the L3-4 level is the new MRI showed an annular tear and disc disease as well as L3-L4 and his pain extending up into mid lumbar spine. (RX 7, p. 10)

At this trial, Petitioner testified he fell at home on April 19, 2022 (sic. April 19, 2022). while trying to ambulate with a walker. (T.22) He testified he injured his left knee and right hand in that fall. (T.23) He had physical therapy for both. (T.24) On cross examination, he admitted he did not have a walker until after he had the low back surgery on September 21, 2022, but the fall from the porch at home had occurred five months earlier, on April 19, 2022. (T.62)

On June 21, 2022, Petitioner was seen by Dr. David Garelick for the right knee. After completing an physical examination, Dr. Garelick opine that required arthroscopic surgery to repair a presumed medical meniscal tear of the right knee. However, he should wait until the back surgery is completed. (RX7, p. 10).

On June 22, 2022, Petitioner was seen by Dr. Shapiro for a follow up visit who noted that Petitioner continues to have low back pain with bilateral lower extremity radiculopathy following work related injury. Conservative treatment failed. Dr. Shapiro recommended posterior spinal decompression fusion at L3-L5 with pedicle screws and interbody cages, and removal of hardware at L5-S1. (RX 7, p. 10)

On July 21, 2022, Petitioner was seen by Dr. Salehi at the Bridgeview facility of Concentra Medical Center for continuing and ongoing low back pain radiating down into the bilateral posterior thigh. Although, Petitioner reported increased pain since his fall at home in March, Dr. Salehi noted that Petitioner had given a specific date of his fall as being April 18, 2022 and notes that he ended up gin got the emergency room on April 19, 2022. Upon physical examination, Dr. Salehi noted Petitioner's gait was antalgic using a cane. He noted tenderness in the lumbosacral spine and decreased range of motion of the lower extremities. Dr. Salehi rendered a diagnosis lumbar disc disease and spondylolisthesis with a

herniated disk at L4-L5 as well as disk disease at L3-L4. Dr. Salehi recommended that because Petitioner persists with mechanical back pain and bilateral radicular pain, he once more recommended surgical intervention via a right L3-5 TLIF with left L4-L5 facetectomy and removal of hardware at L5-S1. Dr. Salehi opined that fall at home because of right leg weakness was an additional reason for the recommended surgery. (PX2, p.41).

Petitioner continued under the care of Concentra, reporting worsening pain throughout his body after the fall at home on April 19, 2022, as of September 1, 2022. (PX 1.) He was also treating with Dr. Murtaza for shoulder and cervical issues.

An MRI of the lumbar spine performed ordered by Dr. Sajjad Murtaza at Oakbrook Radiology was interpreted by Radiologist George G. Kuritza. Dr Kuritza noted the previous examination of 11/02/2021 which demonstrated postsurgical changes at L5-S1 level, the current examination demonstrates no significant interval changes. There are significant post-fusion changes at the L5-S1 level with an intradiscal spacer [an intradiscal spacer is an artificial disc that is inserted into the disc space of the spine to mimic the function of a natural intervertebral disc] It appears that it indents the ventral and left side of the thecal sac by approximately 2-3 mm. At the L4-L5 level there is a 2-3 mm posterior disk protrusion which indents the thecal sac with some mild generalized neuroforaminal narrowing, exacerbated by ligamenta flava hypertrophy and mild facet arthrosis. At the T11-T12 level there is 1-2 posterior annular disk bulge which indents the thecal sac. (PX7, p. 25).

Lumbar Spine Surgery: On September 21, 2022, Petitioner underwent lumbar spine surgery at the Center For Minimally Invasive Surgery. Dr. Salehi's pre-operative and post operative diagnosis was the same: Spondylolisthesis at L4-5, annular tear and disk disease at L4-5 and L3-4, bilateral foraminal herniated disk at L4-5, lumbosacral radiculopathy bilaterally, and mechanical back pain.

Dr. Salehi performed the following surgical procedures: .Removal of the bilateral nonsegmental pedicle screw fixations at L5 and S1, left transforaminal lumbar decompression and fusion by performing inferior L4 and L3 facetectomies, partial superior facetectomies of L5 and L4, discectomies at L3-4 and L4-5, arthrodesis of the endplates, decompression of exiting nerve roots and traversing nerve roots, arthrodesis of the endplates, harvest of iliac crest bone graft from the right side to a separate fascial incision, segmental pedicle screw bilaterally at L3, unilaterally on the right at L4 and bilaterally at L5, use of intraoperative fluoroscopy and neuromonitoring, morselization of local autograft, and use of 20 mL of Exparel [non- opiate anesthetic used in surgical procedures] mixed with 30 ml of bupivacaine for local anesthetic. (PX7-A)

At trial, Petitioner testified that Dr. Salehi performed a triple-level fusion with hardware (T.19). However, the operative report states otherwise but he did have multiple surgical procedures performed at three levels with a fusion at L4-L5 and hardware removal at L5-S1. . The Petitioner also testified that there was a delay in the approval of post-operative therapy, though he eventually received it (T.28–29).

After waking up from the surgery, Petitioner testified that he experienced a burning sensation on his face, and a piece of metal was removed from his eye (T.20). He received follow-up care for his eye at Arbor Clinic (T.21), where he was informed that he had a damaged nerve (Id.). The itemized bill from Arbor Clinic confirms that he received treatment for the damaged nerve, but the exhibit does not include medical records linking the nerve damage directly to the surgery (PX 8).nor hospital records corroborating his testimony.

Petitioner was re-examined again by Dr. Levin on March 21, 2023. He now reported he had injured his neck, right elbow and right shoulder in the October 15, 2021 accident. He reported shooting pain above his right eyebrow and numbness down his entire left arm following the September low back 2022 surgery. Dr. Levin did not find the October 15, 2021 accident caused any injuries to the neck, right shoulder, right wrist or right hand. He felt any minor shoulder problems were transient in nature and had long since resolved. He found Petitioner's low back at maximum medical improvement five months following surgery, thus as of February 21, 2023. He felt given Petitioner's own_description of his light duty job with Respondent with no lifting required Petitioner could return to work in his regular job. (RX 6)

On February 14, 2023, Petitioner was seen by Dr. Williams for follow-up of bilateral shoulder pain and review of recent MRI results. He recently had cervical surgery. He reported pain diffusely about the shoulders and the scapular region. He reported that the pain radiates. (PX4, p. 205). Dr. Williams independently reviewed the MRI of the lumbar spine and noted postoperative fusion changes at L5-S1. The cervical spine MRI shows foraminal narrowing and disc bulging at multiple levels. Dr. Williams opined that the bilateral shoulder pain was due to the cervical surgery. He recommended treatment for the cervical and bilateral shoulder pain. Dr. Williams had low concern for the shoulder pain.(PX4, pp. 205-208).

On March 16, 2023, Petitioner was seen by Dr. Williams for bilateral shoulder pain and right knee pain. Dr. Williams opined that the work accident most likely sustained a right knee contusion that exacerbated a preexisting condition and recommended steroid injections and performed an injection.(PX 4, p. 79).

On March 23, 2023, Petitioner then saw Dr. Salehi reporting no improvement in back pain or neck pain even with therapy. He also reported pain down his left leg and in his right knee. He provided he was still seeing his personal physician for his

shoulders. He reported neck pain down both arms. He indicated there was an order outstanding for some type of injections. Dr. Salehi released him to return to work with no lifting, pushing or pulling over 10 lbs., no bending or twisting more than three times in an hour, and with the ability to alternate sitting and standing every 30 – 45 minutes. Dr. Salehi Petitioner for further care, including medication management to be appropriately weaned down from medications. (RX7, p. 2)

On April 23, 2023, Petitioner was seen by Dr. Williams for follow-up of chronic right knee pain. He reported that the prior knee injection provided mild improvement. He also reports no improvement with a pes anserine bursa injection more recently from another provider. He is establishing care with pain management He denied a new injury to the right knee. (PX4, p.182).

In a To whom it may concern letter dated April 27, 2023 Dr. Denis Williams of Foster Medial Pavilion Orthopedics addressed Petitioner's right knee pain. He noted that the MRI demonstrated a conclusion about the lateral tibial plateau with no medial pathology and yet Petitioner's pain was medially. Dr. Williams opined that the pain is related to the L3-L4 lumbar radiculopathy where he previously had surgery and request authorization for pain management treatment with Dr. Shah of his medical group. (PX 4, p. 73, p. 186) PX6, p. 24).

On May 15, 2023 Dr. Levin opined that as noted in his March 21, 2023 report on page 10, he opined that Petitioner could work in a light duty capacity with a 20-pound weightlifting restriction based upon Petitioner's prior self-reported job description that his job did not require any manual lifting and his job was not physical except for him having to get in and out of the truck. (RX 7) It appears that Dr. Levin did not review Respondent's written job description included an essential physical demand requirement of being able to lift and carry up to 35 lbs.

On June 1, 2023, Petitioner was seen by Dr. Williams reporting failed improvement with CSI injections. He reported that pain management was recommended but it has not been approved yet due to pending paperwork. Dr Williams administered an injection in Petitioner's right knee. (PX 4, pp. 170, 172).

On July 13, 2023, Petitioner was seen by Dr. Williams for chronic right knee pain. The CSI injections failed. Dr. Williams performed a steroid injection. PX 4, p. 44)

On August 16, 2023, Petitioner was seen by Dr. Williams for his chronic right knee pain. He reported that the injection of July 13, 2023 provided 60% relief but only for 3 days and his pain came back and increases with activity. The pain is on the medial side of the knee. (PX 4, p.34)

On August 3, 2023, Petitioner underwent an EMG and NCV which was reported negative for cervical radiculopathy. (PX 7, p. 4)

Petitioner remained under the care of Dr. Murtaza for his lumbar pain and medication management. . He also saw Dr. Williams on August 23, 2023, reporting bilateral shoulder pain and recent cervical surgery. Continued care for cervical radiculopathy was recommended. (PX 4, RX 7)

Petitioner testified he still has pain for which he takes Ibuprofen two to three times per week. (T.32) However he also testified when asked if he has “any current complaints of any type regarding your lower back, your right knee, your left knee, your shoulder . . .” he answered “no.” (T.42) When asked a second time, “so you don’t have any medical issues at all, correct?” he answered “no.” (Id.) He admitted he had no medical care for any claimed work-related condition since August, 2023. (T.66)

Petitioner introduced into evidence his handwritten notes documenting his job searches for the period of August 1, 2023 through January 18, 2024. (PX 11).

Petitioner testified he sought to return to his old job but was not offered work by Respondent. (T.38) He then applied for accommodated work and obtained a job as a watchman with Respondent making \$26.65 per hour, (T.69 – 71)

III.CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. The Act provides that, 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. 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 witness testimony.

Credibility Determination: The Petitioner provided testimony during an open hearing before the Arbitrator, who had the opportunity to observe the Petitioner's demeanor during both direct and cross-examination. The Arbitrator finds Petitioner's demeanor to be sincere. He did not engage in symptom magnification and his material and most relevant conditions of ill-being were corroborated by the medical evidence. Petitioner, however, demonstrated poor historical recall; he is no Herodotus. His recollection of medical treatment events was unreliable but understandable due to the number of prior injuries of the years.

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

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence, his current condition of ill-being to his lower back and right knee are causally related to the accident of October 15, 2021. Additionally, the Arbitrator finds that the Petitioner sustained an injury to his left shoulder and reached maximum medical improvement by June 15, 2022. These findings are based upon the testimony of Petitioner, the medical evidence and the chain of events.

It has long been recognized that, in pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accident 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. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 204-05 (2003). It is axiomatic that employers take their employees as they find them; even when an employee has a pre-existing condition which makes 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 a causative factor. *Id.* at 205. An employee need only prove that some act or phase of his employment was a causative factor of the resulting injury, the mere fact that he might have suffered the same disease, even if not working, is immaterial. *Twice Over Clean, Inc. v. Indus. Comm'n*, 214 Ill.2d 403, 414 (2005).

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." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id.* at 64.

Petitioner had a long-standing lumbar condition following multiple prior work injuries, including one which resulted in a lumbar fusion and a permanent 10 lb. restriction. Petitioner was off of work from for 5 ½ years and which resulted in a disputed wage loss settlement. He then obtained employment with EZ Movers and sustained another low back injury while moving a couch; the Arbitrator presumes that work exceeded Petitioner's permanent restriction level. He then obtained employment with National Power Rodding which the Arbitrator infers the his job duties exceeded 10 lb. lifting restriction. He then sustained a new injury involving his neck and right shoulder while working for them on April 15, 2019, injuries sufficient enough to warrant an ultimate award of an additional 22% of a person,

The Arbitrator also begins his causation analysis by noting Petitioner introduced the three Dr. Levin reports into evidence as part of his case in chief, placing no limitation on the introduction, raising no hearsay or other objection to those reports, rather, making Dr. Levin's findings and conclusions part of Petitioner's claim at trial. Thus, the Arbitrator concludes the findings and conclusions of Dr. Levin have greater reliability and weight than might otherwise be attributed to a Section 12 examiner. Additionally, the reports of Dr. Levin contain a detailed summary of Petitioner's post-accident medical care. However, the Arbitrator is not convinced by Dr. Levin's opinions regarding the right knee. His inability to identify any objective evidence for the cause of the Petitioner's right knee pain is contradicted by the findings of two radiologists, Dr. Westin, Dr. Williams, Dr. Murtaza, and Dr. Garelick, all of whom were able to identify objective evidence of traumatic pathology in the right knee.

Following the incident of October 15, 2021 Petitioner reported right knee, low back and left shoulder complaints. With reference to the right knee, while the MRI showed a meniscus tear and Petitioner testified surgery was discussed, no surgery was performed. His testimony was corroborated by the medical records. By the time Petitioner was examined by Dr. Levin on June 15, 2022 he made no findings in the right knee at all. According to Dr. Levin Petitioner had reached maximum medical improvement with reference to the right knee within four weeks of October 15, 2021, thus by November 15, 2021. However, Dr. Levin's finding are not consistent with the findings and opinions of all the treating physicians.

The Arbitrator notes that the November 2, 2021 MRI of the left shoulder showed post traumatic rotator cuff tendonitis and/or bursitis involving the supraspinatus tendon. (PX7, p.26) .

An MRI taken at Oakbrook Radiology on November 2, 2021 of the right knee revealed significant posttraumatic bone bruising and/or even trabecular microfractures involving the medial femoral condyle as well as the proximal and medial aspect of the tibia and a medial meniscal tear of the posterior horn as well as joint effusion. (PX7, p. 31).

A November 2, 2021 MRI of the lumbar spine noted postsurgical changes at L5-S1 level with an intradiscal spacer. At the L4-L5 level there is a 2-3 mm posterior disk protrusion which indents the thecal sac with some mild generalized neuroforaminal narrowing, exacerbated by ligamenta flava hypertrophy and mild facet arthrosis. At the T11-T12 level there is 1-2 posterior annular disk bulge which indents the thecal sac. (PX7, p. 32).

With reference to the left shoulder the MRI showed tendonitis but no specific care was advocated for any accident-related condition. Later complaints of bilateral shoulder pain May 25, 2022 were only after Petitioner had fallen from the porch at home on April 19, 2022, an incident significant enough to also warrant left hand and left knee care as well as Petitioner commencing treatment with Dr. Williams.

With reference to the low back Dr. Levin concluded Petitioner required a discectomy at L4-5 and hardware removal from the prior lumbar fusion at L5-S1. While Dr. Salehi's surgery did more, a discectomy at L3-4 and a fusion at L4-5 as well as hardware removal at L5-S1, Petitioner had no further lumbar symptoms when seen by Dr. Levin on March 21, 2023, thus prompting the doctor to conclude Petitioner was at maximum medical improvement from that condition by February 21, 2023.

The Arbitrator notes that Dr. Shapiro recommended a more extensive surgery than that performed by Dr. Salehi. The Arbitrator finds that surgery performed by Dr. Salehi was in the Goldilocks zone and was found to be successful by both Dr. Salehi and Dr. Levin.

The Arbitrator also notes Petitioner sustained a new, injury when he fell at home on April 18, 2022 due to right leg weakness.

Turning to work capabilities, the Arbitrator begins by noting Petitioner had a longstanding permanent 10 lb. lifting restriction, which had resulted in a disputed wage loss settlement with TJ Lambrecht, although it would appear Petitioner was working beyond those limitations in his subsequent employment with EZ Movers and TJ Lambrecht. The Arbitrator also notes Petitioner did not disclose that permanent restriction in obtaining that TJ Lambrecht job and initially claimed memory problems when asked about that permanent restriction in this current trial but was able to recall upon have his memory refreshed on cross examination.

In his May 15, 2023 report, Dr. Levin opined that as a result of the October 15, 201 work accident, Petitioner "developed segmental instability at the proximal level of his previous L5-S1 fusion consisting of L4/L5 spondylolisthesis." (RX7, p. 4).

Dr. .Levin in his May 15, 2023 reported upon reviewing the medical records of Dr. Salehi, noted that he released Petitioner on March 23, 2023 to that same 10 lb. restriction, with specific recommendations on bending, twisting, and being able to

alternate positions. Specifically, Dr. Salehi recommended that Petitioner be placed at permanent work capacity restrictions of no lifting, pushing or pulling more than 10 pounds , no bending/twisting more than 3 times per hour, and have the ability to alternate sitting, standing every 30-45 minutes as needed. These restrictions have to be taken in conjunction with the complaints Petitioner was lodging on that date, to wit, no improvement in back pain despite the surgery and physical therapy, continued right knee pain, as well as non-accident-related complaints of both shoulders, the neck and down both arms.

Dr. Levin had Petitioner describe his job duties for Respondent and given his self-described light duties, with no lifting required, cleared Petitioner to return to that work with a 20 lbs. weightlifting restriction. . (RX 7, p. 4) . .

The Arbitrator finds that based upon a preponderance of the evidence, Petitioner's current condition of ill-being to his lower back and right knee are causally related to the accident of October 15, 2021. The Arbitrator further finds that in addition to the lower back injury, Petitioner sustained a left shoulder injury from which Petitioner was at maximum medical improvement by June 15, 2022.

WITH RESPECT TO ISSUE (J), WHETHER 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 concludes that the medical services provided to Petitioner were reasonable, necessary, and causally related to his stipulated work accident. 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. *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (1990).

However, one unpaid bill was admitted into evidence. The Arbitrator finds that Petitioner failed to prove it causally related. Petitioner testified that sustained a complication during surgery for which he required minor eye treatment but failed to introduce evidence in support of the treatment was causally related to the surgery. Petitioner just submitted an unpaid medical bill from Arbor Eye Care the outstanding \$640.00 without supporting medical records. The Arbitrator denies the claim for the eyed care based on a failure of proof.

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

Based on the findings above, the Petitioner has demonstrated by a preponderance of the evidence his entitlement to temporary total disability benefits from October 16, 2021, through March 23, 2023, the date on which Dr. Salehi cleared the Petitioner to return to work with restrictions. Additionally, the Petitioner has shown by a preponderance of the evidence his entitlement to maintenance benefits from March 24, 2023, to January 31, 2024. Petitioner was paid \$102,064.22 in TTD.

Petitioner was earning \$39.35/hour on the accident date and returned to accommodate work as a watchman making \$26.65 per hour work on February 1, 2024 after not receiving temporary maintenance benefits from August 8, 2023 through January 31, 2024

Respondent shall pay Petitioner temporary total disability benefits of \$1,049.60 per week for 74-6/7th weeks, commencing 10/16/2021 through 3/23/2023, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner maintenance benefits of \$1,049.60 per week for 44-6/7th weeks, commencing 3/24/2023 through 1/31/2024, as provided in Section 8(a) of the Act.

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

The Arbitrator adopts his findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Under section 8(d) of the Act, a claimant who suffers a permanent partial disability may receive a wage-differential award or a percentage-of-the-person-as-a-whole award. 820 ILCS 305/8(d)(1), (2) (West 2014). To prove entitlement to a wage-differential award, a claimant must show (1) he is “partially incapacitated from pursuing his usual and customary line of employment” and (2) there is a “difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.” Id. § 8(d)(1).

In contrast, a claimant is entitled to a permanent partial disability award (PPD) based on a percentage-of-a-whole under three circumstances: (1) when his injuries do not prevent him from pursuing the duties of his employment but he is disabled from pursuing other occupations or is otherwise physically impaired, (2) when his “injuries partially incapacitate him from pursuing the duties of his usual and

customary line of employment but do not result in an impairment of earning capacity,” or (3) when he suffers an “impairment of earning capacity” but he “elects to waive his right to recover under [8(d)1].” *Id.* § 8(d)(2).

The Arbitrator notes that The Illinois Supreme Court has expressed a preference for wage-differential awards and “where a claimant proves that he is entitled to a wage-differential award, the Commission is without discretion to award a section 8(d)(2) award in its stead.” *Gallianetti v. Industrial Comm’n*, 315 Ill. App. 3d 721, 727-29 (2000). “The purpose of a wage-differential award is to compensate an injured claimant for his reduced earning capacity, and if the injury does not reduce his earning capacity, he is not entitled to such compensation.” (Internal quotation marks omitted.) *Lenhart v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (3d) 130743WC, ¶ 44.

At Arbitrator finds persuasive guidance in the appellate court’s analysis in the *Stephen Walsh v. Illinois Workers’ Compensation Comm’n*, 2023 IL App (3d) 230174WC-U.

In *Walsh v IWCC*, the Commission found the claimant was entitled to a PPD award under Section 8(e) while the circuit court found the claimant was entitled to a wage-differential award. Upon remand, the Commission awarded benefits under Section 8(d)1. The employer argued the Commission’s first decision should be upheld because it is afforded deference in its credibility determinations. Specifically, the Commission’s findings that (1) the claimant operated a clutch during the entire 2015 construction season post-accident without reporting an issue, (2) the FCE released the claimant back to his position with the exception of operating a clutch and he was provided an automatic truck, (3) the claimant’s testimony regarding the physical labor was not credible, and (4) Petitioner’s surgeon only restriction was that the claimant could not operate a clutch.

The Appellate Court in *Walsh v. Illinois Workers’ Compensation Comm’n* disagreed with the employer’s argument that that the o the Commission’s PPD decision should be upheld. The Court reasoned that the fact that the claimant operated a clutch during the entire 2015 construction season post-accident without reporting an issue has little to no significance. The claimant’s current condition, post-surgery (2016), is the operative condition. Second, although the FCE provided the claimant could perform his job with the exception of operating a clutch, the court noted that there is contrary subsequent evidence of record when the claimant returned to work in November 2017,

In the case at bar, it is undisputed that Petitioner was given a 10 lbs. weight restriction before being employed by the City of Chicago. It is also undisputed worked a “Pool Motor Truck Driver” full time for at least one year before the accident and part time for the previous four years.

It is further undisputed that Petitioner was employed a truck driver with an essential job requirement of occasionally lifting and carrying up to 35 lbs. He was cleared to that same position by Dr. Levin with a 20 lbs. weight restriction; restriction that does not meet the essential job requirement as mandated in Respondent's written job description.

Dr. Salehi released him to return to work with no lifting, pushing or pulling over 10 lbs., no bending or twisting more than three times in an hour, and with the ability to alternate sitting and standing every 30 – 45 minutes.

However, the Respondent declined to offer him his job as a truck driver, a position he had performed full-time without incident for at least one year. Dr. Levin had stated that, based on the Petitioner's description of the job duties, he could return to work as a truck driver with full duties. However, Dr. Levin failed to consider that the job listing identified an occasional 35-pound lift and carry requirement as an essential part of the job.

Applying the Supreme Court's preference for 8(d)1 awards and applying the analysis of the Appellate Court in *Walsh*, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence his entitlement to an 8(d)1 award.

The Arbitrator finds Petitioner testified he is currently making \$26.65 per hour or \$1,066.00/week which is supported by the documentary evidence and had been making \$39.35 per hour at the time of his injury based on his stipulated average weekly of \$1,574.00. No evidence was introduced as to what he would be earning in the full performance of his job as garbage truck drive.

Petitioner's average weekly wage for the year prior to his accident was \$1,574.00, while his current average weekly wage is \$1,066.00, leading to a diminished AWW of \$508.00 per week, or an 8(d)1 wage differential of \$338.67.

The Arbitrator notes that although the Petitioner informed Dr. Salehi on March 23, 2023, he still had low back symptoms, Dr Salehi opined there was nothing further that he could do neurosurgical and referred him for pain medication management to wean him off medications. Petitioner showed no objective findings in the low back when examined by Dr. Levin just one- or two-days prior. During the trial, the Petitioner was asked twice about the presence of continuing symptoms in his low back, right knee, left knee, and shoulder, to which he responded "no."

Given that Petitioner's work accident of October 15, 2021 resulted in surgery with multiple procedures at three levels, L3-4, L4-5, fusion at L4-5 with hardware, as well as hardware removal of the pre-accident fusion at L5-S1, which is a major surgery, and given that post surgery resulted in increased restrictions by Dr. Saheli

beyond the 10 lbs. lifting restriction, and given that Respondent did not allow Petitioner to return to his job as a truck driver but did accept his alternative request for accommodate work by providing him a job as a watchman at diminished wages, the Arbitrator is required to find, based on the evidence presented at trial and the applicable law, that Petitioner is entitled to a wage differential award.

Based upon the above and the record as a whole, the Arbitrator awards Petitioner permanent partial disability benefits commencing 2/1/2024 in the amount of \$338.67 per week for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

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

Under Sections 16, 19(k), and 19(l) of the Workers' Compensation Act, the primary intent is to ensure the timely payment of compensation to injured workers and to penalize employers who delay or withhold compensation in bad faith or without reasonable cause. Whether the employer's conduct justifies the imposition of penalties is to be considered in terms of reasonableness. *McKay Plating Co. v. Industrial Comm'n* 91 Ill. 2d 198 (1982). Whether an employer has acted reasonably in refusing to pay benefits is to be decided on a case-by-case basis and is a question of fact. *Electro-Motive Div. v. Industrial Comm'n*, 250 Ill. App. 3d 432, 436 (1993).

Section 19(k) of the Act provides in pertinent part: "In cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are mere 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)."

Section 19(l) of the Act provides in pertinent part: "If the employee has made 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 (b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that benefits under Section 8(a) or Section (b) have been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. 820 ILCS 305 §19(l)."

In *McMahan v. Industrial Comm'n (farmer's Elevator)*, the Illinois Supreme Court clarified the standard for awarding penalties under section 19(k) and attorney's fees

under section 16 of the Workers' Compensation Act. The Court explained: "Viewing the statute as a whole, we believe that section 19(k) and section 19(1) were actually intended to address different situations. The additional compensation authorized by section 19(1) is in the nature of a late fee. 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.' If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory. *McMahan v. Indus. Comm'n (farmer's Elevator)*, 183 Ill. 2d 499 (1998)"

In contrast to section 19(1), section 19(k) provides for substantial penalties, imposition of which are discretionary rather than mandatory. *Id.* The statute is intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. This is apparent in the statute's use of the terms 'vexations,' 'intentional' and 'merely frivolous.' Section 16, which uses identical language, was intended to apply in the same circumstances. *Id.*

The Arbitrator finds that penalties and fees are not warranted under the above standards. Specifically, the Act's provisions are designed to address situations where an employer's delay or refusal to pay benefits is arbitrary, vexatious, or unreasonably prolonged.

Respondent paid TTD benefits from the period that it believed was determined to be medically appropriate, and any disputes regarding the scope of benefits were based on conflicting medical opinions which is not grounds for a penalty. This finding is particularly relevant given the evidence introduced at trial that Petitioner had a pre-accident disability baseline of a 10 lbs. However, after the accident in this case, Dr. Salehi increased the restrictions beyond just a 10 lbs. lift. Respondent had the right to a judicial determination of its liability based on the facts and circumstances of this case, Especially, in light of Petitioner's prior back injuries. Moreover, the Arbitrator is mindful that Respondent provided Petitioner with an accommodated job which Petitioner accepted and did not voice an issue with the position at trial.

In light of the above and given the purpose of the Workers' Compensation Act to facilitate the fair and expedient resolution of the claims, the Arbitrator finds that Petitioner's request for penalties and fees is without merit and, accordingly, denies the claim for such fees and penalties.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001575
Case Name	Tamika Mason v. Joyful Noise Christian Daycare Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0343
Number of Pages of Decision	5
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Christopher Williams
Respondent Attorney	Kelly Kamstra

DATE FILED: 8/8/2025

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TAMIKA MASON,
 Petitioner,

vs.

NO: 24 WC 001575

JOYFUL NOISE CHRISTIAN DAYCARE,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses and prospective medical, and being advised of the facts and law, reverses the Decision of the Arbitrator regarding accident as stated below, adopts the Arbitrator's Statement of Facts and modifies the Conclusions of Law in the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission, having considered the entire record, finds that Petitioner failed to prove that she sustained an accidental injury arising out of and in the course of her employment on June 30, 2023, rendering all other issues moot. Therefore, the Commission vacates the Arbitrator's award of prospective medical expenses for the reasons set forth below.

The Commission, while adopting the Arbitrator's Statement of Facts, views the evidence differently than the Arbitrator. Therefore, under Conclusions of Law, the Commission strikes the third and fourth paragraphs and substitutes the following:

The Commission finds that Petitioner's testimony regarding the accident was not persuasive and did not comport with the evidence. Petitioner testified that the Respondent's floor was sticky and sticking to her Crocs. On the date of accident, the emergency room documented a

history of Petitioner slipping on a wet floor when she fell, which is inconsistent with her testimony. (PX2, p. 7) Petitioner testified that she did not tell the first providers she slipped on water, but the Commission does not find this testimony persuasive after reviewing the totality of the evidence. (T. 17, 27)

Petitioner further testified that she left school and went home immediately after the incident after the children were put to bed. (T. 17) Respondent's witness, Petitioner's supervisor, Ms. Fields testified that Petitioner continued her shift that day. (T. 37) Ms. Fields testified that Petitioner left early that day, however, Ms. Fields testified that she estimated the time Petitioner left, "was later because that day we had lunch for the teachers, and so she stayed. After I helped her up, she stayed; and we talked about what happened. And then she had lunch with the teachers. After having lunch, she asked me if she could take some food home, and she left." *Id.*

The Commission notes that the emergency room records from the date of accident confirm that Petitioner arrived approximately 4:17 pm in the afternoon (PX2, 11) corroborating that she did not seek treatment immediately after the incident, which occurred around lunchtime, (T. 15-16) and bolstering Ms. Fields' testimony that she stayed. Petitioner returned to work Monday, July 10, 2023, and continued working for Respondent until she resigned on October 15, 2023. (T. 18-19)

Further, Petitioner's testimony was confusing about the timing and nature of the October 17, 2023, emergency room visit. Petitioner testified that she went to the emergency room on October 17, 2023, "[d]ue to the strenuous workload I had that day." (T. 10) Her testimony that she went to the emergency room after a heavy workday while still employed is rebutted by the record. The medical records from that day confirm that she went to the emergency room "because for the past 1 week she had elbow pain with lifting heavy grocery bags." (PX2, 40) She denied any recent falls or trauma. *Id.* Petitioner further testified on cross examination that she had resigned on October 15, 2023. (T. 18) Petitioner's last day of work is also identified in the time records as having been on a Sunday, October 15, 2023.

This factor is inconsistent with Petitioner's testimony that a strenuous workday precipitated the October 17, 2023, hospital visit. Petitioner's testimony about the reason she went to the emergency room is again rebutted by the actual medical records and is obviously not credible.

Further, the Commission strikes the last three paragraphs under Issue (C), "DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT" and substitutes the following:

The issue is whether Petitioner's fall in the hallway constitutes an incident arising out of her employment. In this case, the preponderance of the evidence does not support Petitioner's claim that an aspect of the employer's premises contributed to her fall. Although Petitioner remained consistent in her testimony that the floor was "tacky" and that the day before she noticed the "floor was sticking to her Crocs," (T. 7-8) the medical evidence is inconsistent with Petitioner's testimony regarding the reason she fell. The eleven second video showing her walking and then falling also does not corroborate that account. Respondent's witness, Petitioner's supervisor, Ms.

Fields testified that she saw Petitioner in the hallway and she “walked to her, and I said what happened.” (T. 35) *Id.* Petitioner responded that she fell. *Id.* Ms. Fields provided Petitioner with assistance and asked her “to let me get a chair, let me help you.” *Id.* Ms. Fields testified that when she saw Petitioner on the floor, the floor was not sticky in any way. *Id.* Ms. Fields testified that there was no water on the floor. *Id.* Ms. Fields testified that there were no divots or cracks in the floor. (T. 36)

There is no evidence to suggest that Ms. Fields’ testimony was unreliable.

The Commission notes that Petitioner did not submit any pictures of her shoes or the floor or witnesses to corroborate that she told anyone at that time of the incident that the floor was sticky or tacky or that anyone else noticed it was sticky the day of, or the day before, the accident.

“By itself, the act of walking across a floor at the employer’s place of business does not establish a risk greater than that faced by the general public.” *First Cash Financial Services v. Industrial Comm’n*, 367 Ill. App. 3d 102, 105 (2006). Thus, “for an injury caused by a fall to arise out of the employment, a claimant must present evidence which supports a reasonable inference that the fall stemmed from a risk associated with her employment.” *Id.* at 106. “Employment-related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed such as the risk of tripping on a defect at the employer’s premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.” *Id.*

The Arbitrator’s reasoning comes close to improperly shifting the burden of proof onto Respondent. 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.’” *Id.* 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 Petitioner’s employment as it had no burden to disprove her claim. Again, there is no evidence to suggest that Ms. Fields’ testimony was unreliable. Based on Petitioner’s testimony which is inconsistent with the medical histories and Petitioner’s credibility issues, and Ms. Field’s testimony, the Commission finds that Petitioner failed to sustain her burden of proving she sustained an accident that arose out of and in the course of the Petitioner’s employment by Respondent. Accordingly, we reverse the Decision of the Arbitrator and deny compensation.

Based upon the Commission’s Conclusions of Law reversing accident, all other issues are moot.

Finally, the Commission observes Petitioner’s personal identity information was unredacted from Petitioner’s Exhibits. The Commission cautions the parties to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's award of prospective medical expenses is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator regarding accident is reversed since Petitioner failed to prove she sustained an accidental injury arising out of her employment on June 30, 2023, and, therefore, her claim for compensation is hereby denied, rendering all other issues moot.

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)(2). Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 8, 2025

O061025

KAD/bsd

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/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee H. Simonovich

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC001575
Case Name	Tamika Mason v. Joyful Noise Christian Daycare Inc.
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	Elaine Llerena, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Kelly Kamstra

DATE FILED: 12/23/2024

/s/ Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 17, 2024 4.16%

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

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

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

Tamika Mason

Employee/Petitioner

v.

Joyful Noise Christian Daycare

Employer/Respondent

Case # **24 WC 001575**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **October 31, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 30, 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 *as to the left elbow is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$3,254.00**; the average weekly wage was **\$440.50**.

On the date of accident, Petitioner was **47** years of age, *single* with **1** 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 authorize and pay for prospective medical care in the form of an evaluation by an orthopedic surgeon, physical therapy, and an MRI on Petitioner's left elbow, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner's Petition for penalties and attorney's fees and costs as provided in Sections 16, 19(k), and 19(l) of the Act 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

December 23, 2024

FINDINGS OF FACT:

This matter proceeded to hearing on October 31, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were accident, causal connection, medical expenses, prospective medical care (authorization for evaluation by an orthopedic physician) and penalties and fees. Arbitrator's Exhibit 1 (AX1).

Petitioner's Testimony

Petitioner testified that she worked for Joyful Noise Christian Daycare ("Respondent") on June 30, 2023, as a teacher for children aged three to six years old. (T. 6-7) She had worked there since April 15, 2023. (T. 8)

Petitioner testified that on June 30, 2023, she fell as she was walking to get blankets for one of the children in her classroom. (T. 7) As she described it: "my feet got stuck to the floor, kind of tacky." *Id.* Petitioner then testified that "the first time it stuck to the ground, I tipped a little bit. And then I continued to walk, and that's when it stuck again, both foot—both feet. Then I fell." (T. 8-9) She also described that the day before, as she was entering the building, she almost tripped and that she "noticed that the floor was sticking to my Crocs." (T. 7-8) The Crocs were the same shoes that she wore every day, but they had not gotten stuck to the floor prior to that day before the accident. (T. 8) After the fall, Petitioner noticed that her left elbow and right knee started hurting, and she could barely stand due to her right knee being swollen. (T. 9)

On cross examination, Petitioner explained that she left the classroom during the children's lunchtime and that Respondent's owner and another staffer remained in the classroom. (T. 15-16) She described walking into a hallway and then, "I stumbled, and then I tripped." (T. 16) Petitioner was asked whether that was because the floor was sticky that day, to which she replied, "[y]es. It was sticking to my Crocs." Respondent's owner came to help her a short time after she fell. (T. 17) Petitioner went home after she got up; she did not continue working that day and left after the children were put to bed. *Id.*

Petitioner testified that she sought medical care on the day of the fall at Community First Medical Center. (T. 9) Petitioner denied telling the emergency room doctors that she slipped on water and stated that she told them the floor was sticking to her feet. (T. 17)

Following the fall, Petitioner continued to work for Respondent. (T. 18) She next sought medical care on August 24, 2023, when she went to her primary care physician at Provident Hospital. (T. 10) Petitioner testified that she returned to Community First Medical Center on October 17, 2023, due to "the strenuous workload that day" and to having extreme elbow pain for which she was given an arm sling. *Id.*

Petitioner affirmed on cross-examination that she resigned on October 15, 2023. (T. 18-19) When asked about her direct examination testimony that she sought medical care on the 17th after a strenuous workday, she ultimately stated that she did not recall when she resigned but that she had gone to the emergency room before resigning. (T. 19-20, 22) She explained that if the records said that she went to the emergency room on October 17th, then it needed to have been for something other than her elbow because she had resigned by then. (T. 22-23) Petitioner also stated on cross examination that if the October 17, 2023, emergency room records showed that she went for her elbow and that she had pain after holding grocery bags for a long period of time, those records would be incorrect. (T. 24-25) Petitioner confirmed on re-direct that she did not recall what would have occurred on specific dates from a year ago, such as October 17th or 15th, but that holding things such as grocery bags in her left hand would be painful, and that she did believe her medical records to be true and accurate. (T. 25-26)

The last treatment date was on November 30, 2023. (T. 10) Petitioner believed that x-rays taken of her elbow showed a non-displaced fracture. (T. 13) By that point, providers had recommended an evaluation of her elbow by an orthopedic surgeon, an MRI, and physical therapy. (T. 11) She did not get the MRI due to claustrophobia and did not follow up with an orthopedic physician because her insurance and Respondent's workers' compensation carrier had not approved it. (T. 14)

Regarding her current condition, Petitioner testified that she could barely walk long periods of time with her right knee or wear high-heeled shoes. (T. 12) Moreover, she could not hold items with her left arm for long periods of time. *Id.* She testified that she has not had any other accidents or injuries to her left elbow or right knee since the June 30, 2023, accident. (T. 26)

Petitioner testified that when she started working for Respondent in April 2023, she had a low back issue for which she had work restrictions (no lifting over 20 pounds) that Respondent accommodated, but not every day. (T. 14-15) There was no testimony about the condition of her right knee or left elbow prior to the June 30, 2023, accident.

Respondent's Witness Testimony

Respondent's witness was Ms. Sherise Fields, Respondent's owner. She testified that she oversaw the center's day to day operations, including the hiring and disciplining of employees, and that she hired Petitioner. (T. 28-29) Ms. Fields testified that Petitioner received assistance in her classroom each day, including specifically during mealtimes, with taking children to and from the bathroom, and during nap and clean-up time. (T. 32-33)

Ms. Fields testified that on June 30, 2023, she and the assistant director were in Petitioner's classroom helping with the bathroom, eating, and naptime. (T. 33-34) At one point, Ms. Fields realized that Petitioner was not in the classroom and then noted Petitioner down the hallway. (T. 34) Petitioner was on the floor, and Ms. Fields went to her. *Id.* Ms. Fields asked Petitioner what happened, and Petitioner responded that she had fallen. (T. 35) Ms. Fields testified that she did not know whether she asked Petitioner how or why she fell. *Id.* She did not remember asking Petitioner that, she was just trying to assist Petitioner. *Id.* Ms. Fields replied "no" when asked whether the floor was sticky, whether there was any water on the floor, or whether there were any divots or cracks on the floor. (T. 35-36) According to Ms. Fields, Petitioner continued her shift that day, staying for a lunch held for the teachers, then left work early. (T. 37-38)

Thereafter, Ms. Fields only recalled seeing a work status slip or treatment record from the date of the incident. (T. 38) Petitioner otherwise continued to work her normal schedule. *Id.* Petitioner resigned from Respondent on October 15, 2023. (T. 39) Petitioner was not asked to resign. *Id.* Ms. Fields asked Petitioner to reconsider doing so. (T. 40) The only contact Ms. Fields had with Petitioner following the resignation was a phone call in January 2024 when Petitioner requested her W-2 form. (T. 41)

Summary of Medical Records

Records from Community First Medical Center ("CFMC") show that Petitioner arrived at the emergency department on her own, by car, on June 30, 2023, at 15:28 hours. (PX2 at 6) The history noted that Petitioner is right-hand dominant and that she reported she had slipped on a wet floor and fell forward, striking her knee and upper extremity and was complaining primarily of left upper extremity pain. (PX2 at 7) Physical exam showed no significant swelling or bruising of the right knee and that Petitioner had an antalgic gait favoring her right lower extremity. (PX2 at 8-9) Right knee and left humerus x-rays showed no fractures or

dislocations. (PX2 at 9-10) Petitioner was discharged with diagnoses of contusions to the right knee and lower leg, as well as multiple sites of the left upper arm, and was given a Lidocaine patch and a sling for the arm. (PX2 at 10-11, 31)

On August 24, 2023, Petitioner was seen at an outpatient clinic at Provident Hospital of Cook County ("Provident"). (PX3 at 3) She presented for a follow-up for a fall and was at that point unable to straighten out her left elbow. (PX3 at 4) "Review of Systems" notes reflected a left elbow with painful swelling and stiffness. (PX3 at 4) An x-ray showed an intra-articular nondisplaced fracture of the radial head without dislocation, posterior joint effusion, and focal soft tissue swelling of the olecranon bursa. (PX3 at 32) The notes further stated, "consider MRI for further evaluation if clinically indicated." (PX3 at 32)

CFMC Emergency Department records from October 17, 2023, show that Petitioner presented on that date with left elbow pain. (PX at 34, 36) The records noted that she had fallen on her left elbow three months before. (PX2 at 36) She reported a follow up with her doctor after an emergency room visit then being scheduled for an MRI that she could not tolerate due to claustrophobia. (PX2 at 36) Petitioner reported pain in the left elbow with range of motion, but no swelling was noted at that time. (PX2 at 36) She also reported intermittent numbness in her hand that was worse with heavy use. (PX2 at 36) Triage notes also stated that she had fallen in June, injuring her left arm, and that "now pain has returned for 1.5 weeks," and that there was no recent injury. (PX2 at 39) Also among the history provided was that Petitioner had fallen on the elbow in June, was told she had a fracture, and "was lost to follow up." (PX2 at 40) She was now there because she had been having elbow pain with lifting heavy grocery bags for the past week. (PX2 at 40) She denied recent falls or trauma. (PX2 at 40) Left elbow x-rays showed no fracture or dislocation. (PX2 at 38) Under "assessment and plan," the notes indicate that Petitioner was referred for an orthopedic evaluation and that Petitioner may need an MRI. (PX2 at 38)

Provident records show a November 30, 2023, follow-up to Petitioner's August 24, 2023, visit. (PX3 at 37) Left elbow tenderness was noted. (PX3 at 38) An MRI and physical therapy were to be scheduled. (PX3 at 57) The ongoing "problem" list included her elbow among other conditions, but not the knee. (PX3 at 37)

Other Exhibits

Timecard Records

Respondent introduced timecard records from the time period between April 17, 2023, and October 15, 2023. (RX2) The records from June 30, 2023, show that it was a Friday and that the posted times in and out were 7:56 a.m. and 12:49 p.m. (RX2 at 2) The last entry in the record was for Sunday, October 15, 2023, with a time in of 7:51 a.m., and a time out of 4:21 p.m. (RX2 at 4)

Video

Ms. Fields testified that there was video footage of the incident that she reviewed, saved, and sent to Respondent's counsel. (T. 36) An eleven-second-long video was played at hearing and introduced into evidence as Respondent's Exhibit 1. (T. 37, 44) From the video's overhead vantage point, at the start of the clip, Petitioner is seen from the back as she walks down a hallway, beginning with a step landing on her right foot. The hallway appears to be white tile. To her left as she begins to walk, there is a large dark mat, but she remains on the white floor. After about three steps, she passes a small sink to her right, in front of which is a blue plastic footstool on a black mat slightly larger than the stool and on which she does not step either as she remains on a path down the middle of the corridor. (RX1 at 00:00:03) Petitioner is wearing white Croc-type shoes with a heel strap with white socks. (RX1 at 00:00:04-00:00:06) As she continues, the other end of the hallway comes into

view. There is another rug and an unidentified waist-high object to her left that she passes, veering slightly to her right. Appearing in front of her is another mat and corner, with the corridor then appearing to continue to the right.

The moment of the fall comes after she takes thirteen regular steps from the start of the clip. At that point, she is at the top of the video frame, farthest from the camera, where the hallway appears to be darker, and the image is not as clear as it is at the start. She is seen putting her right foot down for the thirteenth step, the left foot rises for the fourteenth and – though blurry – it appears to cross over in front and on top of the right foot, with her left heel becoming obscured by her right lower leg. (RX1 at 00:00:10) She does not lift her right foot to give another step. After the left foot lifts, the soles of both feet become visible as Petitioner falls forward to the ground. At that point, the video stops.

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 the witness's 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 the witness's testimony. Where a claimant's testimony is inconsistent with the claimant's 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)

Petitioner's testimony about the accident and current condition was straightforward. She was steadfast in her description that the floor was sticking to her shoes. Similarly, she gave a consistent history to medical providers about being injured at work in June 2023. Her testimony did suggest some confusion about the timing and nature of the October 17, 2023, emergency room visit. Her testimony that she went after a heavy workday while still employed is rebutted by the record. The medical records from that day also show, however, that she described increased pain from one and a half weeks prior—a time during which she would still have been employed. Moreover, her last day of work is identified in time records as having been on a Sunday, the 15th. Though no party presented testimony about the work done that day, this factor is generally consistent with Petitioner's testimony that a strenuous workday precipitated the October 17, 2023, hospital visit. Petitioner's testimony about when she went to the doctor suggests a faulty memory more so than an intent to deceive.

Aside from the June 30, 2023, medical records indicating that she reported slipping on a wet floor, Petitioner's history as taken down by medical personnel was otherwise consistent. Moreover, Petitioner denied reporting that she fell on a wet floor. Therefore, this alone does not render Petitioner an unreliable witness.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

To be compensable under the Illinois Workers' Compensation Act (Act), an injury must "arise out of" and "in the course of" the claimant's employment. 820 ILCS 305/2 (202). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 34. A compensable injury occurs "in the course of" employment when it is sustained while the claimant performs reasonable activities in conjunction with his employment. *Id.*

“The ‘arising out of’ component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.” *Id.* at ¶ 36. Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated. *Id.* at ¶ 40. Examples of employment-related risks include “tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.” *Id.* Injuries resulting from a risk distinctly associated with employment are deemed to arise out of one's employment and are compensable under the Act. *Id.*

In this case, Petitioner was in the course of her employment with Respondent when the incident took place. She was at the daycare center, during her work hours, walking down a hallway to get blankets for her classroom.

The issue is whether Petitioner's fall in the hallway constitutes an incident arising out of her employment. In this case, the preponderance of the evidence supports Petitioner's claim that an aspect of the employer's premises contributed to her fall. Petitioner remained consistent in her testimony that the floor was “tacky” and sticking to her shoes. The eleven second video showing her walking and then falling at the least illuminated and farthest point from the camera's vantage point does not refute that account.

Ms. Field testified that the floor was not wet or sticky. She also, however, did not recall whether she asked Petitioner how or what caused her to fall. This leaves no account that Respondent inspected or investigated the premises at the time of the fall to confirm or find a cause.

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 30, 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 testified about ongoing difficulties with her right knee and left elbow and that she is seeking the treatment recommended for her left elbow. The Arbitrator further notes that the emergency department visit on June 30, 2023, documents left elbow and right knee injuries. Further, Petitioner testified that she has not since injured her left elbow or right knee.

The Arbitrator notes that Petitioner's right knee is not referenced in medical records after the June 30, 2023, emergency department visit. There is no indication that any treatment was given or recommended for the right knee after that day. As such, the Arbitrator finds that Petitioner's right knee contusions resolved following the June 30, 2023, work accident and that her current condition of ill-being regarding her right knee is not causally related to the June 30, 2023, work accident.

Regarding Petitioner's left elbow, the medical records show persistent left elbow complaints referable to the June 30, 2023, work accident. Further, the August 2023 x-rays indicate a non-displaced fracture of the left elbow. Additionally, the medical records indicate further evaluation and treatment of Petitioner's left elbow condition since the June 30, 2023, work accident.

Based on the above, the Arbitrator finds that Petitioner's condition of ill-being as to the left elbow is causally related to the June 30, 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 above regarding accident and causation. The Arbitrator further notes that Petitioner sought treatment for injuries sustained during the June 30, 2023, work accident soon after the work accident and thereafter. Therefore, the Arbitrator finds that the medical treatment Petitioner underwent from June 30, 2023, through November 30, 2023, was reasonable and necessary under the Act. However, as no medical bills were introduced into evidence, the Arbitrator does not award any medical expenses.

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

The Arbitrator notes her findings above regarding accident and causation. The Arbitrator further notes the repeated recommended treatment of an orthopedic evaluation, physical therapy and an MRI for the left elbow. Additionally, none have been approved by Respondent's workers' compensation carrier.

Based on the above, the Arbitrator finds that Respondent shall authorize and pay for prospective medical care in the form of the recommended orthopedic evaluation, physical therapy and MRI of the left elbow, pursuant to Sections 8(a) and 8.2 of the Act.

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

The Arbitrator notes that Petitioner left Respondent's employment and that no evidence was presented indicating that Respondent was made aware of Petitioner's need for ongoing medical care or lost time benefits. No medical bills were submitted into evidence and Petitioner did not make a claim for temporary total disability benefits. Therefore, Petitioner has failed to prove entitlement to penalties and fees under the Act. Petitioner's Petition for penalties and attorney's fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017863
Case Name	Miquel Stewart v. McLane Co.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0344
Number of Pages of Decision	25
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Joseph D'Amato

DATE FILED: 8/8/2025

/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))
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MIQUEL STEWART,

Petitioner,

vs.

NO: 23 WC 017863

MC LANE COMPANY, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary disability, nature and extent of the injury and "other: evidentiary issues," and being advised of the facts and law, corrects the Decision of the Arbitrator as follows and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission writes to correct the end date of temporary total disability ("TTD") benefits from February 3, 2024 to February 2, 2024. Accordingly, the Commission also corrects the period of TTD benefits awarded to December 23, 2023 through February 2, 2024, representing six (6) weeks.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated February 14, 2025, is corrected as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay temporary total disability benefits of \$1,512.24/week for a period of six (6) weeks for the period of December 23, 2023, through February 2, 2024, as provided in Section 8(b) 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$59,200.00. 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.

August 8, 2025

o: 08/06/25

CMD/jjm

045

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

/s/ Frank J. Soto

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017863
Case Name	Miquel Stewart v. McLane Co.
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Joseph D'Amato

DATE FILED: 2/14/2025

/s/ Jennifer Bae, Arbitrator

Signature**INTEREST RATE WEEK OF FEBRUARY 11 2025 4.19%**

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Miquel Stewart
 Employee/Petitioner

Case # **23WC017863**

v.

McLane Company, Inc.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Jennifer Bae, Arbitrator of the Commission, in the city of **Chicago** on **December 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 **Two doctor rule**

FINDINGS

On **7/7/23** 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 **\$117,954.20** the average weekly wage was **\$2,268.35**.

On the date of accident, Petitioner was **29** 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 is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER**Medical Bills**

Respondent shall pay for any outstanding medical bills as itemized in PX 13, as provided in Section 8(a) and 8.2 of the Act. Respondent is entitled to a credit for payment of said bills under their workers' compensation policy as itemized in RX 2.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$1,512.24 per week for 6 1/7 weeks, commencing December 23, 2023 through February 3, 2024, as provided in Section 8(b) of the Act.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of \$1,024.87 per week for 50 weeks, because the injuries sustained caused the 10% loss of person-as-a-whole, as provided in Section 8(d)(2) of the Act.

Other

Petitioner has not exceeded the two-doctor rule.

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

FEBRUARY 14 2025

[illegible]

ILLINOIS WORKERS' COMPENSATION COMMISSION

MIQUEL STEWART,
Petitioner,
v.
McLANE COMPANY, INC.,
Respondent.

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Mr. Miquel Stewart (“Petitioner”), by and through his attorney, filed an Application of 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 July 7, 2023 while employed by McLane Company (“Respondent”). A hearing was held on December 11, 2024 on the following issues: causation, medical bills, temporary total disability, nature and extend, and other – two-doctor rule.

Petitioner testified in support of his claim. Mr. Robert Cook (“Cook”) testify on behalf of Respondent. Respondent submitted an IME report, an impairment rating report by Dr. Jay Levin, a Section 12 examiner, and a Utilization Review. (RX 1) The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Petitioner testified that he is currently 31 years old, single, about 5'10" to 6'1", approximately 215 pounds, and right-hand dominant. (T. 10-11) He obtained his high school diploma with a certificate for mechanical school. On July 7, 2023, Petitioner was 29 years old working for Respondent. (T. 10-11; AX 1) He testified that he started working for Respondent on September 6, 2022. (T. 11) Prior to July 7, 2023, Petitioner testified that he did not have any right shoulder or neck injuries or issues. (T. 11-12) He was working for Respondent on full duty status. (T. 12)

Job Duties

Petitioner testified that he worked as an 18-wheeler delivery truck driver for Respondent and has a CDL license. (T. 12) For Respondent, Petitioner testified that he drove semi-trucks and unloaded

items using a dolly that were “heavy food products” to restaurants. (T. 12-13) Petitioner explained that each box on the truck weighted approximately 5 to 50 pounds and he unloaded approximately 11 to 1,200 boxes each day within Illinois and Indiana. (T. 13) Petitioner testified that he worked 40 plus hours per week. (T. 14)

On cross-examination, Petitioner testified that his title is “Driver 3” and that he works in pairs normally. (T. 36) Petitioner confirmed that his hourly rate was \$37.83 at the time of the accident and his current hourly rate is \$41.40 per hour. (T. 37)

Accident

Petitioner testified that on July 7, 2023, he was picking up a box that was high up on a pallet and as he was reaching up, he felt a pop between his neck and shoulder. (T. 14) He loaded the boxes on a dolly and as he was going down the ramp, his shoulder pop again causing “unbearable pain.” (T. 14) He explained that the box contained either bread or beef from Arby’s that weighted about 10 to 20 pounds. (T. 14-15) He further explained that he was “in so much pain” that his coworker had to call their supervisor, Cook, to report the accident. (T. 15)

Petitioner’s Testimony – Regarding Medical Treatment

Petitioner testified that he sought treatment at Advocate South Suburban Hospital Emergency Room with right shoulder pain on July 8, 2023. (T. 15) He told them that his right shoulder “had been very painful” and he was unable to move it. (T. 15) X-rays of the right shoulder were completed. (T. 16) After a physical examination, Petitioner testified that he was diagnosed with a right shoulder sprain. (T. 16) He was prescribed with pain medications and placed in an arm sling. (T. 16)

Petitioner testified that on July 11, 2023, he was seen at Concentra (Occupational Health Centers) for his right shoulder and left-sided neck pain. (T. 16) Petitioner testified that his neck pain started a couple days after the accident. (T. 16) Petitioner testified that he reported no prior injuries or treatment for his right shoulder or neck at his initial treatment at Concentra. (T. 17) At Concentra, Petitioner underwent a second set of x-rays of his right shoulder. (T. 17) After the review of the x-rays and physical examination, Petitioner was diagnosed with a right shoulder strain and a neck strain. (T. 17) He was prescribed with pain medications and a recommendation for an MRI of the right shoulder. (T. 17) Petitioner was also prescribed with physical therapy for 3 times a week for following 2 weeks. (T. 18) He was released back to work with light-duty restrictions. (T. 18) Petitioner testified that he did not return to work after his visit with Concentra. (T. 18)

Petitioner testified that on July 12, 2023, he saw Dr. Ravi Barnabas regarding his right shoulder and neck pain. (T. 18) He testified that he gave the same history of work accident as he did to Advocate South Suburban Hospital and Concentra. (T. 18) At this visit, Petitioner testified that he rated right shoulder pain as a 9/10 and neck pain as an 8/10. (T. 18-19) He again informed Dr. Barnabas that he had no prior right shoulder or neck issues prior to July 7, 2023 work accident. (T. 19) In response to Petitioner’s complaints of pain, Dr. Barnabas ordered him to remain off work completely and ordered an MRI of the right shoulder and neck. (T. 19) Dr. Barnabas

prescribed pain medication and physical therapy in addition to discussing a possibility of referral to an orthopedic specialist. (T. 20)

Petitioner testified that he underwent the MRIs of his right shoulder and neck with Chicago Medical Imaging on July 13, 2023. (T. 20)

Petitioner testified that on July 14, 2023, he followed up with Dr. Barnabas to review the MRI reports. (T. 20) Petitioner testified that Dr. Barnabas opined that he had a tear in his right shoulder, bulging discs in his neck, and shoulder sprain. (T. 20) Dr. Barnabas prescribed pain medications, a TENS unit, and referred him to an orthopedic specialist. (T. 20-21) Petitioner was ordered to remain off work for the next 3 weeks. (T. 21)

Petitioner testified that he started physical therapy on July 15, 2023 per Dr. Barnabas's order. (T. 21)

Petitioner testified that he was referred to OrthoCare by Dr. Barnabas. (T. 21-22) Petitioner saw Dr. Benjamin Goldberg on July 20, 2023 who opined that Petitioner may have "a possible rotator cuff tear." (T. 22) Dr. Goldberg recommended an injection, continue with physical therapy, and remain off work. (T. 22)

Petitioner testified that his pain in his right shoulder worsened and followed up with Dr. Goldberg on July 27, 2023. (T. 22) Petitioner testified that he received an injection in his right shoulder at this visit. (T. 22) Following the injection, Petitioner testified that he was instructed to continue with physical therapy, remain off work, and to follow-up in 4 weeks. (T. 23)

Petitioner testified that he returned to see Dr. Barnabas on August 9, 2023 and reported that the injection helped very little and the pain came back. (T. 23) Petitioner testified that the injection gave him relief for 1 week. (T. 23) Petitioner testified that Dr. Barnabas sent him back to see Dr. Goldberg and referred him to pain management for his neck issues. (T. 23) He was instructed to continue with physical therapy, to remain off work, and follow-up in 3 weeks. (T. 24)

With Dr. Barnabas' referral, Petitioner testified that he saw Dr. Michel Malek of Metro Chicago Spine and Pain Consultations on August 10, 2023. (T. 24) Petitioner testified that he gave the same history of the work accident, his job duties and treatment he received thus far to Dr. Malek. (T. 24) Petitioner reported that standing, sitting, and walking aggravated his right shoulder and neck conditions. (T. 24) Petitioner explained that the "pain was really unbearable right in the spine." (T. 25) It was difficult to turn his neck, bend over, turn around, or lift anything. (T. 25) After reviewing the MRI of his cervical spine and performing a physical examination, Petitioner testified that Dr. Malek diagnosed him with a bulging disc at the C5-6 level and ordered him to continue with physical therapy, prescribed pain medications, recommended an injection to his neck, and remain off work. (T. 25-26)

Petitioner testified that he underwent an injection to his neck with Dr. Malek on August 25, 2023. (T. 26) He followed up with Dr. Malek on August 31, 2023 and reported having no relief from the injection. (T. 26) Dr. Malek ordered Petitioner to remain off work and follow-up with the orthopedic specialist. (T. 26)

Petitioner testified that due to his ongoing right shoulder and neck issues, he underwent an EMG study on September 13, 2023. (T. 27)

Petitioner testified that because of his neck issues, he received a second injection with Dr. Malek. (T. 27)

Petitioner testified that on September 23, 2023, he saw Dr. Thomas Poepping of G&T Orthopaedics & Sports Medicine for a second opinion for his right shoulder. (T. 27) Petitioner testified that he asked Dr. Barnabas for a second opinion from Dr. Goldberg and as a result, Dr. Barnabas referred him to Dr. Poepping. (T. 27) Petitioner testified that he informed Dr. Poepping about the work accident and the treatments he received thus far. (T. 27-28) Petitioner testified that after reviewing the MRIs and performing a physical examination, Dr. Poepping administered an injection to his right shoulder. (T. 28) Petitioner testified that Dr. Poepping informed him to follow-up in 2 weeks and if there was no improvement, he would recommend a surgery. (T. 28) He further ordered Petitioner to remain off work. (T. 28)

Petitioner testified that he underwent a third injection on October 13, 2023 for his neck pain. (T. 28)

Petitioner testified that he followed up with Dr. Poepping on October 18, 2023 and reported having pain relief for one hour and half after the injection that was performed on September 23, 2023. (T. 29) Dr. Poepping recommended a right shoulder surgery and recommended that Petitioner remain off work for the next 2 months, pending surgery approval. (T. 29-30)

Petitioner testified that he followed up with Dr. Poepping on December 22, 2023 and Dr. Poepping reviewed Dr. Levin's IME report. (T. 30) Dr. Poepping released Petitioner to work with restrictions of lifting to 5 pounds, no overhead work. (T. 31) Petitioner testified that he did not return to work because he had pain. (T. 32)

Petitioner testified that his visit with Dr. Levin lasted "maybe an hour." (T. 30) Petitioner testified that Dr. Levin performed a physical examination. (T. 31)

Petitioner testified that he followed up with Dr. Poepping on February 2, 2024 and he released him back to full duty work as of February 6, 2024. (T. 32) Petitioner testified that he took "an extra week or so off" after Dr. Poepping released him to full duty. (T. 32-33)

On cross-examination, Petitioner confirmed that Dr. Levin issued a report after examining him. (T. 44) He knew that the report indicated that he could return to full duty work and but did not remember specifics. (T. 44) Petitioner testified that he did not return to work after Dr. Levin issued a report because he still had pain. (T. 45)

On cross-examination, Petitioner confirmed that he saw a doctor at Advocate on July 8, 2023, a doctor at Occupational Health Centers (Concentra) on July 11, 2023, and started seeing Dr. Barnabas on July 14, 2023 for his shoulder. (T. 47) Petitioner testified that his friend, LaDyas, who is not a lawyer referred him to Dr. Barnabas. (T. 48-49)

On cross-examination, Petitioner testified that Dr. Barnabas did not perform any injections. (T. 49) The injections were preformed by Drs. Goldberg, Malek, and Poepping for his shoulder and neck. (T. 49-50) Petitioner testified that Dr. Barnabas was his primary care doctor. (T. 50) Petitioner testified that an MRI was completed at Dr. Barnabas' facility. (T. 50) He further confirmed that he saw 5 doctors for his shoulder in a 3-month period. (T. 51) Petitioner testified that he came to see Dr. Malek by Dr. Barnabas' referral. (T. 52)

On cross-examination, Petitioner testified that he does not have any doctor's appointments currently. (T. 55)

On redirect examination, Petitioner testified that Respondent sent him to Occupational Health or also known as Concentra. (T. 55) Petitioner testified that he saw all 3 doctors, Drs. Goldberg, Malek, and Poepping after receiving referrals from Dr. Barnabas. (T. 56)

Summary of Medical Records

On July 8, 2023, Petitioner presented to Advocate South Suburban Hospital Emergency Room and was treated by Dr. Amin Yassin. (PX 1) The medical records showed that Petitioner complained of right shoulder pain. (PX 1 p. 4) Petitioner reported moving boxes at work and felt pain in his shoulder after a pop and now it's "very painful to move it." (PX 1 p. 4) Dr. Yassin noted that an "examination of the right shoulder definitely shows some diffuse tenderness of the right anterior aspect of the shoulder however good range of motion but with pain." (PX 1 p. 6) He further noted that "there is no tenderness of the neck." (PX 1 p. 6) Petitioner was diagnosed with sprain of right shoulder and x-rays were ordered. (PX 1 pp. 7-8) Petitioner was prescribed with Baclofen and naproxen. (PX 1 p. 13) The x-rays of right shoulder (3 views) demonstrated "no acute fracture or dislocation. Joint spaces are maintained. Soft tissues are unremarkable." (PX 1 p. 15)

Ms. Katie Cole, Respondent's HR referred Petitioner to Concentra (Occupational Health Centers) on July 11, 2023. (PX 2 p. 18) Petitioner reported that on July 7, 2023, he was unloading and he lifted a box weighing about 10 pounds, he felt a pop and pain in his right shoulder, he then was using manual brake on dolly as he was going down a ramp and felt another pop and more severe pain in his right shoulder and right side of his neck. (PX 2 p. 24) Petitioner informed Concentra that he went to ER at South Suburban Hospital on the evening of the injury, had x-rays taken, a sling issued to him, and prescribed pain medication. (PX 2 p. 24) He reported no prior injury to his shoulder or neck. (PX 2 p. 24) A physical examination of the right shoulder revealed that Petitioner had tenderness in the deltoid, in the anterior glenohumeral joint, in the trapezius muscle, in the anterior shoulder, in the lateral shoulder, in the superior shoulder and in the posterior shoulder. (PX 2 p. 26) It was noted that Petitioner had a limited range of motion in all planes with pain in his right shoulder. (PX 2 p. 26) It was further noted that Petitioner's cervical spine had tenderness in the level (diffuse) right paraspinal and right trapezius muscle. (PX 2 p. 26) For x-rays, there was no significant radiologic findings. (PX 2 p. 28) Petitioner was diagnosed with right shoulder strain and cervical strain. (PX 2 p. 22-26) The plan called for Petitioner to start taking 800 MG Ibuprofen 3 times a day, start Lidocaine patches, MRI of the right shoulder ordered, and a referral for physical therapy. (PX 2 pp. 22-23) Petitioner was to follow up in 2-3 days. (PX 2 p. 23) Petitioner was released to work with restrictions. (PX 2 p. 30)

On July 12, 2023, Petitioner met with Dr. Ravi Barnabas at RTB, S.C. for consultation. (PX 3 pp. 75-76) Petitioner reported his accident at work and his treatment thus far. (PX 3 p. 75) Dr. Barnabas ordered an MRI (PX 3 p. 94), physical therapy to start (PX 3 p. 92), and prescribed pain medications (PX 3 p. 93). (PX 3 p. 76) He noted that Petitioner needed an orthopedic consultation and placed him on off work until August 10, 2023. (PX 2 p. 76, 78)

On July 13, 2023, an MRI of the cervical spine was completed at Chicago Medical Imaging. (PX 2 p. 102-103) It showed C3-4 and C5-6 discs are partly desiccated and diffuse posterior bulge indenting the ventral subarachnoid space without significant neural compromise. (PX 3 pp. 102-103)

On July 13, 2023, an MRI of the right shoulder was completed at Chicago Medical Imaging. (PX 3 p. 104) It showed an interstitial tear of the supraspinatus tendon. (PX 3 p. 104)

On July 14, 2023, Petitioner met with Dr. Barnabas after getting the MRIs. (PX 3 p. 77) Dr. Barnabas noted that the preliminary MRI report showed C3, C4, C5 disks partially desiccated diffuse posterior bulging and interstitial tear of the supraspinatus tendon. (PX 3 p. 77) Petitioner was diagnosed with interstitial tear of the right shoulder, disk bulging with disk desiccation in the neck, cervical area, cervical pain, and left shoulder pain. (PX 3 p. 77) It was noted that Petitioner had an appointment with Dr. Goldberg on July 20, 2023. (PX 3 p. 77) Petitioner was placed on off work and follow up in 3 weeks. (PX 3 p. 77)

On July 14, 2023, Petitioner was seen at MTN Pro Active Rehab for an evaluation for therapy. (PX 8) He had therapy sessions on July 17, 2023 and July 19, 2023. (PX 13)

On July 20, 2023, Petitioner had an orthopedic consultation with Dr. Benjamin Goldberg of OrthoCare Corp. (PX 6 pp. 157-158) Petitioner reported his work accident and treatment he had thus far. (PX 6 p. 157) Dr. Goldberg reviewed the MRI of the shoulder that was done on July 13, 2023 and concurred with the finding that showed a small intrasubstance supraspinatus tendon tear. (PX 6 p. 157) Dr. Goldberg's plan was to have Petitioner return for a subacromial injection and physical therapy to continue. (PX 6 p. 158)

Petitioner continued with therapy on July 21st, 24th, and 26th of 2023. (PX 13)

On July 27, 2023, Petitioner returned to see Dr. Goldberg. (PX 6 p. 160) He performed a corticosteroid injection on Petitioner's right shoulder. (PX 6 p. 161)

Petitioner continued with therapy on July 28th, 31st, August 2nd, 4th, and 7th, 2023. (PX 8) Petitioner had a re-examination on August 9, 2023 that noted overall improvement as 10% and recommended him to continue 2 to 3 times a week for 4 weeks. (PX 13; RX 1)

On August 9, 2023, Petitioner had a follow up with Dr. Barnabas. (PX 3 p. 79) It was noted that Petitioner received an injection with Dr. Goldberg but continued to have pain and wearing a sling. (PX 3 p. 79) Petitioner reported having a little relief from the injection and then the pain got worse. (PX 3 p. 79) Petitioner was scheduled to see Dr. Goldberg on August 27, 2023 but wanted to see

him sooner. (PX 3 p. 79) Dr. Barnabas noted that Petitioner will be seeing Dr. Goldberg and gave him a referral to see a pain management doctor (PX 3 p. 97). (PX 3 p. 79) Petitioner was to continue with physical therapy, placed on off work until September 7, 2023, and told to wear a sling. (PX 3 p. 79, 80) Petitioner was scheduled to come back for a follow up in 2 to 3 weeks. (PX 3 p. 79)

On August 10, 2023, Petitioner met with Dr. Michel Malek for surgical consultation. (PX 7 pp. 180-182) After speaking to Petitioner and reviewing all medical records including any imaging, Dr. Malek recommended a cortisone injection. (PX 6 p. 181)

Petitioner continued with therapy on August 11th, 14th, and 16th of 2023. (PX 13)

On August 17, 2023, Petitioner had a follow up with Dr. Goldberg. (PX 6 pp. 163-164) It was noted that Petitioner should continue with physical therapy for another month and if he is not significantly improved, he may be a candidate for surgery. (PX 6 p. 164)

On August 18, 2023, Petitioner met with Dr. Barnabas for a follow up. (PX 3 p. 81) Petitioner continued to have pain in his shoulder, neck and now pain was radiating down into his elbow. (PX 3 p. 81) An MRI of the right shoulder was ordered. (PX 3 p. 98) It was noted that Petitioner was scheduled to see Dr. Goldberg and Dr. Malek. (PX 3 p. 81)

Petitioner continued with therapy on August 18th, 21st, and 23rd of 2023. (PX 13)

On August 25, 2023, Dr. Malek performed cervical ESI on Petitioner. (PX 7 p. 179)

On August 28, 2023, a right shoulder MR arthrogram and CT arthrogram were performed by Dr. Brian Murray. (PX 4 p. 141-142) It revealed no evidence for a full-thickness rotator cuff tendon tear. (PX 4 p. 141-142)

Petitioner continued with therapy on August 30, 2023. (PX 13)

On August 31, 2023, Petitioner met with Dr. Malek and reported the cervical ESI performed on August 25, 2023 helped him less than 50%. (PX 7 p. 174) It was noted that Petitioner was seeing Dr. Goldberg for his shoulder pain. (PX 7 p. 174) EMG study was recommended. (PX 7 p. 174)

Petitioner continued with therapy on September 1, 2023. (PX 13)

On September 6, 2023, Petitioner met with Dr. Barnabas for a follow up. (PX 3 p. 82) Petitioner rated pain level at 6-7/10 for his shoulder. (PX 3 p. 82) It was noted that Petitioner saw Dr. Malek and received an injection that made him nauseous. (PX 3 p. 82) Petitioner was placed off work until October 5, 2023. (PX 3 p. 83)

Petitioner continued with therapy on September 6th, 8th, 11th, and 12th noting overall improvement of 30-40% and it was recommended that he continue 2-3 times a week for 4 weeks. (PX 13; RX 1)

On September 13, 2023, an EMG study was completed. (PX 3 pp. 105-107) It revealed an abnormal test, an electrodiagnostic evidence of the right C6 cervical spine radiculopathy. (PX 3 pp. 105-107)

On September 14, 2023, Petitioner had a follow up with Dr. Goldberg. (PX 6 pp. 166-167) Dr. Goldberg noted that Petitioner had an MR arthrogram and CT arthrogram on August 28, 2023 that was unremarkable. (PX 6 p. 166) He noted that Petitioner had an EMG that showed a pinched nerve and an injection by Dr. Malek that was not helpful. (PX 6 p. 166) He also noted that the injection he gave Petitioner previously did not help him either. (PX 6 p. 166) Dr. Goldberg again performed a corticosteroid injection in Petitioner's right shoulder. (PX 6 p. 166) Petitioner was scheduled for a follow up in 6 weeks and was placed off work. (PX 6 p. 167)

Petitioner continued with therapy on September 18th and 20th of 2023. (PX 13)

On September 21, 2023, Petitioner followed up with Dr. Malek. (PX 7 p. 175) Petitioner reported having persistent pain. It was noted that EMG was completed on September 13, 2023 by Dr. Orion that showed evidence of right C6 radiculopathy. (PX 7 p. 175) Based on the findings from EMG, Dr. Malek recommended a second cervical ESI. (PX 7 p. 175)

Petitioner continued with therapy on September 25, 2023. (PX 13)

On September 26, 2023, Petitioner met with Dr. Barnabas for a follow up. (PX 3 p. 84) It was noted that Petitioner was frustrated because he was still in a lot of pain even after physical therapy and an injection in the cervical area by Dr. Malek. (PX 3 p. 84) He rated his pain at 6/10 for his shoulder and neck. (PX 3 p. 84) Petitioner wanted to seek a second orthopedic opinion and was given information for Dr. Poepping, Dr. Park, Dr. Markarian, Dr. Scramberg or "anybody he may know" (PX 3 p. 99). (PX 3 p. 84) Petitioner was placed off work until October 24, 2023. (PX 3 p. 85)

Petitioner continued with therapy on September 27, 2023. (PX 13)

On September 28, 2023, Dr. Malek performed a second cervical ESI on Petitioner. (PX 7 p. 178)

On September 29, 2023, Petitioner met with Dr. Thomas Poepping for a second orthopedic opinion. (PX 9 pp. 199-204) After reviewing the MRI, medical records sent by Dr. Barnabas, and physical examination, Dr. Poepping concluded that Petitioner's symptomatology was centered in his AC joint. (PX 9 p. 199) Dr. Poepping performed an injection in the right AC joint with 40 mg of Kenalog and 2 ml of lidocaine. (PX 9 p. 199)

Petitioner continued with therapy on October 2, 2023. (PX 13)

On October 5, 2023, Petitioner reported to Dr. Malek that he had "roughly about 50% improvement" from the second cervical ESI. (PX 7 p. 176) It was recommended that Petitioner to continue orthopedic care, complete current course of physical therapy, pain medication as needed, and consider a third cervical ESI in 2 weeks. (PX 7 p. 176)

Petitioner continued with therapy on October 6th, 9th, and 11th of 2023. (PX 13)

On October 13, 2023, Dr. Malek performed a third cervical ESI on Petitioner. (PX 7 p. 177; PX 10 p. 220)

Petitioner continued with therapy on October 16, 2023. (PX 13)

On October 18, 2023, Petitioner had a follow up with Dr. Poepping. (PX 9 p. 196) It was noted that Petitioner only received a relief for 1 hour after the injection in his AC joint. (PX 9 p. 196) Petitioner reported having severe pain with cracking in the right shoulder. (PX 9 p. 196) Physical examination revealed tenderness over the greater tuberosity, anterior joint line, long head of the biceps, and a little bit over the greater tuberosity. (PX 9 p. 196) Petitioner was interested in surgery and Dr. Popping was to begin the authorization process. (PX 9 p. 196)

On October 20, 2023, Petitioner met with Dr. Malek. (PX 7 p. 173) Dr. Malek noted that Petitioner was improving regarding his neck pain and needed to continue treatment with Dr. Poepping regarding his shoulder. (PX 7 p. 173)

On October 20, 2023, Petitioner met with Dr. Barnabas for a follow up. (PX 3 p. 86) Petitioner informed Dr. Barnabas that he had seen Dr. Poepping who placed him off work until December 22, 2023 for tentative surgery on the right shoulder. (PX 3 p. 86) Petitioner further informed Dr. Barnabas that he was seeing Dr. Malek later and rated his pain at 4/10 for neck and 8/10 for right shoulder. (PX 3 p. 86) Petitioner was told to continue with physical therapy, placed off work until November 17, 2023, come back in 4 weeks as they seek to get an authorization for surgery. (PX 3 p. 86, 87)

Petitioner continued with therapy on October 20th, 25th and 27th of 2023. (PX 13)

On November 17, 2023, Petitioner met with Dr. Barnabas for a follow up. (PX 3 p. 88) Petitioner reported having pain and was scheduled for an IME on December 6, 2023 with Dr. Jay Levine. (PX 3 p. 88) Petitioner reported having an EMG that showed C6 radiculopathy. (PX 3 p. 88) Dr. Barnabas recommended Petitioner to see Dr. Malek. (PX 3 p. 88) Petitioner was placed off work until January 12, 2024. (PX 3 p. 89)

On December 22, 2023, Petitioner had a follow up with Dr. Poepping. (PX 9 p. 194) Physical examination of Petitioner revealed tenderness over the AC joints and some mild tenderness over the anterior joint line and long head of the biceps. (PX 9 p. 194) Petitioner reported having severe pain in the right shoulder. (PX 9 p. 194) Dr. Poepping noted that he reviewed the IME report by Dr. Levin who did not recommend surgical treatment for the right shoulder because he did not feel there was anything structurally that would be causing Petitioner's pain. (PX 9 p. 194) Dr. Poepping stated that it was unclear what Dr. Levin considered as the source of the pain, however, he believed that Petitioner had "a clear association between his injury where he felt a painful pop in the superior shoulder with a lifting maneuver, although not heavy" and are related to the movement of the shoulder more than the actual weight of the object. (PX 9 p. 194) Dr. Poepping opined that Petitioner had an excellent transient response to the AC joint injection where most of the pain was located. (PX 9 p. 194) Dr. Poepping further opined that since Petitioner failed to improve with

conservative treatment, he may be a candidate for surgery. (PX 9 p. 194) Dr. Poepping stated that he would continue to seek authorization for surgery and placed Petitioner on restrictions – return to work with 5 pounds lift/carry, no overhead work, and may drive company vehicle. (PX 9 pp. 194-195)

On January 11, 2024, Petitioner met with Dr. Barnabas for a follow up. (PX 3 p. 90) It was noted that after the IME, Petitioner was scheduled to return to work. (PX 3 p. 90) Petitioner was seeing Dr. Poepping who had placed him on restricted duties. (PX 3 p. 90) Petitioner was prescribed with pain medication. (PX 3 p. 90)

Respondent's Section 12 Examiner – Dr. Jay Levin

On December 13, 2023, Dr. Levin performed a Section 12 independent medical evaluation of Petitioner. (RX 1) Physical examination revealed positive apprehension test for right shoulder pain; positive for drop arm test for pain on the right shoulder; sternoclavicular tenderness on the right without swelling; numbness in the tip of Petitioner's thumb, third, fourth, and fifth finger on the right; diffused right shoulder pain with internal rotation; and diffused right shoulder pain with external rotation. (RX 1 p. 3) Dr. Levin viewed the MRI of the right shoulder dated July 13, 2023 which in his view showed a rotator cuff tendinitis with evidence of a full thickness or high-grade tear of the right shoulder. (RX 1 p. 4) Dr. Levin viewed the MRI of the cervical spine dated July 13, 2023 which in his view showed degenerative disc changes at C3-4 and at C5-6. (RX 1 p. 4) Dr. Levin opined that CT right shoulder and MR arthrogram of the right shoulder dated August 28, 2023 was normal. (RX 1 p. 4) Dr. Levin's office completed x-rays of 7 views of the lateral and oblique that showed minimal degenerative disc changes at C5-6. Dr. Levin's office completed x-rays of 3 views of the lateral axillary/outlet that was normal. (RX 1 p. 4) Dr. Levin listed all medical treatment that Petitioner received thus far including 1 page document containing Petitioner's job description. (RX 1 pp. 4-8)

Dr. Levin diagnosed Petitioner with cervical myofascial strain and right shoulder strain. (RX 1 p. 8) He opined that the injury sustained by Petitioner was causally related to the work accident of July 7, 2023 since the symptoms started immediately thereafter. (RX 1 p. 8) He did not believe Petitioner needed additional treatment or a surgery for his right shoulder. (RX 1 p. 9) Dr. Levin opined that Petitioner should have reached maximum medical improvement ("MMI") between 0 to 6 weeks post injury, up to 10 days post injury the use of oral anti-inflammatories, and 10 sessions of physical therapy at most. (RX 1 p. 9)

Dr. Levin prepared an impairment rating. (RX 1 p. 14) Dr. Levin opined 2% person-as-a-whole permanent impairment rating for Petitioner's cervical spine and 1% person-as-a-whole permanent impairment rating for Petitioner's right shoulder, combined as 3% person-as-a-whole. (RX 1 p. 14)

Respondent's Utilization Review ("UR")

Respondent submitted an UR reported dated June 11, 2024 prepared by Dr. Lawrence Friedman, an internal medicine of Medical Reviewstream at Concentra. (RX 3)

The UR reports noted that Petitioner's date of injury as July 8, 2023, the correct date of injury is July 7, 2023. (RX 3) Respondent's UR report non-certified the following treatment: (1) EMG study for the neck and right upper extremity on September 13, 2023 (RX 3 p. 49) for lack of clinical findings suggestive of possible nerve injury complication; (2) cervical epidural steroid injection on October 13, 2023 (RX 3 p. 59) for lack of information; and (3) 23 chiropractic care sessions for the cervical spine and right shoulder between July 14, 2023 to September 11, 2023 (RX 3 p. 67) for exceeding the guideline recommendation.

Petitioner's Current Condition

Petitioner testified that since the accident, he has "slight issues, but not as much." (T. 34) He testified that "[i]t doesn't happen all the time, but sometimes my shoulder pops." (T. 34) He testified that he would take ibuprofen to "ease the pain a little bit." (T. 34) He testified that he does not wear slings and works with a partner. (T. 34)

Petitioner testified that as a result of the accident, he has difficulty "sometimes bending over or lifting over my head too much, but not as much." (T. 34) He testified that he could lift his left arm all the way overhead but his right arm is "slight off just a little bit." (T. 34-35) Petitioner testified that he does not have any difficulty going in and out of the semi-truck. (T. 35) Petitioner testified that "every so often, but not all the time" he has pain in his right shoulder and neck. (T. 35) He rates his pain at 5/10, "but it goes away, like, every so often, so...." (T. 35) Petitioner testified that driving long-distance does not cause any issues for his right shoulder or neck. (T. 35)

Petitioner testified that the last time he saw a doctor for this accident was on February 2, 2024. (T. 35)

On cross-examination, Petitioner testified that he is still working for Respondent in the same position as July 7, 2023 and receiving "a little bit more" pay. (T. 33)

On cross-examination, Petitioner testified that he had been back to work full duty for Respondent for approximately 1 year. (T. 37) Since returning to work, Petitioner said that he would take time off to "relax the shoulder a little bit." (T. 38) When he would take time off, Petitioner testified that he would tell his supervisor, Robert Cook, that he "didn't feel good." (T. 39-41) Petitioner testified that he believed that at least one time, he told Robert Cook that he needed a day off work for his shoulder and/or neck. (T. 42) Petitioner testified that he never asked anyone at Respondent for modifications or adjustments to his work activities because of his injuries. (T. 43) Petitioner testified that he does unload items from his truck and would consider his job as "a heavy-duty job." (T. 44)

On cross-examination, Petitioner confirmed that he has not had any injuries to his shoulder and or his back since coming back to work. (T. 43-44) Petitioner confirmed that he is 6 feet tall and 31 years old. (T. 44)

Respondent's Witness Testimony – Robert Cook

Cook testified that he is employed by Respondent as a Transportation Supervisor. (T. 59-60) Respondent is located in Glenwood, Illinois. (T. 60) He had been working for Respondent for 3 years and 6 months. (T. 60) His job duties included managing 31 drivers, 6 delivery assistants and 3 dispatchers. (T. 60) Cook testified that Petitioner is one of the employees that he supervises. (T. 61) He is aware of Petitioner's workers' compensation case. (T. 61) He is aware that Petitioner was off work for several months prior to February 4, 2024. (T. 61)

Since returning to work, Cook testified that Petitioner has not asked for time off from work due to his shoulder or neck. (T. 62) Cook described Petitioner as "one of the top performers" and a solid good employee. (T. 62) Cook testified that he did do a route ride with Petitioner and his delivery assistant and he was "fine." (T. 63) Cook testified that Petitioner did not require any assistance or help because of his shoulder or neck. (T. 63) Cook explained that there are 2 people on the truck and they both have parts. (T. 63) Cook testified that since being back to work, Petitioner requested days off for personal things, but not for his neck. (T. 63) Cook testified that when Petitioner asked for time off, he did not tell him that it was "because of his shoulder, neck, or work injuries." (T. 63)

On cross-examination, Cook explained that when an employee wants to take time off, he/she would come in and ask for time off and he would take time from his/her time bucket. (T. 64) If the employee calls off work, he will apply sick time. (T. 64) Cook further explained that he did not track why an employee was taking time off. (T. 65) If someone calls off, he applied sick time but the employee was not required to give a reason for calling off. (T. 65) Cook agreed that Petitioner could be calling off due to his shoulder and/or neck pain. (T. 65)

On cross-examination, Cook testified that they could accommodate light-duty restrictions but not when they are "laying down." (T. 67) Cook testified that workers comp lady contacts him regarding restrictions, if any, when an employee returns from a work-related injury. (T. 68-69) Cook confirmed that he is the person that places an injured employee back on the schedule based on what the workers comp lady tells him. (T. 68-69) If the restriction from the doctor state that the employee "can't lift his arm or anything, he's got to stay in the office." (T. 69) If the restriction is that the employee can perform mobility with "upper parts," Cook would put them to work such as cleaning trucks. (T. 69)

On cross-examination, Cook testified that he took notes from HR that stated that Petitioner was off work from July 9th to October 8th and was instructed to return to work on October 9, 2023. (T. 71) Petitioner worked from October 9th to October 11th on modified duty and was off work from October 12, 2023 to February 6, 2024. (T. 72) Cook confirmed that his notes came from "workers' compensation lady." (T. 72)

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 be a credible witness. Petitioner was direct and answered all the questions posed by his attorney and Respondent's attorney. 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 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).

Petitioner testified that he last saw Dr. Poepping on February 2, 2024 and released to full duty on February 4, 2024. (T. 32-33; 35) Respondent in their proposal stated that Dr. Poepping released Petitioner to MMI/full duty on February 6, 2024. Cook testified that Petitioner was off until February 4, 2024. However, the Arbitrator notes that there are no medical records to confirm the date Petitioner last saw Dr. Poepping other than his testimony.

Both parties agreed that there is no dispute as to the accident itself. The disagreement is whether Petitioner's current condition of ill-being is causally related to the injury that occurred on July 7,

2023. Respondent's position is that Petitioner's current complaints of pain and ongoing difficulties is personal and "not the work loss."

Respondent's Section 12 examiner, Dr. Levin opined that the injury sustained by Petitioner was causally related to the work accident of July 7, 2023 since the symptoms started immediately thereafter. (RX 1 p. 8) His physical examination conducted on December 13, 2023 revealed positive apprehension test for right shoulder pain, right shoulder pain with drop arm test, sternoclavicular tenderness on the right without swelling, diffused right shoulder pain with internal and external rotation. (RX 1 p. 3)

Petitioner's treating doctor for his cervical, Dr. Malek noted that on October 20, 2023, Petitioner was improving regarding his neck pain and needed to continue treatment with Dr. Poepping regarding his shoulder. (PX 7 p. 173)

Petitioner's treating doctor for his right shoulder, Dr. Poepping's physical examination conducted on December 22, 2023 revealed tenderness over the AC joints and some mild tenderness over the anterior joint line and long head of the biceps. (PX 9 p. 194) Petitioner reported having severe pain in the right shoulder. (PX 9 p. 194)

Petitioner testified that he still has "slight issues, but not as much." (T. 34) He said that his shoulder pops sometimes but not often and he discontinue wearing a sling. (T. 34) He further stated that he sometimes has difficulty bending over or lifting. (T. 34) When he has pain, he would rate it at 5/10 "but it goes away, like, every so often, so..." (T. 35)

The Arbitrator notes that Petitioner's testimony is consistent with the medical records that corroborated Petitioner's accident, injury, diagnosis, and treatment. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being with regard to his right shoulder and neck is causally related to the injury sustained on July 7, 2023.

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).

According to AX 1, Respondent has paid a total of \$53,821.92 in medical expenses. Respondent's UR reports concluded the EMG study conducted on September 13, 2023 for lack of clinical findings of possible nerve injury complication, the cervical epidural steroid injection performed

on October 13, 2023 for lack of information, and 23 sessions of chiropractic care from July 14, 2023 to September 11, 2023 for exceeding the guideline recommendation were non-certified. Respondent's position is that the Arbitrator should deny all non-certified treatments since Petitioner's treating doctors failed to speak with the UR providers and/or the UR reports were not appealed, and Respondent's Section 12 examiner's opinion.

Section 8.7 (5) of the Act states that "[a]n admissible utilization review shall be considered by the Commission, along with all other evidence and in the same manner as all other evidence, and must address along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment. Nothing in this Section shall be construed to diminish the rights of employees to reasonable and necessary medical treatment or employee choice of health care provider under Section 8(a) or the rights of employers to medical examinations under Section 12."

Therefore, it's not whether Petitioner's treating doctors failed to speak to UR providers or that UR reports were not appealed. The question is whether the medical services Petitioner received were necessary and the expenses reasonable.

Prior to ordering an EMG study, Petitioner experienced right upper extremity numbness, tingling and weakness with severe pain. The MRI of the cervical spine on July 13, 2023 revealed diffuse disc bulging at C3-4 and C5-6. Dr. Levin viewed the MRI of the cervical spine dated July 13, 2023 which in his view showed degenerative disc changes at C3-4 and at C5-6. (RX 1 p. 4) On September 6, 2023, Dr. Barnabas ordered EMG study to evaluate for a cervical spine radiculopathy and/or right upper extremity peripheral neuropathy. (PX 3 pp. 82, 83, 105-107) The EMG study showed an electrodiagnostic evidence of a right C6 cervical spine radiculopathy. (PX 3 p. 107) Based on the findings from EMG, Dr. Malek recommended a second cervical ESI. (PX 7 p. 175) The Arbitrator finds that the EMG study conducted on September 13, 2023 was necessary and reasonable for Petitioner's injury and treatment that followed.

Prior to performing a third cervical ESI (October 13, 2023), Dr. Malek met with Petitioner on October 5, 2023. (PX 7, p. 176) Dr. Malek noted that Petitioner had 50% improvement after receiving his second cervical ESI on September 28, 2023. Petitioner was continuing with therapy at the time and Dr. Malek wanted to see how he was doing for the next 2 weeks. Petitioner had therapy on October 6th, 9th, and 11th of 2023. (PX 13) It was noted that Petitioner continued to have residual cervical pain at a level interfering with daily activities. (PX 7 p. 177) On October 13, 2023, Dr. Malek performed a third cervical ESI. (PX 7 p. 177) On October 20, 2023, Dr. Malek noted that Petitioner "has done pretty well. His therapy is ongoing, and he continues to get improvement with therapy from the neck standpoint." (PX 7 p. 173) Based on the above, the Arbitrator finds that the third cervical ESI was necessary and reasonable for Petitioner's injury and treatment that followed.

It appears Petitioner had a total of 35 therapy sessions. (PX 13) Dr. Barnabas recommended therapy on July 12, 2023. (PX 3 pp. 75-76) Petitioner had an initial evaluation on July 14, 2023 that recommended 2-3 sessions a week for 4 weeks. Petitioner had therapy sessions on July 17th, 19th, 21st, 24th, 26th, 28th, 31st, August 2nd, 4th, and 7th of 2023. (PX 13) On August 9, 2023, Dr. Barnabas recommended Petitioner to continue with therapy noting Petitioner's severe pain. (PX 3 p. 80) Petitioner then had a reevaluation for therapy on August 9, 2023 that recommended 2-3

sessions a week for 4 weeks after having 10% improvement. Petitioner had therapy sessions on August 9th, 11th, 14th, 16th, 18th, 21st, 23rd, 30th, September 1st, and 6th of 2023. (PX 13) On September 6th 2023, Dr. Barnabas recommended Petitioner to continue with therapy, again noting Petitioner's severe pain. (PX 3 p. 83) Petitioner had therapy sessions on September 8th, 11th, and 12th of 2023. (PX 13) Petitioner had another evaluation on September 12, 2023 that recommended 2-3 sessions a week for 4 weeks after having 30 to 40% improvement. (RX 1) Petitioner had therapy sessions on September 18th, 20th, 25th, 27th, October 2nd, 6th, 9th, 11th, 16th, 20th, 25th, and 27th of 2023. (RX 13) Respondent's Section 12 examiner, Dr. Levin concluded that Petitioner required nothing more than ten physical therapy sessions. (RX 1) However, the Arbitrator finds Drs. Barnabas, Goldberg, Malek, and Poepping more persuasive and finds that a total of 35 therapy sessions were necessary and reasonable for Petitioner's injury and treatment that followed.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that the EMG study, the third cervical ESI, and 35 sessions of therapy was reasonable to cure or relieve from the effects of the accidental injury that occurred on July 7, 2023. Respondent shall pay all outstanding medical services up to MMI date of February 4, 2024, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is given credit for \$53,821.92 in medical expenses already paid.

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).

Respondent's Section 12 examiner, Dr. Levin opined that Petitioner should have reached MMI from zero to 6 weeks post-accident. (RX 1) He diagnosed Petitioner with minor strains and sprains to the right shoulder and neck. (RX 1) Based on his diagnoses, Dr. Levin further opined that Petitioner's condition required nothing more than 10 physical therapy sessions and over-the-counter anti-inflammatory medication up to 10 days. (RX 1) Obviously, Petitioner's injury was more than minor strains and sprains to the right shoulder and neck, as demonstrated throughout the time he was seeking and receiving treatment from various doctors and therapy. Petitioner was credible during his testimony without any exaggeration. In fact, Respondent's witness, Petitioner's supervisor, Cook testified that not only is Petitioner a good employee but one of his best performers. (T. 62) Cook testified that he could put an injured employee back on the schedule once he gets approval from the workers' compensation lady. (T. 72) Cook testified that he was not

instructed to put Petitioner back on the schedule until February 6, 2024. (T. 72) As such, no light duty positions were provided to Petitioner, Petitioner was placed on MMI and released to full duty work on February 4, 2024 at his last Dr. Poepping's visit on February 2, 2024.

Based on the above, the Arbitrator finds Respondent liable for 6 1/7 weeks of TTD benefits (December 23, 2023 through February 3, 2024) at a weekly rate of \$1,512.24, which corresponds to \$9,289.47 to be paid directly to Petitioner. Respondent has paid TTD benefits in the amount of \$36,079.64. (AX 1)

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that the record contains an impairment rating of a 3% person-as-a-whole as determined by Dr. Levin in his December 13, 2023 Section 12 evaluation and pursuant to the 6th Edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. (RX 1 p. 14) The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. As discussed below, the duration and course of Petitioner's treatment does support a permanent partial disability finding to a degree greater than what the impairment rating would reflect. Therefore, the Arbitrator gives lesser weight to this factor. See *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner is a semi-truck driver and delivers "heavy food products" to restaurants. He began working for Respondent on September 22, 2022, worked modified duty from October 9th to 11th of 2023, and returned to full duty on February 6, 2024. The Arbitrator therefore gives moderate 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 29 years old at the time of the accident. See *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability). The Arbitrator gives less weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner is a high school graduate with a certificate in mechanic, has a CDL license, and one of Respondent's top performers. Petitioner testified that at the time of the accident, he was earning \$37.83 per hour and is currently earning \$41.40 per hour. The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Dr. Yassin diagnosed Petitioner with a sprain of the right shoulder; Concentra diagnosed Petitioner with a right shoulder strain and cervical spine strain; Dr. Barnabas ordered an MRI, physical therapy, and an orthopedic consultation; and after MRIs of right shoulder and cervical were completed, Petitioner received referrals to see Drs. Goldberg, Malek, and Poepping where he received injections. Respondent's Section 12 examiner, Dr. Levin diagnosed Petitioner with a cervical myofascial strain and right shoulder sprain and placed him on MMI on December 13, 2023. Petitioner's treating physician, Dr. Poepping placed Petitioner on MMI on February 4, 2024. Petitioner testified that he still has slight issues such as not being able to lift his right arm all the way, sometimes his shoulder pops but "doesn't happen all the time," and that he takes ibuprofen to ease the pain. (T. 33-35) The Arbitrator gives more 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%, pursuant to §8(d)(2) of the Act which corresponds to 50 weeks of permanent partial disability benefits at a weekly rate of \$1,024.87, maximum PPD rate for an accident date of July 7, 2023.

Other Issues – whether Petitioner exceeded the two-doctor rule, 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 "two-doctor rule" refers to Petitioner's choice of providers as described in Section 8(a) of the Act. Section 8(a) of the Act states a Respondent is responsible for "(1) all first aid and emergency treatment; plus (2) all medical, surgical and hospital services provided by the physician, surgeon or hospital initially chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said initial service provider or any subsequent provider of medical services in the chain of referrals from said initial service provider; plus (3) all medical, surgical and hospital services provided by any second physician, surgeon or hospital subsequently chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said second service provider or any subsequent provider of medical services in the chain of referrals from said second service provider..." 820 ILCS 305/8.

After the accident on July 7, 2023, Petitioner went to Advocate South Suburban Hospital – ER on July 8, 2023 complaining of right shoulder pain. (PX 1 p. 7) On July 11, 2023, Respondent's HR referred Petitioner to Concentra where he received treatment. (PX 2 p. 18) Thereafter, Petitioner sought treatment with Dr. Barnabas who would be his first choice. (PX 3) Any subsequent treatment with Drs. Malek, Goldberg, and Poepping were made through Dr. Barnabas' referrals.

Based on the above, the Arbitrator finds that Petitioner has not exceeded the two-doctor rule.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

FEBRUARY 14 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037285
Case Name	Mark Tincher v. City of Murphysboro
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0345
Number of Pages of Decision	7
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	, Thomas Rich
Respondent Attorney	, Patrick Keefe

DATE FILED: 8/12/2025

/s/ Marc Parker, Commissioner

Signature

18 WC 037285

Page 1

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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Tinchier,

Petitioner,

vs.

No. 18 WC 037285

City of Murphysboro,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §8(a) AND §19(h)

This matter comes before the Commission on Petitioner's §8(a) and §19(h) Petition for Review of the Arbitrator's April 6, 2021 decision, seeking additional medical expenses and prospective medical care for his cervical spine condition. Specifically, Petitioner seeks payment of medical bills incurred since the arbitration hearing, and wishes to undergo the two level disc replacement surgery recommended by Dr. Matthew Gornet.

Petitioner's case was originally tried before the Arbitrator on March 12, 2021 for left shoulder and cervical spine injuries he sustained from a work accident on August 27, 2018. The Arbitrator awarded Petitioner 25% loss of use of the person-as-a-whole under §8(d)2 of the Act. On April 13, 2023, Petitioner filed a §8(a)/19(h) and Petition, seeking additional medical benefits due to the alleged worsening of his cervical spine injury sustained as a result of his August 27, 2018 accident. On July 17, 2025, a hearing on this Petition was held by Commissioner Parker. At that time, Petitioner stipulated he was only requesting §8(a) benefits at this time.

Findings of Fact:

On August 27, 2018, Petitioner, an animal control officer, sustained injury to his left shoulder and cervical spine. The German shepherd on the leash Petitioner was holding jumped

18 WC 037285

Page 2

and started running, jerking his left arm and neck. On August 14, 2019, Dr. Matthew Gornet performed disc replacement surgery at C5-6 and C6-7. On January 13, 2020, Dr. Gornet released Petitioner to full duty work with no restrictions. At the arbitration hearing, Petitioner testified that after that surgery, his headaches improved by 75%, and his neck and radiating pain also improved, although he could not turn his head to the left and right as much as he could prior to his accident. Dr. Gornet placed Petitioner at maximum medical improvement on August 17, 2020, which was the last time Petitioner saw him prior to arbitration.

At the July 17, 2025 Review hearing, Petitioner testified that since the arbitration hearing he has been working in his prior position. His symptoms, however, have progressively worsened. The pain in his neck has increased and started radiating down his left shoulder and arm, and a little into his right arm. His headaches have also increased tremendously, and he hasn't been getting much sleep. Petitioner testified that he has not had any new accidents or injuries since his August 27, 2018 accident.

On August 15, 2022, Petitioner returned to Dr. Gornet, who ordered physical therapy. In March 2023, Dr. Gornet ordered an injection at C3-4. Ultimately, Dr. Gornet has recommended surgery to replace Petitioner's C3-4 and C4-5 discs. Petitioner wishes to undergo that surgery.

At the July 17, 2025 hearing, Petitioner offered into evidence, inter alia, the records and the September 19, 2024 deposition testimony of Petitioner's treating surgeon, Dr. Gornet. Dr. Gornet testified that on August 15, 2021, Petitioner came to see him for his annual post-op visit. He was doing well but was still plagued by headaches. Petitioner returned on January 30, 2023, and reported his neck pain and headaches had increased. He also complained of left arm numbness, which was a progression of his original problem.

Dr. Gornet ordered a cervical MRI, which Petitioner underwent on January 30, 2023. That MRI was reviewed by radiologist, Dr. Matthew Ruyle. Dr. Ruyle reported it showed a midline annular tear/fissure at the apex of a 3 mm protrusion, with a small caudally extruded disc fragment, resulting in moderate foraminal stenosis. At the C4-5 level, Dr. Ruyle documented a right paracentral annular tear/fissure and a 1-1.5 mm protrusion, resulting in dural displacement but no stenosis.

Dr. Gornet ordered physical therapy and referred Petitioner for a steroid injection which was performed on March 14, 2023. When that conservative treatment failed to provide significant relief, Dr. Gornet recommended surgery to replace Petitioner's C3-4 and C4-5 cervical discs. Dr. Gornet opined that the pathology in those discs had progressed since Petitioner's accident, and the need for this surgery was causally related to Petitioner's original August 27, 2018 work injury. Dr. Gornet also referred Petitioner to neurologist, Dr. Dan Phillips, for a nerve conduction study, the results of which, Dr. Gornet opined, essentially confirmed that Petitioner had a structural problem of his spine without significant neurologic impairment. Dr. Gornet also opined that the charges for his services to Petitioner were reasonable, customary, and related to Petitioner's August 27, 2018 accident.

At the July 17, 2025 hearing, Respondent offered into evidence the December 13, 2024 deposition testimony of its Section 12 orthopedic surgeon, Dr. Michael Chabot. On June 16, 2023, Dr. Chabot conducted an examination of Petitioner and a review of his records. Dr. Chabot testified that Petitioner gave a history describing his August 27, 2018 accident, and the treatment and surgery he underwent following it. Petitioner reported that after Dr. Gornet's disc replacement surgery in August 2019 he was doing fine, and that he returned to work in January 2020. However, Petitioner also informed him that in September 2022, he developed increasing neck pain with radiation to his shoulders, for which he returned to Dr. Gornet. At Dr. Chabot's exam, Petitioner complained of pain radiating into his left arm and hand to his middle finger, and headache symptoms which were not improved with physical therapy. Dr. Chabot reviewed Petitioner's treating records, but requested Petitioner's January 30, 2023 MRI before completing his report.

On September 14, 2023, Dr. Chabot reviewed Petitioner's MRI and additional treating records. Dr. Chabot acknowledged Petitioner's January 30, 2023 cervical MRI showed disc bulging and degeneration at C3-4, but he did not believe those changes were different than shown on Petitioner's 2019 cervical MRI. However, Dr. Chabot suggested the MRIs be reviewed by a neuroradiologist to confirm the pathology at C3-4. Dr. Chabot agreed that Petitioner's treatment to date had been reasonable, necessary, and causally related to his August 27, 2018 work injury, though he did not believe Petitioner's C3-4 disc was the source of his headaches or neck pain. Dr. Chabot recommended further diagnostic tests to ascertain the origin of Petitioner's left arm symptoms.

On July 2, 2024, Dr. Chabot reviewed additional records from Dr. Gornet and Petitioner's January 30, 2023 cervical MRI images, on which he observed disc bulging at C3-4, but no neural compression either at C3-4 or C4-5. He did not believe Petitioner's disc pathology was associated with his work injury. Dr. Chabot opined that while Petitioner's persisting complaints could be causally related to his prior work injury and surgery, Petitioner did not need any further medical treatment or surgical intervention at C3-4 and C4-5. On April 17, 2025, Dr. Chabot reviewed additional records and opined Petitioner had reached MMI, did not need surgery at C3-4 or C4-5, and that any changes at those levels were age-related.

Respondent retained Dr. Gregory Cizek, a neuroradiologist, to review Petitioner's CTs and MRIs. At the July 17, 2025 hearing, Respondent also offered into evidence Dr. Cizek's March 17, 2025 report and June 25, 2025 deposition testimony. Dr. Cizek opined that Petitioner's 2019 MRI showed that his C3-4 and C4-5 discs had very small abnormal contours, although they did not appear to hit the cord or any nerve roots. Dr. Cizek agreed with some of the findings the initial radiologists reported on Petitioner's MRIs, but he disagreed with the measurements, size, and effect of the discs. On cross examination, Dr. Cizek admitted that Petitioner's left-sided pathology at C3-4 did increase in size from 2019 to 2013. Dr. Cizek further admitted he was unaware that Dr. Gornet's objective intraoperative findings during his 2019 surgery, which showed Petitioner's herniation was much larger than what was expected from MRI imaging. Dr. Cizek admitted he had not reviewed the intraoperative video Dr. Gornet took during his 2019 surgery.

Conclusions of Law:

Pursuant to §8(a) of the Act, a Petitioner is entitled to any and all necessary care to cure or relieve the effects of their work-related injuries. 820 ILCS 305/8(a). Upon establishment of a causal nexus between the injury and the Petitioner's current condition of ill-being, Respondent is liable for all medical care reasonably required to diagnose, relieve, or cure the effects of the Petitioner's work injuries. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill. App. 3d 705, 709 (2d Dist., 1997). An employer's liability for medical services under §8(a) of the Act is continuous so long as the services are required to relieve the injured employee from the effects of the injury. *Efengee Elec. Supply Co. v. Industrial Comm'n*, 36 Ill. 2d 450, 453 (1967).

In this case, Dr. Gornet testified that while Petitioner initially did well following his August 2019 surgery, at subsequent visits he still complained of headaches and neck pain which was progressing. He testified that Petitioner's January 30, 2023 cervical spine MRI revealed a large herniation at C3-4 and a protrusion at C4-5, both of which had progressed since 2019. Petitioner's symptoms had worsened, necessitating his need for further treatment. Dr. Gornet opined Petitioner's best treatment option would be to have his C3-4 and C4-5 discs replaced. Dr. Gornet further opined that Petitioner's need for this surgery was related to his original work injury, and was a progression of his problem.

The Commission find the opinions of Dr. Gornet, regarding causation and need for disc replacement surgery at C3-4 and C4-5, more persuasive than the opinions of Dr. Chabot and Dr. Cizek. Dr. Gornet was Petitioner's treating surgeon. Dr. Chabot agreed that Petitioner's 2023 MRI showed disc degeneration and bulging at C3-4, and mild desiccation at C4-5. Although Dr. Chabot did not believe Petitioner needed disc replacement surgery for C3-4 and C4-5, he admitted that Petitioner's persistent complaints could be causally related to his work injury and subsequent surgery. Dr. Chabot further agreed that the treatment Petitioner received through September 14, 2023 had been reasonable, necessary, and causally related to his August 27, 2018 work injury.

While Dr. Cizek did not believe Petitioner's imaging showed nerve root impingement at C3-4 or C4-5, he acknowledged that the protrusion at C3-4 had progressed in size from 2019 through 2023. Dr. Cizek's interpretation of Petitioner's cervical spine on his January 30, 2023 MRI contradicted the interpretation of radiologist, Dr. Matthew Ruyle. Dr. Ruyle observed, at Petitioner's C3-4 level, a midline annular tear/fissure at the apex of a 3 mm broad-based protrusion with a small caudally extruded disc fragment. At Petitioner's C4-5 level, Dr. Ruyle documented a right paracentral annular tear/fissure and a 1-1.5 protrusion resulting in dural displacement, though without stenosis.

Dr. Cizek agreed that that radiologists can have different interpretations of films. He admitted his analysis did not take into account any of Petitioner's clinical symptoms or other test results, which Dr. Gornet did. Dr. Cizek did not make treatment recommendations for Petitioner,

18 WC 037285

Page 5

and testified he would defer any opinion regarding needed treatment to Petitioner's treating physician, Dr. Gornet.

At the July 17, 2025 hearing, Petitioner offered into evidence the medical bills he has incurred since the August 27, 2018 arbitration hearing. Respondent offered no objection to the reasonableness and necessity of those charges, only to liability. However, in Respondent's proposed findings for this Petition, Respondent appears to have withdrawn any objection to the medical bills incurred by Petitioner, as Respondent suggested the Commission find that, "Respondent is responsible for payment of medical bills incurred by Petitioner as the evidence confirms that the charges are for medical services that were reasonable, necessary and causally related to the original accident."

The Commission does find that the evidence in the record sufficiently supports a finding that the expenses itemized in Petitioner's Exhibit 3 were reasonably required to diagnose, relieve, and cure the effects of Petitioner's injuries from his August 27, 2018 accident. The Commission further finds that the surgery now being recommended by Dr. Gornet is reasonable and necessary.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition is granted to the extent discussed above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the unpaid balance of the medical bills itemized in Petitioner's Exhibit 3, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the C3-4 and C4-5 disc replacement surgery recommended by Dr. Gornet, and all reasonable and necessary attendant care, is granted.

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

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

18 WC 037285

Page 6

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

August 12, 2025MP/mcp
r-07/17/25

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/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	87WC030122
Case Name	Dorothy Konrad v. Anderson Clayton Foods
Consolidated Cases	87WC030123 87WC030124
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0346
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	
Respondent Attorney	

DATE FILED: 8/12/2025

/s/Christopher Harris, Commissioner

Signature

one of her legs and became violently ill. On June 30, 1987, Petitioner again felt extremely ill and left work. The Arbitrator determined that Petitioner sustained work-related exposures to carbon disulfide in all three claims.

The Arbitrator also found that Petitioner's conditions of ill-being, as described by her physicians, were causally connected to the carbon disulfide exposures at work. The Arbitrator was persuaded by the opinions of Petitioner's treaters, especially Dr. Daniel Hryhorczuk, a board-certified toxicologist. Dr. Hryhorczuk opined that Petitioner suffered from carbon disulfide poisoning directly as a result of her exposure at Anderson Clayton Foods and that her symptoms were permanent. Dr. Hryhorczuk testified at his deposition on March 15, 1991, that the toxicity had affected Petitioner's central nervous system. He had ordered a neural psychological evaluation which was supervised by Dr. David Hartman, an expert in neurotoxicology. Dr. Hryhorczuk testified that he relied on Dr. Hartman's evaluation in rendering his final opinion.

Dr. Hryhorczuk determined that Petitioner's intellectual functioning was below pre-morbid levels. Her performance in all areas of functioning (attention and concentration, sensory motor, visual-spatial ability, learning ability, abstract reasoning, and long and short term verbal and figural memory) was moderately to severely impaired. Petitioner was also experiencing, *inter alia*, depression, lax energy and difficulty sleeping. Dr. Hryhorczuk found that Petitioner's neuropsychological impairments were consistent with carbon disulfide exposure. He further indicated that cranial nerves, such as optic and auditory nerves, could be injured by carbon disulfide exposure as well.

The Arbitrator stated that Dr. Hryhorczuk reviewed records during his deposition and noted that Petitioner had high/low frequency drops in one or both ears, as well as a standard threshold shift in her hearing. Lee Mullen, the company nurse, recommended more hearing tests. Dr. Hryhorczuk reviewed additional records which documented that Petitioner had reduced vision in both eyes, various neurological symptoms and small lens opacities in her eyes. Dr. Frank, who had treated Petitioner for her vision problems, indicated that her symptoms were compatible with possible carbon disulfide toxemia. Dr. Hryhorczuk further testified that chronic gastritis, vomiting, diarrhea, fatigue, the inability to concentrate and emotional instability were all symptoms of carbon disulfide exposure. The Arbitrator found that Petitioner had testified to all these symptoms and that the medical records corroborated her testimony. Dr. Hryhorczuk diagnosed Petitioner with solvent encephalopathy, secondary to occupational exposure to carbon disulfide, and depression.

The arbitration transcript from the August 15, 1991 hearing contained Dr. Hryhorczuk's March 15, 1991 deposition transcript. In addition to what the Arbitrator had noted, Dr. Hryhorczuk testified that the onset from a chronic exposure of central nervous system symptoms from carbon disulfide could be fairly insidious and present as depression, vague memory loss and irritability. With regard to the "apex" of those symptoms, Dr. Hryhorczuk testified: "[T]hey would keep growing in severity as the exposure kept occurring and it would probably - - typically what I would expect to see would be some improvement in at least some of the symptoms following removal from exposure, and then the person would improve to baseline." (Arbitration Transcript, Pet. Ex. 9, pg. 94). He added: "[W]ith any toxic exposure there is some recovery that's going to take place. Recovery may not be complete, but we do expect some recovery." (Arbitration Transcript, Pet. Ex. 9, pgs. 94-95).

The arbitration transcript further revealed that according to Dr. Hryhorczuk and some of Petitioner's other treaters, there was no definitive treatment for carbon disulfide poisoning. Dr. Hryhorczuk testified: "[W]hat we can hope to do is to treat some of her symptomology. I mentioned to her that depression is a feature of her illness and that she might benefit from psychiatric care and a trial of antidepressant medication." (Arbitration Transcript, Pet. Ex. 9, pgs. 139-140). Overall, Petitioner's medical treatment for her carbon disulfide exposures primarily involved examinations/evaluations, various other tests/imaging, and prescription medication and eyeglasses. The Arbitrator awarded Petitioner reasonable and necessary medical expenses, expenses related to travel for medical appointments, temporary total disability (TTD) benefits, and wage differential benefits under Section 8(d)1 of the Act.

February 4, 1993 Commission Decision

The parties appealed the Arbitrator's decision to the Commission. On February 4, 1993, the Commission rendered one decision for all three claims modifying the award of TTD benefits and medical expenses. The Commission also converted Petitioner's permanency award to 40% loss of the person as a whole under Section 8(d)2 of the Act. The Commission determined that Petitioner had waived her rights to wage differential benefits.

The Commission's decision also clarified that following the June 30, 1987 incident, Petitioner had been off work per her physician's recommendations through August 5, 1987. She eventually left Respondent's employ on June 18, 1991. The Commission further noted Dr. Hryhorczuk's deposition testimony on March 15, 1991, that Petitioner's condition was permanent and that the period of time in which improvement could be expected had passed. Petitioner would continue to suffer from nausea and vomiting, forgetfulness and depression. Petitioner's intellectual functioning was also moderately to severely impaired and she had vision and hearing problems.

Subsequent filings/proceedings

The Commission's records indicated no further action in any of the claims following the Commission's decision until November 16, 1993 when Petitioner apparently filed a Petition for Review under Sections 19(h) and 8(a) of the Act. There is no information regarding the disposition of this petition.

The next filing occurred on October 23, 2006, when Petitioner filed a Petition for Review under Section 8(a) of the Act in all three claims. The Proof of Service stated that Petitioner had delivered a copy of her petition to Anderson-Clayton at 1201 E. Morton Avenue, Jacksonville, Illinois 62650. The Commission dismissed Petitioner's action on December 31, 2008 for failure of either party to appear on two separate occasions despite due notice of hearing being given each time. The Commission's Order indicated that Petitioner was now pro se.

On May 10, 2024, more than 15 years later, Petitioner filed a Petition for Review under Sections 19(h) and 8(a) of the Act on CompFile, the Commission's electronic filing system. The date on the petition was May 9, 2024 and listed all three claims. However, the Proof of Service was incomplete, with no date of service, no name and address of the party to be served, and it was

not signed or notarized. The form stated that if the person who signed the Proof of Service was not an attorney, such as Petitioner, the form had to be notarized.

On June 20, 2024, Petitioner re-filed the May 9, 2024 Petition for Review under Sections 19(h) and 8(a) of the Act. The Proof of Service stated that the petition had been mailed to Kraft Foods on June 17, 2024 at 1701 W. Bradley Avenue, Champaign, Illinois 61821. The Proof of Service was signed and notarized. Petitioner had also uploaded onto CompFile a letter she sent to Kraft Foods, dated June 14, 2024, informing them of her petition and the July 10, 2024 review call date before Commission Harris.

On October 1, 2024, Petitioner filed on CompFile another letter she sent to Kraft, dated September 22, 2024, informing them of the November 6, 2024 review call date. She also filed a Proof of Service dated September 30, 2024, that stated that notice had been sent by mail/certified mail to Kraft Heinz Corporate Head Quarters, 200 E. Randolph Street, Suite 7600, Chicago, Illinois 60611, and to Kraft Heinz, Inc., 1701 W. Bradley Avenue, Champaign, Illinois 61821. The Proof of Service was not signed or notarized. Petitioner eventually filed a fully executed Proof of Service on November 4, 2024 on CompFile.

On December 3, 2024, Petitioner filed on CompFile a new letter she sent to Kraft, dated December 2, 2024, informing them of the January 14, 2025 review call date. She also filed a new petition under Sections 19(h) and 8(a). The petition itself was dated December 2, 2024 and the Proof of Service stated that Petitioner had delivered/mailed the petition to Crawford Insurance Company on December 2, 2024 at 2621 Montega Avenue, Springfield, Illinois 62704. The Proof of Service was signed and notarized.

On January 13, 2025, Petitioner re-filed the December 2, 2024 19(h)/8(a) petition which had a Proof of Service to Thomas Schmidt, 620 East Edwards Street, P.O. Box 335, Springfield, Illinois 62705. The petition had been delivered/mailed to Mr. Schmidt's office on December 2, 2024.

The matter on review was initially set on Commissioner Harris' review call on July 10, 2024, and then continued from time to time. Neither Respondent nor representative(s) on its behalf appeared at any of the review call dates.

On April 25, 2025, Petitioner's petitions for review under Sections 19(h) and 8(a) of the Act were set for final hearing by the Commission on July 10, 2025.

On June 3, 2025, a formal Motion to Withdraw as Attorney of Record was filed on CompFile by D. Scott Murphy of Livingstone Mueller, et. al., located at 620 E. Edwards Street, P.O. Box 335, Springfield, Illinois 62705. By the motion, Mr. Murphy represented that: (1) Anderson Clayton no longer existed, (2) he did not have authority to represent Anderson Clayton Foods or its subsidiaries, (3) the third party administrator handling the claims for Anderson Clayton Foods in the 1990s was no longer in business, (4) he had no contacts at Anderson Clayton Foods or any of its subsidiaries, and (5) he did not have a client to represent. The motion was presented to Commissioner Harris on July 8, 2025 for consideration and the motion to withdraw was granted.

On July 10, 2025, Petitioner, pro se, was the only party to appear before Commissioner Harris and a record was taken.

FINDINGS OF FACT

Petitioner described the attempts she made to serve the Respondent with notice of her 19(h)/8(a) petitions. She stated that she had sent notice to Kraft in Chicago, Kraft in Champaign and to Bob Mueller in Springfield. Petitioner indicated that her understanding was that Mr. Mueller was Respondent's counsel. She also stated that she did not serve Respondent Anderson Clayton Foods because there was "nobody to serve" since they had gone out of business. (T.5). Petitioner explained that Kraft Foods purchased Anderson Clayton in 1989, and Kraft was aware of her workers' compensation claims because they were represented at the arbitration hearing in 1991. (T.6). Petitioner stated that she was seeking payment of medical bills from Kraft since they had taken over for Anderson Clayton. (T.4; T.7-8). She reiterated that Respondent's attorney at the time was Livingstone Mueller. (T.7-8). Petitioner denied receiving any response from Respondent, Kraft or its insurer regarding her petitions. (T.6-7).

Commissioner Harris noted for the record that the law firm of Livingstone Mueller had been released from the case on July 8, 2025 pursuant to their motion to withdraw. Mr. Murphy, on behalf of Livingstone Muller, had represented that the attorney of record had perished some decades ago and that his firm had not communicated with the Respondent, any agent for the Respondent, or any insurance company for the Respondent in the intervening 20 to 30 years. (T.8).

Petitioner claimed that the charges, for which she was requesting payment, were related to her vision problems. "[T]he toxic exposure caused me a lot of vision problems and nerve damage." (T.10; T.35). Petitioner also testified that she continued to have hearing issues and used a hearing aid. (T.35). In support of her request for payment, Petitioner offered Group Exhibit 1 which included a list that Petitioner created of the purported unpaid medical bills, as well as various medical statements/receipts, and medical records from Dr. Jason McDowell and the International Eyecare Center. Additional documentation in the exhibit were copies of checks, bank statements, a collection letter, and an Affidavit for Wage Deduction Order. (T.10-12; Grp. Ex. 1).

Exhibit 2 was a prescription drug card that according to Petitioner, Kraft had provided to her to help pay for medication. However, Petitioner stated that the card never worked when she tried to use it. (T.13-14; Ex. 2).

Petitioner next alleged that she was owed wage differential benefits. "It was ordered to be paid, but it was never paid." (T.14-16). She provided a copy of the Arbitrator's 1991 decision which was labeled as Exhibit 3. (T.14-15; Ex. 3). Petitioner added that she had stopped working for Respondent in 1994. (T.16).

Exhibit 4 was entitled "KFI Wrap-Up Communication Bulletin" dated February 1989. Petitioner stated that "Philip Morris bought Anderson Clayton and then they sold it to Kraft." (T.16-18; Ex. 4). The document stated that ownership had changed from Quaker Oats to Kraft Inc. and now to Philip Morris. "Philip Morris has combined the Kraft and General Foods businesses

into the Kraft General Foods Group. Further, Kraft General Foods has formed seven separate operating units.” (Ex. 4).

Petitioner further offered Exhibit 5, a phone message and two letters, to show her attempts to reach out to Kraft. (T.18-20; Ex. 5). The exhibit contained a phone message for “Matt,” taken on September 25 (year unknown), from Tom Schmidt. There were also two letters, dated March 29, 1995 from attorney William LaMarca – (1) to L. Robert Mueller of Livingstone, Mueller, et. al., 620 East Edwards Street, P.O. Box 335, Springfield, Illinois 62705, and (2) to Petitioner. The letters pertained to obtaining medical bills and a request for information regarding where to send the outstanding bills. (Ex. 5).

Exhibit 6 was a visit note from Dr. James Knupp, Assistant Professor Division of Ophthalmology, dated March 9, 1992. (T.26; Ex. 6). Petitioner had presented for a follow-up of her toxic optic neuropathy condition. Dr. Knupp examined Petitioner and found that her “[v]isual acuity remains stable today in comparison to her visual acuity since 10/91.” (Ex. 6). Dr. Knupp noted that Petitioner was no longer receiving B12 injections but she was still taking oral vitamins. He recommended a follow-up appointment. (Ex. 6).

Exhibit 6 also contained a Physician’s Statement for the Homestead Exemption for Persons with Disability dated March 8, 2024. The nature of Petitioner’s disability was described as toxic workplace exposure, autonomic instability and Iq G deficiency. The date of disability was January 1, 1995 and the form was signed by Dr. Valerie Thompson. (Ex. 6). Dr. Knupp had also completed a Physician’s Statement of Disability in 1991. He indicated that he was recommending a high dose of B-12 vitamin therapy, and that Petitioner appeared to be “developing a progressive loss of central and peripheral visual acuity on the basis of toxic retinopathy or toxic optic neuropathy.” (Ex. 6).

Exhibit 7 was correspondence from Dr. Matthew Bartlett, of the International Eyecare Center, dated February 11, 1994. It was addressed “Dear Boyle, Klinger and McClain” and stated that according to Dr. Bartlett’s examination, “Dorothy has permanently reduced visual acuity most likely secondary to toxic neuropathy.” Dr. Bartlett did not provide any treatment recommendations in his letter. (T.26; Ex. 7).

Exhibit 8 was a medical summary, dated August 23, 1990, from Dr. Hryhorczuk. (T.26-27; Ex. 8). Dr. Hryhorczuk had testified regarding his summary at his deposition which also outlined his opinions. He indicated that Petitioner’s complaints began while working in the GLC Lab at Kraft Foods. Her complaints included blurred vision, eye irritation, eye swelling, sore throat, nasal congestion, nausea and vomiting. A neuropsychological evaluation was completed on August 6, 1990. Based on the results, Dr. Hryhorczuk opined that Petitioner’s symptoms, physical findings and neurobehavioral testing were consistent with chronic carbon disulfide intoxication. Dr. Hryhorczuk’s assessments again included solvent encephalopathy, secondary to occupational exposure to carbon disulfide and possible other solvents, and depression. He recommended further testing and also advised Petitioner to follow-up with her personal physician and psychiatrist for possible psychotropic medication. (Ex. 8).

Petitioner acknowledged on the record that Exhibit 9 was an incomplete, unsigned report that included a Problem List. The one-page record was dated August 2, 2023 and listed the provider as Dr. Dareen Siri. The various diagnoses from 2023 included iron deficiency, hypercalcemia, multiple sclerosis, acute embolism, asbestosis, hiatal hernia, hematemesis, myalgia, dyspnea, abnormal weight loss and abnormal kidney function. (T.28-29; Ex. 9).

Petitioner testified that she tried to get assistance from the Illinois Work Injury Resource Center. She had obtained their information online. Exhibit 10 was an email from the Illinois Work Injury Resource Center dated March 20, 2023 which stated: "Please call 217-378-2054 to speak with Renee at Kraft in Champaign, IL. She can help direct you from there." Petitioner stated that she spoke to someone at Kraft via telephone but did not receive assistance. (T.30-32; Ex. 10).

CONCLUSIONS OF LAW

The Commission has reviewed the history of proceedings and facts of the matter, and finds that Petitioner's communications following the filing of her petitions under Sections 19(h) and 8(a) of the Act on May 10, 2024, were directed to the correct entities, Anderson Clayton/Kraft Foods. According to the August 15, 1991 arbitration transcript, attorney Thomas Schmidt, of the Livingstone Mueller law firm, had appeared on behalf of Anderson Clayton Foods and Kraft Foods. (8/15/1991 Arbitration Transcript, see also pg. 159). The testimony and documentary evidence further demonstrated that Anderson Clayton and Kraft Foods were referred to and referenced interchangeably, or together, numerous times. The Commission finds sufficient evidence of due notice given to the proper parties with respect to Petitioner's petitions.

Irrespective of notice, Petitioner's request for relief under Section 19(h) of the Act was barred from ever proceeding before the Commission at the time of filing. Section 19(h) grants the Commission continuing jurisdiction over compensation claims for a prescribed period of time. This provision allows an agreement or award providing for compensation in installments to be reviewed by the Commission at the request of either party for change of disability of the employee at any time within 30 months after such agreement or award. 820 ILCS 305/19(h); see also *Eschbaugh v. Indus. Comm'n*, 286 Ill. App. 3d 963, 966 (1996). "The statutory limitations period of Section 19(h) of the Act is a jurisdictional requirement that may be raised at any time and even *sua sponte* by the Commission. It is an absolute and unconditional restriction on the right of review." *Id.* at 968. Based on this, the Commission has no jurisdiction to review Petitioner's 19(h) petitions, dated May 9, 2024 (and December 2, 2024), which were filed long after the applicable deadline following the Commission's 1993 decision had passed. The Commission further deems stricken and void the purported 19(h) petition filed on November 16, 1993 as there is no evidence of any efforts made by any party related to this petition in more than 30 years.

The Commission also lacks jurisdiction with respect to Petitioner's claim that she is owed wage differential benefits. The Arbitrator had awarded Petitioner wage differential benefits pursuant to Section 8(d)1 of the Act. However, upon review to the Commission, the Commission vacated the wage differential award and instead found that Petitioner was entitled to 40% loss of the person as a whole under Section 8(d)2 of the Act. The Commission determined that Petitioner had waived her entitlement to Section 8(d)1 benefits. Neither party sought judicial review under Section 19(f)(1) of the Act and the Commission's decision became a final award. Whether or not

permanency benefits remain owed to Petitioner, any request for payment or enforcement of the Commission's award belongs in the Circuit Court pursuant to Section 19(g) of the Act. The Commission has no power to enforce payment of its own award. *Millennium Knickerbocker Hotel v. Guzman*, 2017 IL App (1st) 161027WC, ¶ 22.

The final remaining issue is Petitioner's 8(a) petitions which the Commission has jurisdiction to review. Petitioner provided some medical statements and receipts, as well as records, from 2014 through 2025, related to treatment for vision problems. (Grp. Ex. 1). The Commission finds only two medical charges had corresponding records to explain the costs, but even then, the records in their entirety were silent as to any connection between Petitioner's current condition(s) of ill-being and her work-related exposures from the late 1980s. In fact, Dr. Ayhubrhan Yifru from the International Eyecare Center stated in the February 29, 2024 visit note that Petitioner had a history of age-related vision problems. Based on these records, the Commission finds no basis on which to award Section 8(a) benefits.

The remaining documents submitted by Petitioner were not probative of any work-related medical benefits owed to her.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petitions under Section 19(h) of the Act, as herein noted, are dismissed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's petitions under Section 8(a) of the Act, as herein noted, are denied for the reasons stated above.

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

August 12, 2025

CAH/pm
d: 8/12/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	87WC030123
Case Name	Dorothy Konrad v. Anderson Clayton Foods
Consolidated Cases	87WC030122 87WC030124
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0347
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Pro Se Dorothy Konrad
Respondent Attorney	

DATE FILED: 8/12/2025

/s/Christopher Harris, Commissioner

Signature

one of her legs and became violently ill. On June 30, 1987, Petitioner again felt extremely ill and left work. The Arbitrator determined that Petitioner sustained work-related exposures to carbon disulfide in all three claims.

The Arbitrator also found that Petitioner's conditions of ill-being, as described by her physicians, were causally connected to the carbon disulfide exposures at work. The Arbitrator was persuaded by the opinions of Petitioner's treaters, especially Dr. Daniel Hryhorczuk, a board-certified toxicologist. Dr. Hryhorczuk opined that Petitioner suffered from carbon disulfide poisoning directly as a result of her exposure at Anderson Clayton Foods and that her symptoms were permanent. Dr. Hryhorczuk testified at his deposition on March 15, 1991, that the toxicity had affected Petitioner's central nervous system. He had ordered a neural psychological evaluation which was supervised by Dr. David Hartman, an expert in neurotoxicology. Dr. Hryhorczuk testified that he relied on Dr. Hartman's evaluation in rendering his final opinion.

Dr. Hryhorczuk determined that Petitioner's intellectual functioning was below pre-morbid levels. Her performance in all areas of functioning (attention and concentration, sensory motor, visual-spatial ability, learning ability, abstract reasoning, and long and short term verbal and figural memory) was moderately to severely impaired. Petitioner was also experiencing, *inter alia*, depression, lax energy and difficulty sleeping. Dr. Hryhorczuk found that Petitioner's neuropsychological impairments were consistent with carbon disulfide exposure. He further indicated that cranial nerves, such as optic and auditory nerves, could be injured by carbon disulfide exposure as well.

The Arbitrator stated that Dr. Hryhorczuk reviewed records during his deposition and noted that Petitioner had high/low frequency drops in one or both ears, as well as a standard threshold shift in her hearing. Lee Mullen, the company nurse, recommended more hearing tests. Dr. Hryhorczuk reviewed additional records which documented that Petitioner had reduced vision in both eyes, various neurological symptoms and small lens opacities in her eyes. Dr. Frank, who had treated Petitioner for her vision problems, indicated that her symptoms were compatible with possible carbon disulfide toxemia. Dr. Hryhorczuk further testified that chronic gastritis, vomiting, diarrhea, fatigue, the inability to concentrate and emotional instability were all symptoms of carbon disulfide exposure. The Arbitrator found that Petitioner had testified to all these symptoms and that the medical records corroborated her testimony. Dr. Hryhorczuk diagnosed Petitioner with solvent encephalopathy, secondary to occupational exposure to carbon disulfide, and depression.

The arbitration transcript from the August 15, 1991 hearing contained Dr. Hryhorczuk's March 15, 1991 deposition transcript. In addition to what the Arbitrator had noted, Dr. Hryhorczuk testified that the onset from a chronic exposure of central nervous system symptoms from carbon disulfide could be fairly insidious and present as depression, vague memory loss and irritability. With regard to the "apex" of those symptoms, Dr. Hryhorczuk testified: "[T]hey would keep growing in severity as the exposure kept occurring and it would probably - - typically what I would expect to see would be some improvement in at least some of the symptoms following removal from exposure, and then the person would improve to baseline." (Arbitration Transcript, Pet. Ex. 9, pg. 94). He added: "[W]ith any toxic exposure there is some recovery that's going to take place. Recovery may not be complete, but we do expect some recovery." (Arbitration Transcript, Pet. Ex. 9, pgs. 94-95).

The arbitration transcript further revealed that according to Dr. Hryhorczuk and some of Petitioner's other treaters, there was no definitive treatment for carbon disulfide poisoning. Dr. Hryhorczuk testified: "[W]hat we can hope to do is to treat some of her symptomology. I mentioned to her that depression is a feature of her illness and that she might benefit from psychiatric care and a trial of antidepressant medication." (Arbitration Transcript, Pet. Ex. 9, pgs. 139-140). Overall, Petitioner's medical treatment for her carbon disulfide exposures primarily involved examinations/evaluations, various other tests/imaging, and prescription medication and eyeglasses. The Arbitrator awarded Petitioner reasonable and necessary medical expenses, expenses related to travel for medical appointments, temporary total disability (TTD) benefits, and wage differential benefits under Section 8(d)1 of the Act.

February 4, 1993 Commission Decision

The parties appealed the Arbitrator's decision to the Commission. On February 4, 1993, the Commission rendered one decision for all three claims modifying the award of TTD benefits and medical expenses. The Commission also converted Petitioner's permanency award to 40% loss of the person as a whole under Section 8(d)2 of the Act. The Commission determined that Petitioner had waived her rights to wage differential benefits.

The Commission's decision also clarified that following the June 30, 1987 incident, Petitioner had been off work per her physician's recommendations through August 5, 1987. She eventually left Respondent's employ on June 18, 1991. The Commission further noted Dr. Hryhorczuk's deposition testimony on March 15, 1991, that Petitioner's condition was permanent and that the period of time in which improvement could be expected had passed. Petitioner would continue to suffer from nausea and vomiting, forgetfulness and depression. Petitioner's intellectual functioning was also moderately to severely impaired and she had vision and hearing problems.

Subsequent filings/proceedings

The Commission's records indicated no further action in any of the claims following the Commission's decision until November 16, 1993 when Petitioner apparently filed a Petition for Review under Sections 19(h) and 8(a) of the Act. There is no information regarding the disposition of this petition.

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On May 10, 2024, more than 15 years later, Petitioner filed a Petition for Review under Sections 19(h) and 8(a) of the Act on CompFile, the Commission's electronic filing system. The date on the petition was May 9, 2024 and listed all three claims. However, the Proof of Service was incomplete, with no date of service, no name and address of the party to be served, and it was

not signed or notarized. The form stated that if the person who signed the Proof of Service was not an attorney, such as Petitioner, the form had to be notarized.

On June 20, 2024, Petitioner re-filed the May 9, 2024 Petition for Review under Sections 19(h) and 8(a) of the Act. The Proof of Service stated that the petition had been mailed to Kraft Foods on June 17, 2024 at 1701 W. Bradley Avenue, Champaign, Illinois 61821. The Proof of Service was signed and notarized. Petitioner had also uploaded onto CompFile a letter she sent to Kraft Foods, dated June 14, 2024, informing them of her petition and the July 10, 2024 review call date before Commission Harris.

On October 1, 2024, Petitioner filed on CompFile another letter she sent to Kraft, dated September 22, 2024, informing them of the November 6, 2024 review call date. She also filed a Proof of Service dated September 30, 2024, that stated that notice had been sent by mail/certified mail to Kraft Heinz Corporate Head Quarters, 200 E. Randolph Street, Suite 7600, Chicago, Illinois 60611, and to Kraft Heinz, Inc., 1701 W. Bradley Avenue, Champaign, Illinois 61821. The Proof of Service was not signed or notarized. Petitioner eventually filed a fully executed Proof of Service on November 4, 2024 on CompFile.

On December 3, 2024, Petitioner filed on CompFile a new letter she sent to Kraft, dated December 2, 2024, informing them of the January 14, 2025 review call date. She also filed a new petition under Sections 19(h) and 8(a). The petition itself was dated December 2, 2024 and the Proof of Service stated that Petitioner had delivered/mailed the petition to Crawford Insurance Company on December 2, 2024 at 2621 Montega Avenue, Springfield, Illinois 62704. The Proof of Service was signed and notarized.

On January 13, 2025, Petitioner re-filed the December 2, 2024 19(h)/8(a) petition which had a Proof of Service to Thomas Schmidt, 620 East Edwards Street, P.O. Box 335, Springfield, Illinois 62705. The petition had been delivered/mailed to Mr. Schmidt's office on December 2, 2024.

The matter on review was initially set on Commissioner Harris' review call on July 10, 2024, and then continued from time to time. Neither Respondent nor representative(s) on its behalf appeared at any of the review call dates.

On April 25, 2025, Petitioner's petitions for review under Sections 19(h) and 8(a) of the Act were set for final hearing by the Commission on July 10, 2025.

On June 3, 2025, a formal Motion to Withdraw as Attorney of Record was filed on CompFile by D. Scott Murphy of Livingstone Mueller, et. al., located at 620 E. Edwards Street, P.O. Box 335, Springfield, Illinois 62705. By the motion, Mr. Murphy represented that: (1) Anderson Clayton no longer existed, (2) he did not have authority to represent Anderson Clayton Foods or its subsidiaries, (3) the third party administrator handling the claims for Anderson Clayton Foods in the 1990s was no longer in business, (4) he had no contacts at Anderson Clayton Foods or any of its subsidiaries, and (5) he did not have a client to represent. The motion was presented to Commissioner Harris on July 8, 2025 for consideration and the motion to withdraw was granted.

On July 10, 2025, Petitioner, pro se, was the only party to appear before Commissioner Harris and a record was taken.

FINDINGS OF FACT

Petitioner described the attempts she made to serve the Respondent with notice of her 19(h)/8(a) petitions. She stated that she had sent notice to Kraft in Chicago, Kraft in Champaign and to Bob Mueller in Springfield. Petitioner indicated that her understanding was that Mr. Mueller was Respondent's counsel. She also stated that she did not serve Respondent Anderson Clayton Foods because there was "nobody to serve" since they had gone out of business. (T.5). Petitioner explained that Kraft Foods purchased Anderson Clayton in 1989, and Kraft was aware of her workers' compensation claims because they were represented at the arbitration hearing in 1991. (T.6). Petitioner stated that she was seeking payment of medical bills from Kraft since they had taken over for Anderson Clayton. (T.4; T.7-8). She reiterated that Respondent's attorney at the time was Livingstone Mueller. (T.7-8). Petitioner denied receiving any response from Respondent, Kraft or its insurer regarding her petitions. (T.6-7).

Commissioner Harris noted for the record that the law firm of Livingstone Mueller had been released from the case on July 8, 2025 pursuant to their motion to withdraw. Mr. Murphy, on behalf of Livingstone Muller, had represented that the attorney of record had perished some decades ago and that his firm had not communicated with the Respondent, any agent for the Respondent, or any insurance company for the Respondent in the intervening 20 to 30 years. (T.8).

Petitioner claimed that the charges, for which she was requesting payment, were related to her vision problems. "[T]he toxic exposure caused me a lot of vision problems and nerve damage." (T.10; T.35). Petitioner also testified that she continued to have hearing issues and used a hearing aid. (T.35). In support of her request for payment, Petitioner offered Group Exhibit 1 which included a list that Petitioner created of the purported unpaid medical bills, as well as various medical statements/receipts, and medical records from Dr. Jason McDowell and the International Eyecare Center. Additional documentation in the exhibit were copies of checks, bank statements, a collection letter, and an Affidavit for Wage Deduction Order. (T.10-12; Grp. Ex. 1).

Exhibit 2 was a prescription drug card that according to Petitioner, Kraft had provided to her to help pay for medication. However, Petitioner stated that the card never worked when she tried to use it. (T.13-14; Ex. 2).

Petitioner next alleged that she was owed wage differential benefits. "It was ordered to be paid, but it was never paid." (T.14-16). She provided a copy of the Arbitrator's 1991 decision which was labeled as Exhibit 3. (T.14-15; Ex. 3). Petitioner added that she had stopped working for Respondent in 1994. (T.16).

Exhibit 4 was entitled "KFI Wrap-Up Communication Bulletin" dated February 1989. Petitioner stated that "Philip Morris bought Anderson Clayton and then they sold it to Kraft." (T.16-18; Ex. 4). The document stated that ownership had changed from Quaker Oats to Kraft Inc. and now to Philip Morris. "Philip Morris has combined the Kraft and General Foods businesses

into the Kraft General Foods Group. Further, Kraft General Foods has formed seven separate operating units.” (Ex. 4).

Petitioner further offered Exhibit 5, a phone message and two letters, to show her attempts to reach out to Kraft. (T.18-20; Ex. 5). The exhibit contained a phone message for “Matt,” taken on September 25 (year unknown), from Tom Schmidt. There were also two letters, dated March 29, 1995 from attorney William LaMarca – (1) to L. Robert Mueller of Livingstone, Mueller, et. al., 620 East Edwards Street, P.O. Box 335, Springfield, Illinois 62705, and (2) to Petitioner. The letters pertained to obtaining medical bills and a request for information regarding where to send the outstanding bills. (Ex. 5).

Exhibit 6 was a visit note from Dr. James Knupp, Assistant Professor Division of Ophthalmology, dated March 9, 1992. (T.26; Ex. 6). Petitioner had presented for a follow-up of her toxic optic neuropathy condition. Dr. Knupp examined Petitioner and found that her “[v]isual acuity remains stable today in comparison to her visual acuity since 10/91.” (Ex. 6). Dr. Knupp noted that Petitioner was no longer receiving B12 injections but she was still taking oral vitamins. He recommended a follow-up appointment. (Ex. 6).

Exhibit 6 also contained a Physician’s Statement for the Homestead Exemption for Persons with Disability dated March 8, 2024. The nature of Petitioner’s disability was described as toxic workplace exposure, autonomic instability and Iq G deficiency. The date of disability was January 1, 1995 and the form was signed by Dr. Valerie Thompson. (Ex. 6). Dr. Knupp had also completed a Physician’s Statement of Disability in 1991. He indicated that he was recommending a high dose of B-12 vitamin therapy, and that Petitioner appeared to be “developing a progressive loss of central and peripheral visual acuity on the basis of toxic retinopathy or toxic optic neuropathy.” (Ex. 6).

Exhibit 7 was correspondence from Dr. Matthew Bartlett, of the International Eyecare Center, dated February 11, 1994. It was addressed “Dear Boyle, Klinger and McClain” and stated that according to Dr. Bartlett’s examination, “Dorothy has permanently reduced visual acuity most likely secondary to toxic neuropathy.” Dr. Bartlett did not provide any treatment recommendations in his letter. (T.26; Ex. 7).

Exhibit 8 was a medical summary, dated August 23, 1990, from Dr. Hryhorczuk. (T.26-27; Ex. 8). Dr. Hryhorczuk had testified regarding his summary at his deposition which also outlined his opinions. He indicated that Petitioner’s complaints began while working in the GLC Lab at Kraft Foods. Her complaints included blurred vision, eye irritation, eye swelling, sore throat, nasal congestion, nausea and vomiting. A neuropsychological evaluation was completed on August 6, 1990. Based on the results, Dr. Hryhorczuk opined that Petitioner’s symptoms, physical findings and neurobehavioral testing were consistent with chronic carbon disulfide intoxication. Dr. Hryhorczuk’s assessments again included solvent encephalopathy, secondary to occupational exposure to carbon disulfide and possible other solvents, and depression. He recommended further testing and also advised Petitioner to follow-up with her personal physician and psychiatrist for possible psychotropic medication. (Ex. 8).

Petitioner acknowledged on the record that Exhibit 9 was an incomplete, unsigned report that included a Problem List. The one-page record was dated August 2, 2023 and listed the provider as Dr. Dareen Siri. The various diagnoses from 2023 included iron deficiency, hypercalcemia, multiple sclerosis, acute embolism, asbestosis, hiatal hernia, hematemesis, myalgia, dyspnea, abnormal weight loss and abnormal kidney function. (T.28-29; Ex. 9).

Petitioner testified that she tried to get assistance from the Illinois Work Injury Resource Center. She had obtained their information online. Exhibit 10 was an email from the Illinois Work Injury Resource Center dated March 20, 2023 which stated: "Please call 217-378-2054 to speak with Renee at Kraft in Champaign, IL. She can help direct you from there." Petitioner stated that she spoke to someone at Kraft via telephone but did not receive assistance. (T.30-32; Ex. 10).

CONCLUSIONS OF LAW

The Commission has reviewed the history of proceedings and facts of the matter, and finds that Petitioner's communications following the filing of her petitions under Sections 19(h) and 8(a) of the Act on May 10, 2024, were directed to the correct entities, Anderson Clayton/Kraft Foods. According to the August 15, 1991 arbitration transcript, attorney Thomas Schmidt, of the Livingstone Mueller law firm, had appeared on behalf of Anderson Clayton Foods and Kraft Foods. (8/15/1991 Arbitration Transcript, see also pg. 159). The testimony and documentary evidence further demonstrated that Anderson Clayton and Kraft Foods were referred to and referenced interchangeably, or together, numerous times. The Commission finds sufficient evidence of due notice given to the proper parties with respect to Petitioner's petitions.

Irrespective of notice, Petitioner's request for relief under Section 19(h) of the Act was barred from ever proceeding before the Commission at the time of filing. Section 19(h) grants the Commission continuing jurisdiction over compensation claims for a prescribed period of time. This provision allows an agreement or award providing for compensation in installments to be reviewed by the Commission at the request of either party for change of disability of the employee at any time within 30 months after such agreement or award. 820 ILCS 305/19(h); see also *Eschbaugh v. Indus. Comm'n*, 286 Ill. App. 3d 963, 966 (1996). "The statutory limitations period of Section 19(h) of the Act is a jurisdictional requirement that may be raised at any time and even *sua sponte* by the Commission. It is an absolute and unconditional restriction on the right of review." *Id.* at 968. Based on this, the Commission has no jurisdiction to review Petitioner's 19(h) petitions, dated May 9, 2024 (and December 2, 2024), which were filed long after the applicable deadline following the Commission's 1993 decision had passed. The Commission further deems stricken and void the purported 19(h) petition filed on November 16, 1993 as there is no evidence of any efforts made by any party related to this petition in more than 30 years.

The Commission also lacks jurisdiction with respect to Petitioner's claim that she is owed wage differential benefits. The Arbitrator had awarded Petitioner wage differential benefits pursuant to Section 8(d)1 of the Act. However, upon review to the Commission, the Commission vacated the wage differential award and instead found that Petitioner was entitled to 40% loss of the person as a whole under Section 8(d)2 of the Act. The Commission determined that Petitioner had waived her entitlement to Section 8(d)1 benefits. Neither party sought judicial review under Section 19(f)(1) of the Act and the Commission's decision became a final award. Whether or not

permanency benefits remain owed to Petitioner, any request for payment or enforcement of the Commission's award belongs in the Circuit Court pursuant to Section 19(g) of the Act. The Commission has no power to enforce payment of its own award. *Millennium Knickerbocker Hotel v. Guzman*, 2017 IL App (1st) 161027WC, ¶ 22.

The final remaining issue is Petitioner's 8(a) petitions which the Commission has jurisdiction to review. Petitioner provided some medical statements and receipts, as well as records, from 2014 through 2025, related to treatment for vision problems. (Grp. Ex. 1). The Commission finds only two medical charges had corresponding records to explain the costs, but even then, the records in their entirety were silent as to any connection between Petitioner's current condition(s) of ill-being and her work-related exposures from the late 1980s. In fact, Dr. Ayhubrhan Yifru from the International Eyecare Center stated in the February 29, 2024 visit note that Petitioner had a history of age-related vision problems. Based on these records, the Commission finds no basis on which to award Section 8(a) benefits.

The remaining documents submitted by Petitioner were not probative of any work-related medical benefits owed to her.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petitions under Section 19(h) of the Act, as herein noted, are dismissed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's petitions under Section 8(a) of the Act, as herein noted, are denied for the reasons stated above.

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

August 12, 2025

CAH/pm
d: 8/12/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	87WC030124
Case Name	Dorothy Konrad v. Anderson Clayton Foods
Consolidated Cases	87WC030122 87WC030123
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0348
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Pro Se Dorothy Konrad
Respondent Attorney	

DATE FILED: 8/12/2025

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Signature

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On June 20, 2024, Petitioner re-filed the May 9, 2024 Petition for Review under Sections 19(h) and 8(a) of the Act. The Proof of Service stated that the petition had been mailed to Kraft Foods on June 17, 2024 at 1701 W. Bradley Avenue, Champaign, Illinois 61821. The Proof of Service was signed and notarized. Petitioner had also uploaded onto CompFile a letter she sent to Kraft Foods, dated June 14, 2024, informing them of her petition and the July 10, 2024 review call date before Commission Harris.

On October 1, 2024, Petitioner filed on CompFile another letter she sent to Kraft, dated September 22, 2024, informing them of the November 6, 2024 review call date. She also filed a Proof of Service dated September 30, 2024, that stated that notice had been sent by mail/certified mail to Kraft Heinz Corporate Head Quarters, 200 E. Randolph Street, Suite 7600, Chicago, Illinois 60611, and to Kraft Heinz, Inc., 1701 W. Bradley Avenue, Champaign, Illinois 61821. The Proof of Service was not signed or notarized. Petitioner eventually filed a fully executed Proof of Service on November 4, 2024 on CompFile.

On December 3, 2024, Petitioner filed on CompFile a new letter she sent to Kraft, dated December 2, 2024, informing them of the January 14, 2025 review call date. She also filed a new petition under Sections 19(h) and 8(a). The petition itself was dated December 2, 2024 and the Proof of Service stated that Petitioner had delivered/mailed the petition to Crawford Insurance Company on December 2, 2024 at 2621 Montega Avenue, Springfield, Illinois 62704. The Proof of Service was signed and notarized.

On January 13, 2025, Petitioner re-filed the December 2, 2024 19(h)/8(a) petition which had a Proof of Service to Thomas Schmidt, 620 East Edwards Street, P.O. Box 335, Springfield, Illinois 62705. The petition had been delivered/mailed to Mr. Schmidt's office on December 2, 2024.

The matter on review was initially set on Commissioner Harris' review call on July 10, 2024, and then continued from time to time. Neither Respondent nor representative(s) on its behalf appeared at any of the review call dates.

On April 25, 2025, Petitioner's petitions for review under Sections 19(h) and 8(a) of the Act were set for final hearing by the Commission on July 10, 2025.

On June 3, 2025, a formal Motion to Withdraw as Attorney of Record was filed on CompFile by D. Scott Murphy of Livingstone Mueller, et. al., located at 620 E. Edwards Street, P.O. Box 335, Springfield, Illinois 62705. By the motion, Mr. Murphy represented that: (1) Anderson Clayton no longer existed, (2) he did not have authority to represent Anderson Clayton Foods or its subsidiaries, (3) the third party administrator handling the claims for Anderson Clayton Foods in the 1990s was no longer in business, (4) he had no contacts at Anderson Clayton Foods or any of its subsidiaries, and (5) he did not have a client to represent. The motion was presented to Commissioner Harris on July 8, 2025 for consideration and the motion to withdraw was granted.

On July 10, 2025, Petitioner, pro se, was the only party to appear before Commissioner Harris and a record was taken.

FINDINGS OF FACT

Petitioner described the attempts she made to serve the Respondent with notice of her 19(h)/8(a) petitions. She stated that she had sent notice to Kraft in Chicago, Kraft in Champaign and to Bob Mueller in Springfield. Petitioner indicated that her understanding was that Mr. Mueller was Respondent's counsel. She also stated that she did not serve Respondent Anderson Clayton Foods because there was "nobody to serve" since they had gone out of business. (T.5). Petitioner explained that Kraft Foods purchased Anderson Clayton in 1989, and Kraft was aware of her workers' compensation claims because they were represented at the arbitration hearing in 1991. (T.6). Petitioner stated that she was seeking payment of medical bills from Kraft since they had taken over for Anderson Clayton. (T.4; T.7-8). She reiterated that Respondent's attorney at the time was Livingstone Mueller. (T.7-8). Petitioner denied receiving any response from Respondent, Kraft or its insurer regarding her petitions. (T.6-7).

Commissioner Harris noted for the record that the law firm of Livingstone Mueller had been released from the case on July 8, 2025 pursuant to their motion to withdraw. Mr. Murphy, on behalf of Livingstone Muller, had represented that the attorney of record had perished some decades ago and that his firm had not communicated with the Respondent, any agent for the Respondent, or any insurance company for the Respondent in the intervening 20 to 30 years. (T.8).

Petitioner claimed that the charges, for which she was requesting payment, were related to her vision problems. "[T]he toxic exposure caused me a lot of vision problems and nerve damage." (T.10; T.35). Petitioner also testified that she continued to have hearing issues and used a hearing aid. (T.35). In support of her request for payment, Petitioner offered Group Exhibit 1 which included a list that Petitioner created of the purported unpaid medical bills, as well as various medical statements/receipts, and medical records from Dr. Jason McDowell and the International Eyecare Center. Additional documentation in the exhibit were copies of checks, bank statements, a collection letter, and an Affidavit for Wage Deduction Order. (T.10-12; Grp. Ex. 1).

Exhibit 2 was a prescription drug card that according to Petitioner, Kraft had provided to her to help pay for medication. However, Petitioner stated that the card never worked when she tried to use it. (T.13-14; Ex. 2).

Petitioner next alleged that she was owed wage differential benefits. "It was ordered to be paid, but it was never paid." (T.14-16). She provided a copy of the Arbitrator's 1991 decision which was labeled as Exhibit 3. (T.14-15; Ex. 3). Petitioner added that she had stopped working for Respondent in 1994. (T.16).

Exhibit 4 was entitled "KFI Wrap-Up Communication Bulletin" dated February 1989. Petitioner stated that "Philip Morris bought Anderson Clayton and then they sold it to Kraft." (T.16-18; Ex. 4). The document stated that ownership had changed from Quaker Oats to Kraft Inc. and now to Philip Morris. "Philip Morris has combined the Kraft and General Foods businesses

into the Kraft General Foods Group. Further, Kraft General Foods has formed seven separate operating units.” (Ex. 4).

Petitioner further offered Exhibit 5, a phone message and two letters, to show her attempts to reach out to Kraft. (T.18-20; Ex. 5). The exhibit contained a phone message for “Matt,” taken on September 25 (year unknown), from Tom Schmidt. There were also two letters, dated March 29, 1995 from attorney William LaMarca – (1) to L. Robert Mueller of Livingstone, Mueller, et. al., 620 East Edwards Street, P.O. Box 335, Springfield, Illinois 62705, and (2) to Petitioner. The letters pertained to obtaining medical bills and a request for information regarding where to send the outstanding bills. (Ex. 5).

Exhibit 6 was a visit note from Dr. James Knupp, Assistant Professor Division of Ophthalmology, dated March 9, 1992. (T.26; Ex. 6). Petitioner had presented for a follow-up of her toxic optic neuropathy condition. Dr. Knupp examined Petitioner and found that her “[v]isual acuity remains stable today in comparison to her visual acuity since 10/91.” (Ex. 6). Dr. Knupp noted that Petitioner was no longer receiving B12 injections but she was still taking oral vitamins. He recommended a follow-up appointment. (Ex. 6).

Exhibit 6 also contained a Physician’s Statement for the Homestead Exemption for Persons with Disability dated March 8, 2024. The nature of Petitioner’s disability was described as toxic workplace exposure, autonomic instability and Iq G deficiency. The date of disability was January 1, 1995 and the form was signed by Dr. Valerie Thompson. (Ex. 6). Dr. Knupp had also completed a Physician’s Statement of Disability in 1991. He indicated that he was recommending a high dose of B-12 vitamin therapy, and that Petitioner appeared to be “developing a progressive loss of central and peripheral visual acuity on the basis of toxic retinopathy or toxic optic neuropathy.” (Ex. 6).

Exhibit 7 was correspondence from Dr. Matthew Bartlett, of the International Eyecare Center, dated February 11, 1994. It was addressed “Dear Boyle, Klinger and McClain” and stated that according to Dr. Bartlett’s examination, “Dorothy has permanently reduced visual acuity most likely secondary to toxic neuropathy.” Dr. Bartlett did not provide any treatment recommendations in his letter. (T.26; Ex. 7).

Exhibit 8 was a medical summary, dated August 23, 1990, from Dr. Hryhorczuk. (T.26-27; Ex. 8). Dr. Hryhorczuk had testified regarding his summary at his deposition which also outlined his opinions. He indicated that Petitioner’s complaints began while working in the GLC Lab at Kraft Foods. Her complaints included blurred vision, eye irritation, eye swelling, sore throat, nasal congestion, nausea and vomiting. A neuropsychological evaluation was completed on August 6, 1990. Based on the results, Dr. Hryhorczuk opined that Petitioner’s symptoms, physical findings and neurobehavioral testing were consistent with chronic carbon disulfide intoxication. Dr. Hryhorczuk’s assessments again included solvent encephalopathy, secondary to occupational exposure to carbon disulfide and possible other solvents, and depression. He recommended further testing and also advised Petitioner to follow-up with her personal physician and psychiatrist for possible psychotropic medication. (Ex. 8).

Petitioner acknowledged on the record that Exhibit 9 was an incomplete, unsigned report that included a Problem List. The one-page record was dated August 2, 2023 and listed the provider as Dr. Dareen Siri. The various diagnoses from 2023 included iron deficiency, hypercalcemia, multiple sclerosis, acute embolism, asbestosis, hiatal hernia, hematemesis, myalgia, dyspnea, abnormal weight loss and abnormal kidney function. (T.28-29; Ex. 9).

Petitioner testified that she tried to get assistance from the Illinois Work Injury Resource Center. She had obtained their information online. Exhibit 10 was an email from the Illinois Work Injury Resource Center dated March 20, 2023 which stated: "Please call 217-378-2054 to speak with Renee at Kraft in Champaign, IL. She can help direct you from there." Petitioner stated that she spoke to someone at Kraft via telephone but did not receive assistance. (T.30-32; Ex. 10).

CONCLUSIONS OF LAW

The Commission has reviewed the history of proceedings and facts of the matter, and finds that Petitioner's communications following the filing of her petitions under Sections 19(h) and 8(a) of the Act on May 10, 2024, were directed to the correct entities, Anderson Clayton/Kraft Foods. According to the August 15, 1991 arbitration transcript, attorney Thomas Schmidt, of the Livingstone Mueller law firm, had appeared on behalf of Anderson Clayton Foods and Kraft Foods. (8/15/1991 Arbitration Transcript, see also pg. 159). The testimony and documentary evidence further demonstrated that Anderson Clayton and Kraft Foods were referred to and referenced interchangeably, or together, numerous times. The Commission finds sufficient evidence of due notice given to the proper parties with respect to Petitioner's petitions.

Irrespective of notice, Petitioner's request for relief under Section 19(h) of the Act was barred from ever proceeding before the Commission at the time of filing. Section 19(h) grants the Commission continuing jurisdiction over compensation claims for a prescribed period of time. This provision allows an agreement or award providing for compensation in installments to be reviewed by the Commission at the request of either party for change of disability of the employee at any time within 30 months after such agreement or award. 820 ILCS 305/19(h); see also *Eschbaugh v. Indus. Comm'n*, 286 Ill. App. 3d 963, 966 (1996). "The statutory limitations period of Section 19(h) of the Act is a jurisdictional requirement that may be raised at any time and even *sua sponte* by the Commission. It is an absolute and unconditional restriction on the right of review." *Id.* at 968. Based on this, the Commission has no jurisdiction to review Petitioner's 19(h) petitions, dated May 9, 2024 (and December 2, 2024), which were filed long after the applicable deadline following the Commission's 1993 decision had passed. The Commission further deems stricken and void the purported 19(h) petition filed on November 16, 1993 as there is no evidence of any efforts made by any party related to this petition in more than 30 years.

The Commission also lacks jurisdiction with respect to Petitioner's claim that she is owed wage differential benefits. The Arbitrator had awarded Petitioner wage differential benefits pursuant to Section 8(d)1 of the Act. However, upon review to the Commission, the Commission vacated the wage differential award and instead found that Petitioner was entitled to 40% loss of the person as a whole under Section 8(d)2 of the Act. The Commission determined that Petitioner had waived her entitlement to Section 8(d)1 benefits. Neither party sought judicial review under Section 19(f)(1) of the Act and the Commission's decision became a final award. Whether or not

permanency benefits remain owed to Petitioner, any request for payment or enforcement of the Commission's award belongs in the Circuit Court pursuant to Section 19(g) of the Act. The Commission has no power to enforce payment of its own award. *Millennium Knickerbocker Hotel v. Guzman*, 2017 IL App (1st) 161027WC, ¶ 22.

The final remaining issue is Petitioner's 8(a) petitions which the Commission has jurisdiction to review. Petitioner provided some medical statements and receipts, as well as records, from 2014 through 2025, related to treatment for vision problems. (Grp. Ex. 1). The Commission finds only two medical charges had corresponding records to explain the costs, but even then, the records in their entirety were silent as to any connection between Petitioner's current condition(s) of ill-being and her work-related exposures from the late 1980s. In fact, Dr. Ayhubrhan Yifru from the International Eyecare Center stated in the February 29, 2024 visit note that Petitioner had a history of age-related vision problems. Based on these records, the Commission finds no basis on which to award Section 8(a) benefits.

The remaining documents submitted by Petitioner were not probative of any work-related medical benefits owed to her.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petitions under Section 19(h) of the Act, as herein noted, are dismissed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's petitions under Section 8(a) of the Act, as herein noted, are denied for the reasons stated above.

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

August 12, 2025

CAH/pm
d: 8/12/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007691
Case Name	Monica Lopez v. Bloomington Country Club
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0349
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	John Lesaganich, Damon Young
Respondent Attorney	Jessica Bell, Ashley Broadstone

DATE FILED: 8/13/2025

/s/ Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MONICA LOPEZ,

Petitioner,

vs.

NO: 22 WC 7691

BLOOMINGTON COUNTRY CLUB

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, benefit rates, causation, medical expenses, prospective medical treatment, and temporary total disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

Petitioner, a 45 year old housekeeping employee, injured her right knee on March 8, 2022. While pushing a laundry cart, Petitioner's foot caught on the wheel, causing her to twist her knee and fall. She landed on a rubber mat. After she fell, Petitioner yelled for assistance and her colleague, David Garcia, found Petitioner laying on the floor. Garcia then radioed for assistance and other personnel, including the General Manager and Assistant General Manager arrived at the scene. General Manager, David Garcia, confirmed Petitioner was lying on the rubber mat near the iron when he arrived. Petitioner's daughter was notified and she arrived at the scene. An ambulance was called and an accident report was completed by Sherri Martheler. Petitioner's daughter translated between Petitioner and the paramedics. She reported Petitioner slipped on a rubber mat and felt a pop in her right knee. Petitioner was subsequently transported to the emergency room, where her daughter translated to the ER personnel. At the ER, she reported Petitioner was at work when her right knee gave out, causing her to fall backwards. On exam, Petitioner had effusion and tenderness of the right knee. Petitioner also complained of head/neck pain and underwent imaging. Petitioner was discharged from the ER with a knee immobilizer and was instructed to follow up with an orthopedist.

Petitioner followed up with orthopedist, Dr. Maxey, the following day. She told Dr. Maxey she twisted her right knee while pushing a cart at work. Dr. Maxey recommended she discontinue the knee immobilizer and return in three weeks. Petitioner sought a second opinion with orthopedist, Dr. Below. She told Dr. Below she tripped and twisted her right knee while moving laundry. Dr. Below recommended an MRI and prescribed medications, physical therapy, and cortisone injections. Petitioner told her physical therapist she was putting clothes in a laundry cart when the wheel of the cart stopped, she tripped, and felt her right knee twist and crack. Following physical therapy, Petitioner continued to have pain and dysfunction in her right knee and Dr. Below recommended a right knee arthroscopy and possible chondroplasty with microfracture of the patella.

Respondent obtained a Section 12 examination of Petitioner by Dr. Farley. She told Dr. Farley she was pushing a cart filled with clothes when her foot caught on one of the wheels and she felt her knee twist. Dr. Farley opined Petitioner's condition was causally related to the work accident and recommended additional treatment.

In addition to Petitioner's employment with Respondent, Petitioner was concurrently employed with ANC Commercial Cleaning at the time of the work accident, and had been employed there since 2019. Respondent claimed it had no knowledge of Petitioner's concurrent employment at the time of the work accident.

The Arbitrator, citing inconsistencies in Petitioner's accident description, found Petitioner failed to prove an accident that arose out of and in the course of her employment..

II. CONCLUSIONS OF LAW

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671, 278 Ill. Dec. 70 (2003). "To satisfy [the 'arising out of'] requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.*

The determination of whether an injury arose out of and in the course of one's employment is generally a question of fact." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482, 340 Ill. Dec. 475 (2009). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Id.*

Unlike the Arbitrator, the Commission finds Petitioner credible and any inconsistencies in her description of the work accident minor and related to the language barrier. At trial, Petitioner testified she had unloaded clean laundry into a white plastic cart and was pushing it across the room, when her foot caught on one of the wheels, causing her to fall. Petitioner described hitting her back on the nearby iron and feeling immediate pain in her right knee. Following her fall, Petitioner's daughter arrived and translated between Petitioner and the

paramedics/ER personnel. The Commission acknowledges Petitioner's accident description to the paramedics and ER personnel lacked the detail of her trial testimony; however, we attribute the lack of detail to translation issues and Petitioner's pain levels after the fall. A thorough review of the ER record revealed additional inaccuracies, including the description of Petitioner's employment "in a laundry mat," instead of in the laundry department of a country club, which are supportive of a translation issue. Petitioner testified the accident description in the ER record was inaccurate.

The Commission also finds the accident report, completed by Sherri Martheler, inconsistent with the testimony of David Kelley and David Garcia. Ms. Martheler did not testify at trial. In the report, Martheler wrote Petitioner was "taking laundry out of dryer...her right knee popped, and she went down." David Kelley, General Manager, testified he reviewed Martheler's report, but did not have a clear understanding of how Petitioner fell; when he arrived at the accident scene, Petitioner was not lying next to the dryer, but on the rubber mat approximately six feet from the dryer. Petitioner's co-worker, David Garcia, confirmed this was the location Petitioner fell.

Dr. Farley attributed the minor inconsistencies in Petitioner's reporting to the language barrier, not her credibility, and found her current condition was causally related to the work accident. We agree. Although Petitioner's trial testimony was more detailed, we find her description to various providers merely a shortened or simplified version, not a complete deviation of her testimony. Accordingly, we reverse and find Petitioner sustained an accident that arose out of and in the course of her employment.

The Commission also finds Petitioner's current condition was causally related to the work accident. There is no evidence Petitioner had pain or treatment to her right knee before the work accident. Immediately following, the ER record noted right knee pain, swelling, and difficulty walking. Dr. Below and Section 12 examiner, Dr. Farley, diagnosed Petitioner with chondral injuries related to the work accident. The Commission agrees and awards all causally related medical expenses outlined in Petitioner's Exhibit 7; TTD from June 1, 2022, through August 17, 2022, totaling 11 1/7 weeks; and prospective medical treatment consisting of a right knee arthroscopy and a chondroplasty with microfracture of the patella and all reasonable and necessary attendant care, as recommended by Dr. Below.

Finally, the Commission finds Petitioner failed to prove Respondent was aware of her concurrent employment. Petitioner testified she told her direct supervisor, Carl Driskell, on one occasion she worked at ANC cleaning. Carl Driskell disputed having a conversation about concurrent employment with Petitioner or having any knowledge of her employment with ANC cleaning. Additionally, there was no evidence Petitioner notified any other personnel, wore a uniform from ANC cleaning, or submitted other documentation to Respondent about her secondary employment. Therefore, the Commission excludes any wages from ANC cleaning from Petitioner's average weekly wage.

The parties agreed Petitioner's average weekly wage was \$373.25 if Petitioner's concurrent wages were excluded. Therefore, the agreed \$373.25 is the proper average weekly wage calculation.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on October 28, 2024, is reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical services outlined in Petitioner's Exhibit 7, as provided in section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay temporary total disability benefits from June 1, 2022, through August 17, 2022, or 11 1/7 weeks, at a rate of \$368.00, as provided in section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall authorize and pay for prospective medical treatment consisting of a right knee arthroscopy and possible chondroplasty with microfracture of the patella, and all reasonable and necessary attendant care, as recommended by Dr. Below.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$30,100.00. 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.

August 13, 2025

o: 7/10/25

MP/ns

060

/s/ Marc Parker
Marc Parker

/s/ Maria E. Portela
Maria E. Portela

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027337
Case Name	Edward Warren v. Valor Technologies
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0350
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Marcy Bennett

DATE FILED: 8/13/2025

/s/ Raychel Wesley, 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD WARREN,

Petitioner,

vs.

NO: 23 WC 27337

VALOR TECHNOLOGIES,

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 current condition of ill-being is causally related to the July 12, 2022 accidental injury and Petitioner's entitlement to prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 18, 2025 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for lumbar spine treatment as recommended by Dr. Mark Chang, as provided in §8(a) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of 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 \$52,000. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 13, 2025

RAW/mck

/s/ *Raychel A. Wesley*

O: 8/6/25

/s/ *Carolyn M. Doherty*

43

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC027337
Case Name	Edward Warren v. Valor Technologies
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	Frank Soto, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Marcy Bennett

DATE FILED: 2/18/2025

/s/Frank Soto, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 11, 2025 4.19%

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)

Edward Warren

Employee/Petitioner

v.

Valor Technologies

Employer/Respondent

Case # **23** WC **027337**

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 **12/10/2024**. 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, **7/12/2022**, 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 **\$67,600.00**; the average weekly wage was **\$1,300.00**.

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

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

ORDER

Petitioner has proven by the preponderance of the credible evidence that his current condition of ill-being is causally related to his work accident, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay for the L5-S1 laminectomy and discectomy recommended by Dr. Chang including an updated lumbar MRI and 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.

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: /s/ Frank J. Soto
Arbitrator

February 18, 2025

Procedural History

This case proceeded to trial on December 10, 2024 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues were causation and prospective medical care consisting of a L5-S1 laminectomy and discectomy. (Arb. Ex. #1).

Findings of Fact

Testimony of Petitioner

Edward Warren (herein after referred to as “Petitioner”) testified that he worked for Valor Technologies (Hereinafter referred to as “Respondent”) as a construction supervisor a position he held for the past 8 years. (T.10 -11). Petitioner testified as a construction supervisor he often helped the crews and would lift things weighing between 20 and 60 pounds. (T.15).

Petitioner testified he injured his back about 20 years ago. (T.21). Petitioner testified to attending therapy and being off work about 6 months. (*Id.*). Petitioner testified he was released from care without any restrictions and was able to perform his job duties since then. (T.21-22).

The parties stipulated Petitioner sustained an accidental injury that arose out of and in the course of employment on July 12, 2022. (Arb. Ex. #1). Petitioner testified to picking up a steel screen when something twitched in his low back causing him to go down. (T.24). Petitioner presented to Physician’s Immediate Care reporting low back pain that same day. Petitioner was issued work restrictions and given a back brace. (T.27).

On September 1, 2022 Petitioner returned to Physician’s Immediate Care reporting that his pain returned after lifting bags of asbestos¹. Petitioner testified his pain never went away but worsened after lifting the bags of asbestos. (T. 33-34). Petitioner testified after this incident his work restrictions were changed to avoid twisting and bending from the waist. (T. 35). At that visit, an MRI was ordered and Petitioner was referred to a neurosurgeon after he underwent the MRI. (T. 39).

Petitioner started treating with Dr. Chang, a physician who previously treated him.² (*Id.*). Petitioner testified since his neck surgery he had no reason to return to Dr. Chang. (T. 39). Dr.

¹ Petitioner testified he was removing asbestos while working for Respondent. (T.13-15).

² Petitioner’s Prior Medical Treatment: In 2006 Petitioner underwent a cervical discectomy and fusion surgery performed by Dr. Mark Chang. (Rx. 5, p. 157-158, 168). Petitioner reached MMI and was released to return to work full duty for his cervical spine on June 29, 2006. (Rx. 5, p. 126). Petitioner returned to Dr. Chang on March 4, 2010 reporting neck pain and low back pain radiating to his right leg. (Rx. 5, p. 35). On March 5, 2010 Petitioner underwent a lumbar MRI which showed a diffused disk bulge and degenerative spurring with hypertrophic change of the facets resulting in mild to moderate bilateral foraminal narrowing and mild central spinal canal stenosis at L5-S1. (Rx. 5, p. 40). On March 20, 2010, Petitioner was allowed to return to work light duty. Petitioner returned to Dr. Chang on June 10, 2010 reporting he was doing fairly well and therapy helped. At that time, Petitioner was found to be at maximum medical improvement and he was released from care. (Rx. 5, P. 31).

Chang recommended physical therapy and epidural injections. (T.39). Petitioner underwent bilateral epidural steroid injections with Dr. Angelopoulos, a pain management physician. (T.40). Petitioner reported 60-70% relief of pain after the first injection. (T. 41). Petitioner underwent more epidural steroid injections. (*Id.*). Petitioner testified the first injected provided significant relief for a few days while the other injections provided relief for about a week. (T. 53-54). Petitioner testified to returning to Dr. Angelopoulos on April 14, 2023 reporting that his pain returned after the injections. (T. 42).

Petitioner testified he underwent an unrelated hernia surgery in 2023. (T. 43). On July 7, 2023 Petitioner returned to Dr. Chang who recommended additional physical therapy. (T. 44). In September of 2023, Petitioner told Dr. Chang that his low back pain was also radiating down his right leg. (*Id.*). Petitioner testified Dr. Chang recommended surgery and he agreed to proceed with surgery. (T. 46).

As to his current condition, Petitioner testified to experiencing pain when he sits too long. (T.47). Petitioner testified to difficulties sleeping and driving long distances. (T.48). Petitioner testified that he is not currently working because there is no available supervisor work. (*Id.*). Petitioner testified he is unable to work as a laborer due to his work restrictions. (*Id.*). Petitioner testified prior to his work injury he would work as a laborer when supervisor work wasn't available. (T.51).

The Arbitrator finds Petitioner's testimony to be credible.

Petitioner's Medical Treatment

Petitioner treated at Physicians Immediate Care from July 12, 2022 through October 27, 2022. (Px. 2). On July 12, 2022 Petitioner reported a sudden onset of lower back pain that radiated into his left leg with numbness into his toes after lifting a window metal cover. The examination noted a positive straight leg raise tests on the right and left with reduced range of motion. X-rays showed lumbar spondylosis and osteopenia without acute or other chronic skeletal disease. (*Id.*). Petitioner was diagnosed with radicular pain and sciatica. (*Id.*). Petitioner was issued work restrictions and prescribed a back brace, Methylprednisolone and Acetaminophen. (*Id.*).

On July 27, 2022 physical therapy was recommended and Petitioner was prescribed Prednisone. On September 1, 2022, Petitioner reported his symptoms were improving with therapy but, on August 30th, he was lifting something heavy at work when his pain returned. Additionally, Petitioner reported experiencing occasional numbness and tingling shooting into his left toes. (*Id.*). The examination noted reduced range of motion, flexion was limited to the

mid-shin, and the push-pull test was positive. Additional physical therapy was recommended and Petitioner was prescribed Acetaminophen and Cyclobenzaprine. (Id.).

On October 13, 2022, Petitioner returned to Physicians Immediate Care reporting continued pain across his low back radiating into his left buttock that shoots down his left leg. An examination noted reduced range of motion, reduced flexion, and pain with forward flexion, twisting and turning. The medical records state an MRI was ordered because of Petitioner's persistent low back pain despite therapy and conservative treatment. (Id.). The MRI was performed on October 25, 2022 which showed marked disc space narrowing with concentric disc bulge effacing the thecal sac and bilateral descending S1 roots at L5-S1. The MRI also showed bilateral facet arthropathy, moderate biforaminal stenosis with mild compression of the bilateral exiting L5 nerve root at the L5-S1 level. (Px. 3.). At the L4-5 level, the MRI showed concentric bulge effacing the thecal sac and bilateral descending L5 roots with bilateral facet arthropathy with disc desiccation and moderate biforaminal stenosis with mild compression of the bilateral exiting L4 root. (Id.). Petitioner returned to Physicians Immediate Care on October 27, 2022 to review the MRI results. (Px. 2). The medical records state that the MRI showed disc bulges effacing the thecal sac with moderate biforeminal stenosis and that Petitioner was referred to a spinal specialist. (Id.).

On November 15, 2022, Petitioner presented to Dr. Mark Chang of Midwest Spine Care reporting while working on July 12, 2022 he experienced a sharp pain in his lower back causing his legs to give out while lifting a heavy window screen. (Px. 4). An examination of the lower back noted moderate tenderness, reduced flexion and extension. The examination also noted mild weakness in the left ankle and great toe dorsiflexion with decreased sensation to pinprick in the dorsum of the left foot. (Id.).

Dr. Chang reviewed the MRI and noted that it showed severe disc degeneration, mild central stenosis, severe right foraminal stenosis, severe right foraminal stenosis, severe left foraminal stenosis and retrolisthesis at L5-S1 and mild disc degeneration with a small right-sided disc herniation, mild central stenosis, moderate right foraminal stenosis and moderate left foraminal stenosis at L4-5. (Px. 4). Dr. Chang diagnosed acute lower back pain, acute left L5 radiculopathy secondary to L4-5 and L5-S1 stenosis. (Id.). In his records, Dr. Chang wrote that he found obvious neurological problems in Petitioner's left leg consistent with nerve impingement as reflected in the MRI. At that time, Dr. Chang referred Petitioner to pain management for lumbar epidural injections. Dr. Chang also issued light duty work restrictions. (Id.).

On December 13, 2022, Petitioner presented to Dr. Angelopoulos for bilateral L5-S1 transforaminal injections under fluoroscopy which Petitioner underwent on December 19, 2022. (Px. 5). Petitioner returned to Dr. Chang on January 3, 2023 reporting the injection helped for about four days. (Px.4.). At that time, Dr. Chang recommended additional injections. (Id.). Petitioner underwent a second injection on January 23, 2023 and a third injection on March 22, 2023. (Px. 5). Petitioner reported a 60% improvement but that he continued to experience constant bilateral low back pain with intermittent radiating pain down both buttocks but mainly in the right buttock. Dr. Angelopoulos assessed exacerbation and progression of intervertebral disc disorder with radiculopathy, degeneration and stenosis. On July 19, 2023 Dr. Angelopoulos recommended surgery with decompression to alleviate the pressure and irritation of the spinal nerves or spinal cord. At that time, Petitioner returned to Dr. Chang. (Id.).

Petitioner followed up with Dr. Chang on September 7, 2023 reporting the injections did not provide lasting or significant relief and that he continued to experience low back pain and left leg pain. (Px. 4.). An examination showed moderate tenderness in the low back, reduced flexion and extension, mild weakness in the right ankle, great toe dorsiflexion and decreased sensation to pinprick in the dorsum of the right foot. (Id.). At that time, Dr. Chang recommended surgery consisting of a L5-S1 laminectomy and discectomy. (Id.). Petitioner continued to follow up with Dr. Chang every few months while waiting for surgical approval. (Id.).

On October 15, 2024, Petitioner returned to Dr. Chang reporting persistent low back pain and left leg pain. (Px. 4). Petitioner also reported taking Norco twice a day but that it was not helping as much due to his worsening pain. Dr. Chang renewed his surgical recommendation. (Id.).

Dr. Harel Deutsch, Section 12 Examiner

Dr. Harel Deutsch examined Petitioner on September 8, 2023 pursuant to Section 12 of the Act. At that time, Petitioner reported back and buttock pain since July 12, 2022 after removing a screen from a window at work. (Rx. 2). Dr. Deutsch indicated Petitioner missed 3 days of work before returning to work with restrictions. (Id.). Dr. Deutsch reviewed various medical records including Physicians Immediate Care, Drs. Chang and Angelopoulos as well as the MRI dated October 25, 2022. (Id.).

Dr. Deutsch examined Petitioner and noted a positive straight leg raise test on the right, tenderness to light palpation and slightly guarded lumbar movements. Dr. Deutsch found no positive Waddell Signs. Dr. Deutsch reviewed the MRI images and determined it showed lumbar degenerative changes but no objective findings of an injury or significant stenosis. (Id.).

Dr. Deutsch opined Petitioner sustained a lumbar strain with no objective evidence of any injury. Dr. Deutsch indicated Petitioner's examination was normal and he opined that Petitioner suffered a lumbar strain which resolved. Dr. Deutsch also opined that Petitioner's current complaints were related to his degenerative changes not to his work injury. (Id.). Dr. Deutsch stated Petitioner's current subjective pain complaints were consistent with his age and mild lumbar degenerative changes. (Id.).

Dr. Deutsch opined the first 3 months of treatment and NSAIDS were reasonable, necessary and related to his lumbar strain. (Rx. 2). Dr. Deutsch also opined the MRI and 16 sessions of physical therapy were reasonable but not the lumbar epidural injections. (Id.). Dr. Deutsch further opined that Petitioner reached maximum medical improvement and the lumbar laminectomy was not reasonable given the mild lumbar degenerative changes. (Id.).

Records Review performed by Dr. Babak Lami

Respondent submitted into evidence a records review performed by Dr. Babak Lami dated August 18, 2024. (Rx. 4). Dr. Lami reviewed various records including Petitioner's 2010 and 2022 through 2024 medical records as well as Dr. Deutsch's Section 12 report. (Id.).

Dr. Lami diagnosed Petitioner as suffering a work-related back sprain with a component of right radiculitis. (Id.). Dr. Lami opined there was no causal relationship between Petitioner's current complaints and his alleged July 12, 2022 injury. (Id.). Dr. Lami stated he based his opinion upon the fact that Petitioner had a history of prior back issues. (Id.). Dr. Lami also opined that Petitioner's symptoms essentially resolved by September 1, 2022 when he reported almost back to 100% with therapy. (Id.).

Dr. Lami stated Petitioner's subjective complaints were corroborated by the degenerative changes identified on the MRI. (Id.). Dr. Lami also disagreed with the L5-S1 laminectomy surgery recommended by Dr. Chang. Dr. Lami said there was no significant central spinal stenosis amenable to a laminectomy and that Petitioner's neural foraminal narrowing was not likely to be corrected with laminotomy surgery. (Id.). Dr. Lami opined Petitioner reached maximum medical improvement by September 1, 2022 and no work restrictions were warranted. (Id.).

Testimony of Dr. Mark Chang, the Treating Physician

Dr. Chang testified he first examined Petitioner on November 15, 2022 and, at that time, he reported a 4 month history of low back pain radiating into his left leg but mostly to the posterior thigh after lifting a heavy window screen at work weighing approximately 100-150 pounds. (Px. 6, p. 9). Petitioner reported feeling a sharp pain in his lower back causing his legs to give out. (Id.).

Dr. Chang testified his examination noted mild weakness with the left ankle, great toe dorsiflexion, decreased sensation of pin prick in the dorsum of the left foot. (Px. 6, p. 10). Dr. Chang testified the MRI dated October 25, 2022 showed severe bilateral foraminal stenosis at L5-S1 and a small right disc herniation at L4-5.³(Id.). Dr. Chang testified he diagnosed acute lower back pain, acute left L5 radiculopathy secondary to an L4-5 disc herniation and L5-S1 stenosis. (Id.). Dr. Chang opined that Petitioner's symptoms started as a result of his July 12, 2022 work accident. (Px. 6, p. 11). Dr. Chang stated he based his opinions on Petitioner's history, the examination, and the MRI. (Id.).

Initially Dr. Chang recommended epidural injections which the first injection helped for about four days. (Px. 6, p. 12). Dr. Chang recommended additional injections which did not provide lasting help. (Px. 6, p. 14). Dr. Chang testified on September 7, 2023 Petitioner reported therapy wasn't helping and his examination noted weakness in the right ankle, great toe dorsiflexion and that Petitioner developed symptoms on the right side. (Px. 6, p. 16). At that time, Dr. Chang recommended surgery consisting of a L5-S1 laminectomy and discectomy because Petitioner was still symptomatic despite extensive conservative treatment. (Id.). Dr. Chang opined the surgery was related to Petitioner's July 12, 2022 work accident based upon Petitioner's symptoms, examination, imaging and the history. (Px. 6, p. 17).

On cross examination Dr. Chang testified he reviewed the actual MRI images and that his interpretation was purely based upon his review of the MRI images. (Px. 6, p. 23). Dr. Chang testified Petitioner's MRI showed a significant degenerative condition that likely existed prior to Petitioner's work injury. (Px. 6, p. 25). Dr. Chang testified he recommended a laminectomy with discectomy at L5-S1 but the discectomy was included in the event a disc needs to be trimmed. (Px. 6, p. 26). Dr. Chang testified the recommended surgery was warranted because the injections provided relief even if only temporary. (Px. 6, p. 27).

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).

³ Dr. Chang initially testified to small disc herniations at L5-S1 and L4-5 appearing on the MRI but later corrected his assessment to a disc herniation only at the L4-5 level. (Px. 6, p. 26).

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 aggravation or acceleration of a preexisting condition caused by work-related activity is compensable under the Act. *Sisbro, Inc.*, 207 Ill. 2d at 204-05. When a preexisting condition is asymptomatic and then becomes painful as the result of work-related activity, that symptomatic condition is compensable under the Act as an aggravation of the preexisting condition even in the absence of an organic or structural change in the preexisting condition. *Tazewell County v. Illinois Workers' Compensation Comm'n*, 2025 IL App (4th) 230754WC. When a preexisting asymptomatic condition becomes painful for reasons other than an organic or structural change or natural progression, it follows that the preexisting condition was aggravated by something. If the aggravation is work-related, such as repetitive trauma, and solely causes pain, we hold that the pain suffered is, in and of itself, a compensable aggravation of the preexisting condition. (*Id*).

The Arbitrator has carefully reviewed and considered all medical evidence along with all the testimony. The Arbitrator finds Petitioner has proven by the preponderance of the credible evidence that his current condition of ill-being is causally related to his work accident, as set forth more fully below.

Based upon the evidence submitted at trial, prior to his July 12, 2022 work accident, Petitioner was working full duty, was performing all of his job duties and was not experiencing low back symptoms. After his July 12, 2022 work accident, Petitioner developed low back symptoms, was issued light duty work restrictions, and started to undergo medical treatment. Dr. Chang diagnosed low back pain, acute left L5 radiculopathy secondary to L5-S1 stenosis. (Px. 6, p. 10). Dr. Chang opined that Petitioner's July 12, 2022 work accident was a cause of his current condition. (Px. 6, p. 11, 17).

The Arbitrator finds Petitioner had a non-symptomatic underlying degenerative condition and that his condition deteriorated after his July 12, 2022 work injury. The Arbitrator further finds that it's reasonable to infer Petitioner's work accident caused the deterioration of his condition. 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. In fact, 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).

Additionally, the Arbitrator finds the opinions of Drs. Chang and Angelopoulos, as treating physicians, to be more persuasive than the opinions of Dr. Deutsch and Lami, in part, since they had a greater opportunity to assess Petitioner's symptoms and credibility. See *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 4 (1979); see also *Sears v. Rutishauser*, 102 Ill. 2d. 402. 407 (1984). When Petitioner presented to Dr. Chang he complained of pain, numbness and weakness in the left leg. Dr. Chang's examination noted moderate tenderness, reduced flexion and extension, mild weakness in the left ankle, great toe dorsiflexion and decreased sensation to pinprick in the dorsum of the left foot. Petitioner was examined by Angelopoulos, a pain management physician, who also noted reduced range of motion, radicular pain, axial low back pain with extension, a positive straight leg test, paraspinal muscle spasms, tenderness over the facet joints and sciatic notch. The exam findings of Drs. Chang and Angelopoulos were consistent with the various examinations performed at Physicians Immediate Center as well as the MRI, which identified a marked space narrowing with concentric disc bulge effacing the thecal sac and bilateral descending S1 root at L5-S1 and moderate biforaminal stenosis with mild compression of the bilateral existing L5 nerve roots. (Px. 2, 3). The temporary relief Petitioner received from the bilateral L5-S1 transforaminal injections supports the exam findings of Drs. Chang and Angelopoulos.

The Arbitrator finds the opinions of Drs. Deutsch and Lami less persuasive than the opinions of Drs. Chang and Angelopoulos. Dr. Deutsch opined Petitioner suffered a lumbar strain which, he said, typically resolves within 3 months. Dr. Lami assessed a lumbar strain which, he believed, resolved by September 1, 2022. The Arbitrator finds the opinions of Drs. Deuthch and Lami to be inconsistent with the Physicians Immediate Care exam findings dated September 1, 2022. The examination conducted at Physicians Immediate Care on September 1, 2022 showed a positive bilateral straight leg test, reduced range of motion, pain with range of motion to the knees, tenderness of lumbar muscles, and sciatic pain. (Px. 2, p. 160). At that time, Petitioner was prescribed additional physical therapy, Acetaminophen and Cyclobenzaprine and Petitioner's work restrictions were renewed. (Id.). The Arbitrator finds Petitioner's physical condition had not returned to his pre accident condition by September 1, 2022 and that the various examinations conducted on and after September 1, 2022 undermines the opinions of Drs. Deutsch and Lami.

Dr. Lami stated Petitioner's symptoms were essentially resolved by September 1, 2022 but, the Arbitrator finds that statement inconsistent with the Physicians Immediate Care medical records. On September 1, 2022, Petitioner reported his symptoms were improving with therapy until the 30th of August when his pain returned after lifting something heavy at work.

Drs. Deutsch and Lami both opined that Petitioner's current symptoms are solely related to his degenerative condition. The Arbitrator finds Drs. Deutsch and Lami failed to sufficiently address the temporal relationship between Petitioner's work accident and the onset of his symptoms. Petitioner was asymptomatic prior to his work injury. Petitioner developed low back symptoms immediate after his work injury and those symptoms continue to exist. Drs. Deutsch and Lami failed to identify or describe Petitioner's pre accident condition or baseline nor did they identify any medical records supporting their opinion that Petitioner's condition returned to its pre accident condition or baseline.

Additionally, Drs. Deutsch and Lami failed to sufficiently address why they believe Petitioner's work accident didn't exacerbated, accelerated, or contributed to his asymptomatic underlying degenerate condition becoming symptomatic after his work accident. The evidence at trial shows that Petitioner's preexisting underlying degenerative condition was asymptomatic prior to his work injury. Petitioner was working full duty, was not experiencing low back symptoms nor receiving medical treatment. Drs. Deutsch and Lami both opine that Petitioner's current condition is solely related to his underlying degenerative condition. Their opinion infers that Petitioner's underlying preexisting degenerative condition became symptomatic

simultaneously as Petitioner's work-related low back strain was resolving. In such situations a sufficient explanation supporting their opinions is warranted.

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

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

The Arbitrator incorporates the Conclusions of Law in Section into this Section. Petitioner seeks prospective medical treatment consisting of a L5-S1 laminectomy and discectomy recommended by Dr. Chang. The Arbitrator has carefully reviewed and considered all medical evidence along with all the testimony. The Arbitrator finds Petitioner has proven by the preponderance of the credible evidence that he is entitled to prospective medical care, as set forth more fully below.

As stated above in Section "F" of the Conclusions of Law the Arbitrator found the opinions of Drs. Chang and Angelopoulos to be more persuasive than those of Drs. Deutsch and Lami. Dr. Chang recommended surgery consisting of a L5-S1 laminectomy and discectomy based, in part, upon Petitioner remaining symptomatic despite extensive conservative treatment. (Id.). Petitioner continues to have weakness in the right ankle and great toe dorsiflexion. Petitioner received temporary relief from the L5-S1 epidural injections which supports Dr. Chang's opinions. Dr. Chang testified Petitioner's symptoms were consistent with the history, examination and imaging. Dr. Chang's surgical recommendation is also consistent with the surgical recommendation of Dr. Angelopoulos. The Arbitrator finds the surgery recommended by Dr. Chang to be reasonably required to cure or relieve Petitioner from the effects of his injury. As such, Respondent shall pay for the L5-S1 laminectomy and discectomy recommended by Dr. Chang including an updated lumbar MRI and reasonable and necessary attendant care pursuant to Sections 8.2 and 8(a) of the Act.

By: /s/ Frank J. Soto
Arbitrator

February 14, 2025
Date

February 18, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC021254
Case Name	Craig A Snyder v. Innovative Staff Solutions
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0351
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Michael Meyer
Respondent Attorney	Bruce Bonds

DATE FILED: 8/14/2025

/s/Amylee Simonovich, 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 JEFFERSON)	☐ Reverse	☐ Second Injury Fund (§8(e)(18))
	☐ Modify	☐ PTD/Fatal denied
		☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Craig A. Snyder,

Petitioner,

vs.

NO: 15 WC 021254

Innovative Staff Solutions,

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 causation, medical expenses, temporary total disability, permanent partial disability, and permanent total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

STATEMENT OF FACTS

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, except as stated below.

The medical records demonstrate Petitioner did not have any issues with his right foot prior to the work-related surgery of July 1, 2015, but that he developed issues approximately six months after surgery. PX3, p.7-9. Petitioner testified that after the surgery, he was not able to "put his right foot flat" and was "walking on his toes on his right foot" for close to a year. T.22. Dr. Coyle first noted Petitioner's issues with his ambulation beginning in December 2015. PX2, p.17. He recommended Petitioner undergo physical therapy. *Id.* However, Petitioner's strange ambulation continued to be noted by Dr. Coyle in his treatment notes of January, March, April and May 2016. PX2, p. 18, 20, 21, 22. Petitioner specifically complained of pain when he attempted and achieved heel strike in his right foot. PX2, p. 22. Dr. Coyle did not have a good explanation for his symptoms, but noted they persisted. *Id.* On June 20, 2016, Dr. Coyle again noted he had no explanation for his toe walking and dismissed Petitioner from his care. PX2, p.24.

Petitioner continued to seek treatment for his pain from Dr. Ogan. T.23. Dr. Ogan initially

tried an epidural injection on July 26, 2016, but the Petitioner only experienced minimal relief. PX3, p.16. Dr. Ogan then provided an SI joint injection on August 30, 2016, which did provide relief for a couple of days. PX4, p.53. During his treatment of Petitioner, Dr. Ogan noted decreased range of motion in the right ankle and a very awkward gait. PX3, p.19. Petitioner reported increased right lower lumbar pain, if he put the plantar surface of his right foot flat. *Id.* Given his continued low back pain, right leg pain and inability to put his foot flat, Dr. Ogan referred him to Victoria Johnson at Carle Spine Institute in Champaign. PX4, p.55. Dr. Johnson noted that Petitioner reported developing right leg pain radiating down to his foot about six months after the surgery. PX3, p.7-9. Dr. Johnson ordered an MRI, which demonstrated only minimal facet arthropathy. PX4, p.55-56. Petitioner's greatest concern was the problem he was having with his right foot, which she diagnosed as Achilles tendon pain, and for which she referred him to podiatrist, Dr. Grambart. PX4, p.56.

Dr. Grambart saw Petitioner on November 14, 2016. PX4, p.60-61. He noted Petitioner had undergone surgery in July of 2015 and been unable to put his foot on the ground since December of 2015. At that time, Petitioner reported a seven out of ten on the pain scale in his right foot. Dr. Grambart diagnosed Petitioner with a drop foot deformity and low back injury. He recommended an EMG/NCV, which showed the Petitioner's nerves were functioning. Dr. Grambart believed Petitioner's pain in his drop foot was probably coming from his back. PX4, p.76. He gave Petitioner options for getting his foot in a flat position, including an ankle fusion. *Id.* This was neither the least invasive or most invasive of the options discussed. Dr. Grambart further indicated that the surgery might not remove all nerve or range of motion issues, but that Petitioner's right ankle really did not have any range of motion at that point. PX4, p.72.

Dr. Grambart performed a surgery on Petitioner on April 19, 2017, which lengthened his Achilles tendon and fused his ankle at a 90-degree angle, allowing him to lay his foot flat again. T.25; PX4, p.78-81. Petitioner attended physical therapy after the surgery. PX4, p.81. In follow up, Dr. Grambart noted Petitioner had a good result, with good alignment, an ability to curl his toes up and down, and no calf tenderness. PX4, p. 96-97, 100. Petitioner still complained of occasional pain, but his ankle was noted to be healing appropriately. As of July 10, 2017, Petitioner was released by Dr. Grambart, who noted Petitioner was to continue with physical therapy and contact him as needed. PX4, p.99-100. This was the last time Petitioner was seen by Dr. Grambart.

ANALYSIS

While the Parties stipulated that the Petitioner's low back and right ankle conditions were causally related to the accident, they disputed the date Petitioner is said to have reached maximum medical improvement for those conditions. In her Decision, the Arbitrator found Petitioner reached maximum medical improvement as of June 20, 2016. We disagree with this finding.

While Dr. Coyle did technically place Petitioner at maximum medical improvement on June 20, 2016, Petitioner continued to display active complaints of a painful and awkward gait at the time of his release. We find the medical records and Petitioner's testimony demonstrated a need for continued medical care beyond Dr. Coyle's pronouncement of maximum medical improvement.

Pursuant to Section 8(a) of the Act, an employer must pay for all necessary medical expenses “reasonably required to cure or relieve from the effects of the accidental injury.”

In the case at hand, the Petitioner’s painful right foot and abnormal gait were not present prior to Petitioner’s original work injury and persisted beyond the time of his release on June 20, 2016. As Petitioner’s symptoms persevered after his release from care by Dr. Coyle, he continued to seek treatment for his low back pain, right foot pain, and the resulting gait problems from Dr. Ogan, Dr. Johnson and Dr. Grambart. Petitioner had a temporary relief of pain for his low back during Petitioner’s treatment with Dr. Ogan and Dr. Johnson, but his right foot gait issue was still present and acting as an aggravation to his low back. PX3, p.19. Petitioner’s main concern at the time of his treatment with Dr. Johnson and Dr. Grambart appeared to be the functionality of his right foot, specifically his continued painful toe walking and inability to place his foot flat on the ground. Dr. Grambart advised him prior to the April 19, 2017 right foot fusion surgery that the surgery might not be able to relieve the nerve pain Petitioner was experiencing from his back injury, but that it could help him to get his foot flat on the ground, making it more functional. PX4, p.72. At the time Dr. Grambart released Petitioner on July 10, 2017, Petitioner’s arthrodesis was healing as expected and Petitioner was able to flex and extend his toes. PX4, p.100. Petitioner was advised to return as needed; however, this was his last visit with Dr. Grambart. Accordingly, we find Petitioner reached maximum medical improvement as of July 10, 2017.

Further, while Respondent’s Section 12 evaluator, Dr. Van Fleet, did not agree with the actual diagnosis of drop foot provided by Dr. Grambart, he did agree that the Petitioner’s foot and ankle problem was the result of the work injury. Dr. Van Fleet indicated, “As to whether or not the pantalar arthrodesis was an appropriate treatment for this condition, I would leave that to a foot and ankle surgeon, however, I do feel that the judgement that was rendered to perform the surgery at that point in time was as a result of the gentleman's lumbar spine operation.” RX2, Deposition Ex. 2, p.6. We note that no further expert opinions were offered from a foot and ankle surgeon to provide rebuttal for Dr. Grambart’s opinion as to the reasonableness of the surgery.

The Commission finds Petitioner is entitled to reasonable and related medical expenses required to cure or relieve from the effects of the accidental injury through the date of maximum medical improvement on July 10, 2017. This includes medical expenses incurred for treatment relating to his low back and right foot, including surgery and post-surgical care, provided by Effingham Surgical Ambulatory Surgery Center (\$1,512.40), Carle Clinic (\$6,342.80) and with Dr. Ogan (\$1,241.49), as demonstrated in PX3, PX9, and PX10, pursuant to Section 8(a) and 8.2 of the Act.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 9, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner reasonable and necessary medical services, including causally related treatment incurred

through July 10, 2017 at Effingham Surgical Ambulatory Surgery Center (\$1,512.40), Carle Clinic (\$6,342.80), and with Dr. Ogan (\$1,241.49), as set forth in PX3, PX9, and PX10, as provided in Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay/reimburse the Illinois Department of Healthcare & Family Services \$9,319.76 for medical bills it paid as itemized in PX11.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of \$220.00/week for 47 weeks, commencing on February 3, 2015 through August 23, 2015 and April 19, 2017 through July 10, 2017, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of \$220.00/week for 375 weeks, as the injuries sustained caused 75% loss of use 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 shall pay to Petitioner permanent partial disability benefits of \$220.00/week for 83.5 weeks, as the injuries sustained caused 50% loss of use of the right foot, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that the 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 \$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.

August 14, 2025

O: 07/01/25

AHS/kjj

051

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Kathryn A. Doerries
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	15WC021254
Case Name	Craig A Snyder v. Innovative Staff Solutions
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Michael Meyer
Respondent Attorney	Bruce Bonds

DATE FILED: 9/9/2024

/s/William Gallagher, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 4, 2024 4.645%

COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Craig A. Snyder
Employee/Petitioner

Case # 15 WC 21254

v.

Consolidated cases: n/a

Innovative Staff Solutions
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on July 25, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

ICArbDec 2/10 69 W. Washington, 9th Floor, Chicago, IL 60602 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On January 29, 2015, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$13,520.00; the average weekly wage was \$260.00.

On the date of accident, Petitioner was 36 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of \$2,555.58 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$2,555.58.

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

ORDER

Respondent shall pay/reimburse the Illinois Department of Healthcare & Family Services \$9,319.76, for medical bills it paid as itemized Petitioner's Exhibit 11. All other medical bills received into evidence at trial are hereby denied.

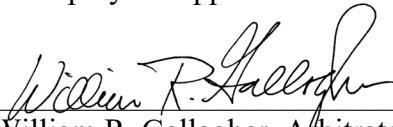
Respondent shall pay Petitioner temporary total disability benefits of \$220.00 per week for 47 weeks commencing commencing February 3, 2015, through August 23, 2015, and April 19, 2017, through July 10, 2017, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$220.00 per week for 375 weeks because the injury sustained caused the 75% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$220.00 per week for 83.5 weeks because the injury sustained caused the 50% loss of use of the right foot, as provided in Section 8(e) of the Act.

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

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


 William R. Gallagher, Arbitrator

September 9, 2024

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on January 29, 2015. According to the Application, Petitioner was "lifting" and sustained an injury to his "low back" (Arbitrator's Exhibit 2). There was no dispute in regard to accident. In respect to causal relationship, Petitioner and Respondent stipulated that the injuries to Petitioner's low back and right foot/ankle were causally related to the accident; however, various other medical conditions for which Petitioner also sought treatment were not causally related to the accident. Accordingly, the disputed issues were medical bills, temporary total disability benefits and the nature and extent of permanent disability (Arbitrator's Exhibit 1).

In regard to medical bills, Respondent stipulated that it was liable for medical bills paid by the Illinois Department of Healthcare & Family Services in the amount of \$9,319.76, for treatment provided to Petitioner in respect to his right foot/ankle injury. In respect to other medical bills tendered into evidence at trial, Respondent disputed liability on the basis that they were for services provided to Petitioner subsequent to Petitioner's having been determined to be at MMI in respect to his low back condition (Arbitrator's Exhibit 1; Petitioner's Exhibits 9, 10 and 11).

In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 73 ³/₇ weeks, commencing January 30, 2015, through June 19, 2016, because Petitioner was found to be at MMI in respect to his low back injury the following day. Respondent claimed Petitioner was entitled to temporary total disability benefits of 28 ⁶/₇ weeks, commencing February 3, 2015, through August 23, 2015, when Respondent offered Petitioner light duty work (Arbitrator's Exhibit 1).

In regard to Petitioner's permanent disability, Petitioner claimed he was permanently and totally disabled as a result of the accident of January 29, 2015, and entitled to permanent total disability benefits commencing June 20, 2016. Respondent disputed that Petitioner was permanently and totally disabled, but that he was entitled to permanent partial disability benefits in respect to his low back and right foot/ankle injury (Arbitrator's Exhibit 1).

Petitioner worked for Respondent, a temporary staffing agency and was assigned to work at Sherwin Williams, a paint company. At the time of the accident of January 29, 2015, Petitioner had worked at Sherwin Williams for approximately one year. On January 29, 2015, Petitioner was in the process of unloading a semi truck and lifting pallets which weighed in excess of 100 pounds. When he did so, Petitioner experienced a sharp pain in his low back which radiated down his right leg.

The accident was reported to Respondent shortly after it occurred and Petitioner was directed by Respondent to go to the Bonutti Clinic, where he was initially evaluated by Dr. Karl Rudert, on February 3, 2015. Petitioner informed Dr. Rudert of the accident and complained of low back and right leg pain. Dr. Rudert opined Petitioner had sustained an acute low back injury with L5 radiculopathy down the right leg. He ordered an MRI scan of the lumbar spine (Petitioner's Exhibit 1).

The MRI was performed on February 5, 2015. According to the radiologist, the MRI revealed a mild circumferential disc bulge and right paracentral annular tear at L5-S1, and mild facet arthropathy at L4-L5, but no disc herniation. Petitioner was then referred to Dr. Bernard Rerri, an orthopedic surgeon, at the Bonutti Clinic (Petitioner's Exhibit 1).

Dr. Rerri saw Petitioner on February 13, 2015, and reviewed the MRI scan. He opined the MRI revealed a disc herniation at L5-S1 and he prescribed medication, recommended Petitioner receive an epidural injection, and ordered physical therapy. Dr. Rerri subsequently administered an epidural injection at L4-L5, and released Petitioner to return to work on light duty on March 23, 2015 (Petitioner's Exhibit 1).

At trial, Petitioner testified the epidural injection did not help and he continued to experience the same low back and right leg symptoms. Petitioner subsequently sought medical treatment from Dr. James Coyle, an orthopedic surgeon.

Dr. Coyle initially evaluated Petitioner on April 28, 2015, and his report of that date was directed to Respondent's insurer. Accordingly, it appears as though Dr. Coyle first saw Petitioner as Respondent's Section 12 examiner; however, he subsequently became Petitioner's treating physician. When seen by Dr. Coyle, Petitioner informed him of the accident of January 29, 2015, and the medical treatment he received thereafter. Dr. Coyle examined Petitioner and reviewed the MRI scan which he opined revealed a herniated disk and annular tear on the right at L5-S1. He recommended Petitioner undergo surgery consisting of an L5-S1 decompression, partial facetectomy and fusion. He opined Petitioner could not work in a very heavy capacity, but noted Petitioner was working in his "own business" and could continue to do so (Petitioner's Exhibit 2).

Dr. Coyle performed surgery on Petitioner's lumbar spine on July 1, 2015. The procedure consisted of a fusion at L5-S1. When seen by Dr. Coyle on July 17, 2015, Petitioner's low back and right leg pain symptoms had improved, but Dr. Coyle continued to authorize Petitioner to remain off work (Petitioner's Exhibit 2).

When Dr. Coyle saw Petitioner on August 20, 2015, Petitioner's severe right leg pain was gone and there was x-ray evidence of bony fusion. Dr. Coyle directed Petitioner to engage in an aggressive walking program. Dr. Coyle's report of that date did not provide an opinion as to Petitioner's ability to return to work (Petitioner's Exhibit 2).

At trial, Petitioner acknowledged that Dr. Coyle released him to return to work with restrictions when he saw him in August, 2015. Petitioner also agreed Respondent had contacted him at that time offering him light duty work. Respondent's counsel wrote Petitioner's counsel on August 24, 2015, advising him of the offer of light duty work which was tendered to Petitioner (Respondent's Exhibit 9). Petitioner testified he did not attempt to return to work at that time.

Dr. Coyle continued to treat Petitioner and ordered aquatic therapy. When he saw Petitioner on December 21, 2015, he continued to impose a lifting restriction of no greater than 30 pounds. However, when Dr. Coyle saw Petitioner on January 28, 2016, Petitioner advised his back pain had increased. Dr. Coyle noted there was no radiculopathy, but Petitioner had gained weight and was close to 300 pounds. He ordered a CT scan of the lumbar spine (Petitioner's Exhibit 2).

The CT scan was performed on March 1, 2016. According to the radiologist, the fusion was solid and the hardware was in satisfactory position (Petitioner's Exhibit 2).

Dr. Coyle saw Petitioner on March 1, 2016, and reviewed the CT scan and spoke to the radiologist. He informed Petitioner there was nothing else which could be done for him from either a surgical or physical therapy point. He directed Petitioner to lose weight and to exercise normal safety precautions when bending, twisting and lifting (Petitioner's Exhibit 2).

When Dr. Coyle subsequently saw Petitioner on March 31, 2016, Petitioner continued to complain of right leg pain, but advised his condition was significantly improved when compared to his condition prior to surgery. Dr. Coyle ordered an MRI scan to rule out any other disk herniations (Petitioner's Exhibit 2).

Dr. Coyle saw Petitioner on April 1, 2016, and reviewed the MRI performed that same day. He opined it revealed no disk herniations or stenosis at L5-S1 and revealed no evidence of nerve root compression. Dr. Coyle opined the fusion was solid (Petitioner's Exhibit 2).

Dr. Coyle again saw Petitioner on May 24, 2016. At that time, Petitioner continued to have right leg complaints. Dr. Coyle noted he did not "... have a good explanation for his symptoms", and ordered an EMG/nerve conduction study (Petitioner's Exhibit 2).

Dr. Coyle last saw Petitioner on June 20, 2016, and reviewed the EMG/nerve conduction studies. He opined it did not reveal any active radiculopathy. He opined Petitioner was at MMI and should observe normal safety precautions (Petitioner's Exhibit 2).

Petitioner subsequently sought treatment from Dr. Brian Ogan, a pain management physician, who initially evaluated Petitioner on July 25, 2016. At that time, Petitioner complained of low back and right leg pain. Dr. Ogan administered an epidural injection on July 26, 2016, and August 30, 2016. He subsequently referred Petitioner to Dr. Victoria Johnson (Petitioner's Exhibit 3).

Dr. Johnson evaluated Petitioner on September 21, 2016. At that time, Petitioner complained of back and right leg pain which he rated as 8/10. On examination, straight leg raising was mildly positive on the right and the examination findings in respect to both lower extremities were normal. Dr. Johnson opined Petitioner had lumbar spondylosis with radiculopathy. She recommended Petitioner have an MRI scan of the lumbar spine (Petitioner's Exhibit 3).

Petitioner subsequently sought treatment from Dr. Sean Grambart, a podiatrist, on November 14, 2016, for right foot/ankle symptoms. At that time, Petitioner complained of right Achilles foot pain which had been present since December, 2015. Petitioner advised Dr. Grambart he had undergone back surgery in July, 2015. Dr. Grambart diagnosed Petitioner with a right drop foot deformity (Petitioner's Exhibit 4; Deposition Exhibit 4).

When Dr. Grambart saw Petitioner on January 14, 2017, he recommended Petitioner undergo right foot/ankle surgery consisting of a pantalar arthrodesis with metal hardware and grafting. Dr. Grambart performed surgery on Petitioner's right foot/ankle and the procedure consisted of a

pantalar arthrodesis with metal hardware as well as Achilles tendon lengthening (Petitioner's Exhibit 4; Deposition Exhibit 5).

Dr. Grambart continued to treat Petitioner following surgery and ordered physical therapy. When he last saw Petitioner on July 10, 2017, he opined the arthrodesis was healing and Petitioner's ankle was stable. At that time, he released Petitioner from care and that was the last time Petitioner was seen by him (Petitioner's Exhibit 4; Deposition Exhibit 7).

Petitioner subsequently sought treatment from Dr. Jeffrey Brummer, a family physician, who initially evaluated Petitioner on December 11, 2018. At that time, Petitioner complained primarily of low back and right ankle pain as well as depression. Dr. Brummer diagnosed Petitioner with lumbago and right sided sciatica. He treated Petitioner with medication which included medical marijuana. Dr. Brummer saw Petitioner intermittently through August 27, 2020, and treated Petitioner for a number of other health issues (Petitioner's Exhibit 5).

On August 6, 2020, Petitioner was evaluated by Dr. Kevin Teal, a neurosurgeon associated with the Carle Clinic. At that time, Petitioner complained of chronic neck pain with radiculopathy and chronic low back pain with bilateral sciatica. Dr. Teal treated Petitioner primarily in respect to his neck pain and administered injections which provided some temporary relief (Respondent's Exhibit 3).

Petitioner subsequently sought treatment from Dr. Paul Oltman, a family physician, who initially evaluated him on October 29, 2020. At that time, Petitioner complain primarily of low back, neck and right ankle pain. Petitioner informed Dr. Oltman of the work accident and the fact that he had undergone lumbar and right foot surgeries. Dr. Oltman treated Petitioner's low back and right ankle symptoms with injections, aquatic therapy, and physical therapy. He also treated Petitioner for numerous other medical conditions including cervical radiculopathy, headaches, gastrointestinal problems, depression/anxiety, sleep apnea and other medical conditions. Dr. Oltman last saw Petitioner on July 12, 2024 (Petitioner's Exhibit 6).

Dr. Oltman saw Petitioner on March 10, 2021, and noted Petitioner had been in a motor vehicle accident (hereinafter referred to as "MVA") and sustained a right tibial plateau fracture which required open reduction and internal fixation. At that time, Petitioner continued to complain of low back pain. When seen by Dr. Oltman on March 19, 2021, Petitioner complained primarily of low back pain after the MVA. When seen by Dr. Oltman on April 18, 2021, Petitioner informed him that his low back and right leg symptoms had significantly worsened since the MVA (Petitioner's Exhibit 6).

Dr. Teal again saw Petitioner on June 9, 2021. At that time, Petitioner informed him of having been in an MVA in February, 2021, which "...aggravated his baseline back pain." Petitioner also informed Dr. Teal of the work accident and that he had undergone fusion surgery in 2015. Dr. Teal opined Petitioner had sustained an aggravation of his chronic low back pain and recommended physical therapy and injections (Respondent's Exhibit 3).

At trial, Petitioner testified that he was involved in an MVA in February, 2021 and had sustained an injury to his right leg. However, Petitioner denied having sustained any type of reinjury to either his low back or right ankle as a result of the MVA.

When Dr. Oltman saw Petitioner on October 29, 2021, Petitioner advised he was not having significant ankle pain and was not feeling depressed. Petitioner continued to complain of right knee pain and Dr. Oltman directed him to use a cane (Petitioner's Exhibit 6).

Dr. Oltman evaluated Petitioner on December 29, 2021. At that time, Petitioner advised he was experiencing more back pain because he had been doing a lot of riding in a car and traveling. Dr. Oltman continued to treat Petitioner, primarily for sleep apnea and right knee pain (Petitioner's Exhibit 6).

Dr. Oltman continued to treat Petitioner through July, 2024, for all of his numerous medical conditions. When he last saw Petitioner on July 12, 2024, Petitioner complained of low back and right leg radicular pain, right knee pain, anemia and depression/anxiety. Dr. Oltman recommended Petitioner continue physical therapy and medication (Petitioner's Exhibit 6).

At trial, Respondent tendered into evidence surveillance videos of Petitioner which were taken on October 1, 2021, and November 2, 2021. The Arbitrator watched the videos and observed Petitioner propelling himself with his legs while seated in a wheelchair. Petitioner was able to get out of the wheelchair, get into his car and drive away. Petitioner was then observed getting out of his car, lifting boxes, getting boxes out of the trunk of his car, putting boxes in the back seat of his car and putting trash into a dumpster. Petitioner was subsequently observed ambulating with the assistance of a cane and then going to a grocery store (Respondent's Exhibits 10 and 11).

At the direction of Respondent, Dr. Timothy VanFleet, an orthopedic surgeon, reviewed medical records regarding the treatment Petitioner had received from February 3, 2015, through June 26, 2017. Dr. VanFleet prepared a report regarding his review of the medical records dated September 13, 2022. The records reviewed by Dr. VanFleet were primarily those of Dr. Coyle and Dr. Grambart. He opined Petitioner's ankle injury and the subsequent surgery was related to the accident and that Petitioner would have a restriction of no lifting in excess of 20 pounds and no repetitive walking because of Petitioner's right ankle condition. In respect to Petitioner's low back condition, Dr. VanFleet agreed with Dr. Coyle that Petitioner was at MMI as of June 20, 2016 (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. VanFleet subsequently examined Petitioner on April 24, 2024. At that time, Dr. VanFleet reviewed additional medical records and watched the aforementioned surveillance video of Petitioner. Dr. VanFleet diagnosed Petitioner as having undergone a lumbar spinal fusion with multilevel degenerative disc disease. Dr. VanFleet opined Petitioner had pain subsequent to the accident of the January 29, 2015, accident at work which resulted in the fusion surgery; however, he also opined the subsequent MVA of February 24, 2021, was more likely related to Petitioner's current level of pain. He opined the medical treatment Petitioner had received subsequent to the MVA was related to it, and not to the accident of January 29, 2015 (Respondent's Exhibit 2; Deposition Exhibit 3).

Dr. VanFleet opined Petitioner might require future medical treatment because of the ongoing degenerative condition which is exacerbated by Petitioner's morbid obesity. He opined Petitioner could return to work, but with a 15 pound lifting restriction. This was based on Petitioner's obesity, presence of degenerative disc disease, and his observations of Petitioner when he watched the surveillance videos (Respondent's Exhibit 2; Deposition Exhibit 3).

At the direction of his attorney, Petitioner was evaluated by Leslie LLOYD, a vocational rehabilitation expert, on September 15, 2020. In connection with her evaluation of Petitioner, she reviewed the medical records of Dr. Coyle, Dr. Grambart, and Dr. Brummer. In respect to the records of Dr. Brummer, she reviewed a report dated June 27, 2019, wherein he opined Petitioner had multiple limitations, including only rarely lifting five to 10 pounds, limits on reaching/handling objects, that Petitioner could only sit for 20 minutes and stand for 10 minutes, that Petitioner required the use of a cane to walk and had various postural limitations (Petitioner's Exhibit 7).

LLOYD obtained a vocational history from Petitioner and determined he was a college graduate with a degree in geography, previously owned/operated a vending machine company, was a delivery driver, sold cell phones, was previously a licensed real estate agent, and had an online hobby store. She did not obtain any further information in respect to the "hobby store", and conducted no vocational testing. Based on the preceding, and the restrictions imposed by Dr. Brummer, LLOYD opined there was not a job in the open competitive labor market for Petitioner given his prior work experience and the restrictions imposed by Dr. Brummer. She also opined Petitioner was not a candidate for vocational rehabilitation/retraining (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was evaluated by Elizabeth SKYLES, a vocational rehabilitation expert, on November 8, 2022. In connection with her evaluation of Petitioner, SKYLES reviewed medical records provided to her by Respondent. The medical records included the report of Dr. Brummer of June 27, 2019, wherein he opined as to Petitioner's restrictions (Respondent's Exhibit 1; Deposition Exhibit 2).

In regard to Petitioner's vocational history, Petitioner provided SKYLES with information regarding his online business which he called "Yesterday's Toybox" which he had been operating since April, 2012. In this business, Petitioner would buy/sell toys primarily made in the 80s and 90s. Petitioner advised he would obtain them at toy shows, auctions, charity stores and online. Many of the toys he obtained were action figures, various collectibles and electronic devices. Petitioner advised her that, prior to Covid, he sold approximately 50,000 units per year, but that he was presently averaging 30,000 to 40,000 units per year. Petitioner also informed her that he sold small electronic devices, did computer repair work and had the ability to build websites (Respondent's Exhibit 1; Deposition Exhibit 2).

SKYLES noted Petitioner had not sought any employment but preferred being self employed and wanted to continue to expand his business. She opined Petitioner was employable in a light duty capacity which was consistent with the operation of the business he described to her. She also opined there were jobs available for Petitioner in the open market for which he was qualified in addition to operating his online business (Respondent's Exhibit 1; Deposition Exhibit 2).

At trial, Petitioner explicitly denied informing Skyles that he had sold 30,000 to 40,000 units per year and that while operating "Yesterday's Toybox", he only sold one or two units per week. He described this as being a hobby, not a business. Petitioner also denied informing Skyles that he did repair work on electronics and computers and that he did not know how to set up websites.

Petitioner tendered into evidence Schedule C from his federal income tax returns from 2017 through 2023. The gross sales of "Yesterday's Toybox" ranged from a low of \$18,535.00, to a high of \$128,213.00 (Petitioner's Exhibit 8). At trial, Petitioner explained that gross sales of \$128,213.00 in 2017, was primarily because of his sale of many personal items, not toys.

Dr. Sean Grambart was deposed on August 9, 2019, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Grambart's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Grambart testified Petitioner's right ankle condition and the need for the surgery he performed was related to the lumbar spine fusion surgery (Petitioner's Exhibit 4; pp 13-17).

Elizabeth Skyles was deposed on July 10, 2022. On direct examination, Skyles' testimony was consistent with her report and she reaffirmed the opinions contained therein. Specifically, Skyles testified Petitioner had not sought employment because he was "...not interested in looking for a job", because he continued to run his own business. Petitioner informed her that he wanted to have the freedom of being self employed and that he had plans for expansion of his business in the future (Respondent's Exhibit 1; pp 24-26).

Dr. VanFleet was deposed on July 17, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. VanFleet's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Dr. VanFleet testified Petitioner had a failed back syndrome, degenerative disc disease and morbid obesity. He also testified the treatment Petitioner received subsequent to the accident of March 27, 2021, was not related to the work accident of January 29, 2015 (Respondent's Exhibit 1; pp 16, 24-25).

Dr. VanFleet testified Petitioner had work restrictions of no lifting in excess of 20 pounds and no repetitive walking. Dr. VanFleet also noted that the MVA occurred when the vehicle Petitioner was in was struck from behind at highway speed and that this was a significant mechanism of injury; however, he did not believe that the MVA increased Petitioner's overall disability and had no effect in respect to the work restrictions he suggested (Respondent's Exhibit 2; pp 21-27).

Dr. Brummer was deposed on July 23, 2024, and his deposition testimony was received into evidence at trial. Dr. Brummer testified in respect to the report of June 27, 2019, when he opined as to Petitioner's work restrictions. He testified those restrictions he imposed were permanent as of that date (Petitioner's Exhibit 12; pp 7-11).

On cross-examination, Dr. Brummer agreed he was a family physician, and not an orthopedic surgeon or occupational medicine specialist. He conceded that the only positive findings on examination were a diminished strength in the lower extremities, Petitioner moved slowly with a cane, and walked with the right foot turned outward. In respect the various restrictions he imposed, Dr. Brummer agreed these were based upon what Petitioner informed him he could do or not do.

Further, he did not provide any opinion as to whether the restrictions were related to Petitioner's work-related accident (Petitioner's Exhibit 12; pp 13-19).

At trial, Petitioner testified he engages in little or no activity on a typical day. He said he does sell items on the internet, but he described it as a "hobby", not a business. In respect to the boxes he was observed picking up in the surveillance video, Petitioner testified that the maximum weight of each was one pound or less. Petitioner denied selling 50,000 items on the internet and he did not repair/rebuild computers. He further stated that he has absolutely no plans to try to expand this toy selling hobby.

Petitioner testified he has gained approximately 100 pounds since the accident and continues to experience low back, right ankle, neck and hand pain on a daily basis. He is also depressed because of being in constant pain. Petitioner acknowledged he was involved in an MVA in 2021, but did not sustain any type of reinjury to either his right ankle or low back.

Conclusions of Law

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner in respect to his low back condition from February 3, 2015, through June 20, 2016, was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith, but that the treatment provided to Petitioner subsequent to June 20, 2016, was not reasonable and necessary and were not related to the accident of January 29, 2015, and Respondent is not liable for same.

Based upon the stipulation of Petitioner and Respondent, the Arbitrator concludes Respondent is liable for the medical expenses incurred in connection with Petitioner's right foot/ankle injury and is directed to reimburse the Illinois Department of Healthcare & Family Services in the amount of \$9,319.76.

Respondent shall pay/reimburse the Illinois Department of Healthcare & Family Services \$9,319.76, for medical bills it paid as itemized Petitioner's Exhibit 11. All other medical bills received into evidence at trial are hereby denied.

In support of these conclusions in respect to Petitioner's low back condition, the Arbitrator notes following:

Dr. Coyle, Petitioner's primary treating physician, opined Petitioner was at MMI in respect his low back condition on June 20, 2016.

Petitioner was subsequently involved in an MVA in March, 2021, in which he sustained a reinjury/aggravation of his low back condition.

Respondent's Section 12 examiner, Dr. VanFleet, reviewed medical records and examined Petitioner and agreed with Dr. Coyle that Petitioner was at MMI in respect to his low back condition as of June 20, 2016. Dr. VanFleet also opined that all of the medical treatment provided

to Petitioner for his low back condition subsequent to the MVA was not related to the work-related accident.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 47 weeks commencing February 3, 2015, through August 23, 2015, and April 19, 2017, through July 10, 2017.

In support of this conclusion the Arbitrator notes the following:

Petitioner was receiving medical treatment and authorized to be off work from February 3, 2015, through August 23, 2015, at which time he was offered light duty work which he refused.

Petitioner was receiving medical treatment and authorized to be off work from April 19, 2017, through July 10, 2017.

In regard to disputed issue (L) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes Petitioner is not permanently and totally disabled.

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 75% loss of use of the person as a whole and 50% loss of use of the right foot.

In support of these conclusions the Arbitrator notes the following:

The medical basis of Petitioner's claim that he is permanently and totally disabled is based, to a large extent, upon the restrictions imposed by Dr. Brummer, a family physician, in his report of June 27, 2019. For the reasons stated herein, the Arbitrator is not persuaded by Dr. Brummer's opinion regarding same.

Dr. Brummer's opinion as to Petitioner's restrictions is based, to a large extent, on Petitioner's statements to him as to what he was able to do or not do. Further, on cross-examination, Dr. Brummer did not causally relate Petitioner's restrictions to the work-related accident.

Dr. Brummer's report of June 27, 2019, predated the MVA of March, 2021, as well as the surveillance videos of Petitioner of October and November, 2021.

Dr. VanFleet, an orthopedic surgeon, reviewed medical records, examined Petitioner, and watched the surveillance videos of Petitioner. When he was deposed, Dr. VanFleet testified Petitioner had a lifting restriction of 20 pounds and no repetitive walking.

Based upon the preceding, the Arbitrator finds the opinion of Dr. VanFleet, in respect to Petitioner's work restrictions, to be more persuasive than that of Dr. Brummer.

The Arbitrator finds Petitioner's credibility to be very questionable. At trial, Petitioner testified that he did not sustain any type of reinjury to his low back as a result of the MVA of March, 2021. This is contrary to the information contained in the medical records of both Dr. Oltman and Dr. Teal, both of which noted Petitioner has sustained a worsening/aggravation of his low back pain as a result of the MVA.

At trial, Petitioner denied informing Elizabeth Skyles of selling 30,000 to 50,000 items per year in his online business, that he planned to expand his business, that he did electronic/computer repairs and could create websites. Petitioner was, in effect, accusing Skyles of fabricating the preceding. The Arbitrator finds that there is absolutely no basis for Skyles engaging in such dishonest and unprofessional conduct.

The Arbitrator was not persuaded by Petitioner's testimony that his online business is, in fact, a hobby and that he only sells one to two items per week. The gross amounts revealed in the Schedule C's received into evidence at trial clearly indicated that Petitioner was operating a business, not engaging in a hobby.

The Arbitrator notes that Petitioner's activities in running his own online business clearly conform to the restrictions imposed by Dr. VanFleet.

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

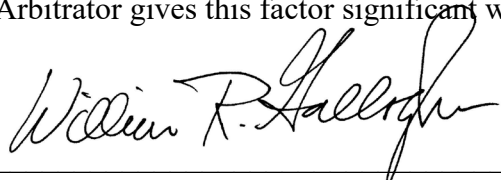
At the time of the accident, Petitioner worked at Sherwin Williams in a physically demanding job. There was no question Petitioner is unable to return to work to such a physically demanding job. The Arbitrator gives this factor significant weight.

At the time of the accident, Petitioner was 36 years old and, at the time of trial, Petitioner was 47 years old. Petitioner will have to live with the effects of the injury for the remainder of his working and natural life. The Arbitrator notes Petitioner continues to experience pain related to the accident as well as to multiple other medical conditions not related to the accident. The Arbitrator gives this factor significant weight.

At the time of the accident, Petitioner had an average weekly wage of \$260.00. Even though Petitioner was not able to return to work to the job he had at the time he sustained the accident, Petitioner was operating his own online business and, in spite of his statements to the contrary, has continued to do so. The Petitioner has chosen not to seek employment elsewhere and informed Elizabeth Skyles that he preferred to be self employed. Because of the preceding, the effect, if any, on Petitioner's future earning capacity is highly speculative. The Arbitrator gives this factor minimal weight.

Petitioner sustained a low back injury which ultimately required a fusion at L5-S1. Petitioner has continued to experienced low back pain which was aggravated by an MVA in March, 2021. As a result of the lumbar fusion, Petitioner sustained an injury to his right foot/ankle which required a fusion and tendon lengthening surgical procedure. Petitioner has sustained significant injuries to

both the low back and right foot/ankle as a result of the accident of January 29, 2015. The Arbitrator gives this factor significant weight.

A handwritten signature in black ink, reading "William R. Gallagher". The signature is fluid and cursive, with the first name "William" and last name "Gallagher" clearly legible. The middle initial "R." is smaller and less distinct.

William R. Gallagher, Arbitrator

September 9, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019676
Case Name	Cassandra Bell v. Amazon
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0352
Number of Pages of Decision	18
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	James Flannery

DATE FILED: 8/15/2025

/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 Medical	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CASSANDRA BELL,

Petitioner,

vs.

NO: 22 WC 19676

AMAZON,

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 of ill-being is causally related to the April 10, 2022 accidental 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, modifies 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).

CONCLUSIONS OF LAW

Medical Expenses

Petitioner's Exhibit 7 details \$53,007.52 in prescription costs incurred at Parkview Orthopaedic Group from July 11, 2022 through August 19, 2024; there remains an unpaid balance of \$46,448.75. *See* PX7. The Arbitrator found these prescriptions were reasonable and necessary and ordered Respondent to pay the outstanding charges. On review, Respondent argues it is not liable for many of the awarded prescription charges contained in PX 7 pursuant to the utilization review reports submitted into evidence as Respondent's Exhibit 3. The Commission agrees with Respondent's position, in part and modifies the Arbitrator's Decision as follows.

Pursuant to §8.7(i)(4) of the Act, when payment for medical services has been denied pursuant to utilization review, “the employee has the burden of proof to show by a preponderance of the evidence that a variance from the standards of care used by the person or entity performing the utilization review...is reasonably required to cure or relieve the effects of his or her injury.” 820 ILCS 305/8.7(i)(4). Here, Respondent obtained a series of utilization reviews that non-certified various prescription medications, including diclofenac, new terocin, dendracin, lidothol, raberprazole, cyclobenzaprine, tramadol, lidopro, viva patch, Skarjel gel, zylotrol, Narcosoft, ondansetron, and eszopiclone. The medications were prescribed by Parkview Orthopaedic Group on dates ranging from April 21, 2022 through March 30, 2023. The Commission has analyzed the utilization review reports (RX3) in conjunction with the treating records of Dr. Shah and Dr. Mekhail (PX1) as well as the prescription billing statement (PX7).

First, the Commission observes that PX 7, Petitioner’s prescription bill statement, does not include the costs for medications prescribed on April 21, 2022; May 18, 2022; or June 13, 2022; rather, the initial incurred charge included in Petitioner’s Exhibit 7 is from July 11, 2022. As such, the Commission finds the May 9, 2022, May 20, 2022, June 21, 2022, and July 7, 2022 utilization reviews are moot as they do not pertain to the prescription expenses claimed by Petitioner as owing at trial.

Next, the Commission observes the August 3, 2022, August 4, 2022 and October 12, 2022 utilization review reports non-certified the prescription medications addressed above. However, the Commission specifically observes that the bills for these non-certified medications had been paid prior to hearing. Because these non-certified prescriptions were paid for prior to hearing, the Commission finds the prescriptions to be reasonable and necessary. *See Paul Harris v. City of East St. Louis*, 2008 Ill. Work. Comp. LEXIS 627 (May 30, 2008) and *Patricia Babb v. Victoria’s Secret*, 2010 Ill. Work. Comp. LEXIS 51 (January 15, 2010) (both cases stating it has long held principle of the Commission that a paid bill is presumed to be reasonable even when the treatment has been scrutinized by utilization review). Therefore, the Commission declines to vacate the Arbitrator’s award of payment for the said prescriptions.

However, the Commission agrees with Respondent’s position relating to the utilization reviews dated December 21, 2022, January 3, 2023, February 7, 2023, and May 15, 2023. In these reports, the reviewers, Hilary Alpert, M.D. (December 21, 2022 and February 7, 2023), Steven Milos, M.D. (January 3, 2023), and Michael Rubinstein, M.D. (May 15, 2023), concluded that the prescribed medications did not meet the established criteria for medical necessity given Petitioner’s then-current clinical picture. *See* RX3. The Commission emphasizes that Petitioner’s treating records establish the non-certifications were provided to the prescribing physician Dr. Mekhail; but the doctor made no attempt to appeal the non-certifications. The Commission also notes that there is no other evidence in the record which supports a finding that a variance from the standard of care was necessary as it relates to the prescription medications non-certified on December 21, 2022, January 3, 2023, February 7, 2023 and May 15, 2023. Accordingly, the Commission finds that Petitioner failed to meet her burden to rebut pursuant to Section 8.7(i)(4) of the Act. Therefore, the Commission finds Respondent is not liable for the following denied and non-certified prescription costs:

U.R. Date	Prescription Date	Medication	Cost
December 21, 2022	November 14, 2022	Lidocaine	\$385.11
		Zylotrol	\$1,586.86

January 3, 2023	December 7, 2022	Narcosoft	\$246.23
		Lidocaine	\$385.11
		Diclofenac	\$1,183.64
		Skarjel	\$244.74
		Zylotrol	\$1,574.68
February 7, 2023	January 16, 2023	Ondansetron	\$1,118.13
		Raberprazole	\$347.99
		Eszopiclone	\$369.01
May 15, 2023	March 30, 2023	Cyclobenzaprine	\$569.17
		TOTAL	\$8,010.67

By vacating these unpaid and non-certified prescription charges totaling \$8,010.67 from the outstanding balance of \$46,475.75, the Commission finds Respondent is liable for \$38,465.08 in unpaid prescription costs and so modifies the Arbitrator's Decision.

All else is affirmed.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$508.99 per week for a period of 128 6/7 weeks, representing April 21, 2022 through October 8, 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. Respondent shall have a credit of \$31,310.34 for benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses set forth in Petitioner's Exhibit 3 (\$3,850.00, Shah Orthopaedics), Petitioner's Exhibit 4 \$2,430.00, Stat Anesthesia Specialists, Ltd.), Petitioner's Exhibit 5 (\$13,522.65, Flexus Medical); Petitioner's Exhibit 6 (\$10,800.00, Mekhail Orthopaedics—Toxicology); Petitioner's Exhibit 7 (\$38,465.08, Parkview Orthopaedic Group-Medications), and Petitioner's Exhibit 9 (\$2,170.00, Parkview Orthopedic Group), 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 cervical spine treatment as recommended by Dr. Anis Mekhail, 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 \$19,200.00. 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.

August 15, 2025

RAW/mck

/s/ *Raychel A. Wesley*

O: 7/9/25

/s/ *Carolyn M. Doherty*

43

/s/ *Christopher A. Harris*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019676
Case Name	Cassandra Bell v. Amazon
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	James Flannery

DATE FILED: 12/4/2024

/s/ William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 3 2024 4.31%

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)

Cassandra Bell

Employee/Petitioner

v.

Case # **22 WC 019676**

Consolidated cases: N/A

Amazon

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **October 8, 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: **C5-C6 anterior cervical decompression and fusion with instrumentation allograft**

FINDINGS

On the date of accident, 04/10/2022, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$12,101.35; the average weekly wage was \$763.49.

On the date of accident, Petitioner was 38 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 \$28,131.58 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$136,045.04 for medical benefits, and \$3,178.76 in short term disability benefits, for a total credit of \$167,355.38.

Respondent is entitled to a credit of \$167,355.38 under Section 8(j) of the Act.

ORDER

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that her current condition of ill-being is causally related to her work injury sustained on the date of the accident.

Respondent should be responsible for the following medical bills: \$3,850.00—Premier Healthcare Services (PX3); \$2,430.00—Stat Anesthesia Specialists, Ltd. (PX4); \$13,52.65—Flexus Medical (PX5); \$10,800.00—Premier Healthcare Services—Toxicology (PX6); \$46,448.75—Premier Healthcare Services-Medications (PX7); \$2,170--Parkview Orthopedic Group (PX9). Respondent shall pay these bills to Petitioner per the medical fee schedule.

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from April 21, 2022, through October 8, 2024, representing 128 6/7 weeks at the weekly rate of \$508.99 totaling \$65,586.97. Respondent is entitled to a credit of \$31,310.34 for TTD and short-term disability benefits previously paid.

The Arbitrator finds Petitioner is awarded prospective medical care as recommended by her treating doctor, Dr. Anis Mekhail in the form of a C5 – C6 anterior cervical decompression and fusion with instrumentation and allograft procedure.

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.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of loops and a long horizontal stroke.

Signature of Arbitrator

DECEMBER 4 2024

FINDINGS OF FACT

On April 10, 2022, Petitioner, Cassandra Bell worked as a packer for Amazon, typically working 36 hours weekly. (Tr. 9). Her job duties involved handling an assembly line of totes, each filled with various items. Petitioner's duties required her to pull each tote off the line, unpack and repack items according to specific instructions, and return the tote to the line. She described lifting potentially heavy items as part of her routine (Tr. 9).

On April 10, 2022, Petitioner sustained an injury while lifting a heavy item from a tote. Immediately after the injury, Petitioner felt pain in her left shoulder, which quickly spread to her neck and down her arm. The Petitioner reported the injury to her employer and was taken to Amazon's wellness center, where she received initial treatment, including heat packs and Ibuprofen, but found that her pain worsened with continued work (Tr. 9-13).

Unable to manage the pain, Petitioner visited the emergency room at Advocate South Suburban Hospital on April 17, 2022. (Rx 5). At that time, she reported severe, radiating pain in her left shoulder and arm, with difficulties sleeping due to stiffness and discomfort (Tr. 13-14).

Following her emergency room visit on April 17th, 2022, Petitioner began treatment with Dr. Nirav Shah at Parkview Orthopedic Group on April 21, 2022. (Px 1). Dr. Shah prescribed an MRI arthrogram, which confirmed a rotator cuff tear in her left shoulder. Dr Shah recommended surgery to address the tear.

Another MRI was conducted on May 2, 2022, at PMI Diagnostic Imaging. It was noted the examination was limited due to Petitioner's motion. The impression was a full-thickness tear of the anterior supraspinatus tendon insertion, infraspinatus tendinosis with no evidence of a tear, and mild acromioclavicular degenerative changes. (PX1 at 350-351).

On May 9, 2022, Petitioner returned to Dr. Shah. She reported her pain remained severe. Pain was traveling up and down her left arm into the trapezial muscle and shoulder. There was no mention of neck symptoms. Dr. Shah diagnosed an acute left shoulder rotator cuff tear, and recommended a left arthroscopic rotator cuff repair, possible subacromial decompression, distal clavicle excision, and possible arthroscopic biceps tenodesis. (PX1 at 44).

Petitioner underwent rotator cuff surgery on May 31, 2022, performed by Dr. Shah, and continued follow-up treatment including a TENS unit, a sling, and physical therapy with Fyzical Therapy (Tr. 14-17).

Petitioner returned to Dr. Shah on June 1, 2022, for follow up. She stated she still had some pain in the left shoulder. It was recommended that she remain off work and begin physical therapy twice a week for six weeks. (PX1 at 43).

On June 7, 2022, Petitioner presented to Fyzical Therapy and Balance Centers for an initial evaluation. She reported a left shoulder injury and pain, but no mention of pain or an injury to the neck. (PX1 at 535-536).

Petitioner returned to Dr. Shah on June 13, 2022. She reported the pain overall was better, and that PT was going well. There is again no mention of neck symptoms. Dr. Shah kept her off work and recommended continued PT. (PX1 at 42).

On June 21, 2022, progress notes indicated a 30% improvement to the shoulder, and no mention of neck pain. (PX 1 at 532-534).

On June 21, 2022, UR denied certification of lidopro, and viva patch pad. (RX3 at 36). Basis included that per ODG guidelines, topical analgesics, compounded is not recommended as a first-line treatment option. (RX3 at 38-39).

Petitioner underwent another three sessions of PT through July 5, 2022, with a 50% improvement in her left shoulder, and no motion of neck pain. (PX1 at 529-531).

On July 7, 2022, UR denied certification of viva patch pad, rabeprazole tab, lidopro OIN, cyclobenzaprine tab, and tramadol tab. (RX3 at 42). For viva patch – the basis was no mention of failure of first line neuropathic meds to support the use of lidocaine. (RX3 at 44). For lidopro – there was no mention of failure of first line neuropathic meds or tricyclics to meet criteria for lidocaine. For rabeprazole – she is not prescribed any nonsteroidal anti-inflammatories that could cause GERD. For cyclobenzaprine, there was no evidence of spasm. For tramadol – there was no mention of failure of first line non-opiates to support it, nor a urine drug screen. (RX3 at 45). Due to persistent pain radiating from her neck into her shoulder and arm.

Petitioner returned to Dr. Shah on July 11, 2022. Dr. Shah noted she was doing very well. There was again no mention of neck symptoms, but there was some right shoulder pain. She would continue physical therapy and remain off work. (PX1 at 40).

A MRI showed that a cervical decompression and fusion surgery might be necessary to alleviate her symptom Physical therapy for her neck was prescribed alongside continued shoulder therapy, but her symptoms persisted despite these interventions (Tr. 18-25).

On August 4, 2022, Petitioner returned to Dr. Shah for her left shoulder. Dr. Shah stated Petitioner had a new complaint of neck pain that started the prior Saturday. Petitioner stated she was sitting in her cousin's house and felt sharp pain in her neck and chest going into her hand and then some shoulder pain. Dr. Shah remarked that even placing his hand on the skin of her shoulder elicited subjective pain complaints. Dr. Shah wanted to have her neck and shooting pains evaluated before continuing PT or work conditioning. He placed PT on hold. (PX1 at 38).

Petitioner presented to Dr. Anis Mekhail at Parkview Orthopedic Group on August 8, 2022. She reported she was experiencing neck pain which shot down her left arm and involved numbness and tingling. She stated the problem began when she lifted a box weighing approximately seventy pounds from a conveyor belt on April 10, 2022. She alleged she injured her left shoulder and her neck on April 10, 2022. Petitioner indicated Dr. Shah had fixed her left rotator cuff, but now she was having neck pain. X-rays of her cervical spine were obtained and showed significant C5-6-disc degeneration. Diagnosis was left cervical radiculopathy which he opined lasted for four months. Dr. Mekhail recommended a cervical spine MRI. (PX1 at 36).

Petitioner's left shoulder pain necessitated a second surgery, which Dr. Shah performed on January 25, 2023. (Px 1). Post-surgery, Petitioner continued physical therapy and began treatment with Nathan Bell, a PA at Sports and Ortho PC. Despite these treatments, she reported ongoing pain in her shoulder and neck, leading to discussions with Dr. Mekhail about the recommended cervical fusion surgery at C5-C6 (Tr. 21-23).

Given her continued pain, Dr. Mekhail has recommended cervical fusion surgery to alleviate the discomfort in her neck and shoulder. (Px 1). Petitioner expressed her willingness to proceed with the surgery, particularly as she believes this course of action is her best option for potential pain relief. She attributes some of her prolonged symptoms and ongoing pain to delays in treatment authorization.

DEPOSITION TESTIMONY OF DR. ANIS MEKHAIL

Dr. Anis Mekhail is a board-certified in orthopedic surgery. He concentrates his practice on treating the spine (PX2, Tr. 4-6). Dr. Mekhail testified that he performs approximately 350 to 400 spine surgeries per year (PX2, Tr. 6). He conducted a detailed evaluation of Petitioner's medical history and imaging results, mainly focusing on any work-related causes of her neck condition (PX2, Tr. 4-5).

Dr. Mekhail concluded that Petitioner's cervical condition, particularly her complaints of neck pain and associated symptoms like numbness and tingling radiating into her left arm, began

following an incident at work on April 10, 2022. Dr. Mekhail cited that Petitioner's symptoms aligned with a timeline indicating the onset of cervical issues post-accident, supporting a causative link between the workplace incident and her current neck complaints. He observed no prior reports of neck pain in Petitioner's medical history before the accident, which reinforced his opinion that the workplace injury was the likely causative factor (PX2, Tr. 24-25).

According to Dr. Mekhail, Petitioner's neck pain reportedly began following the work incident on April 10, 2022, where she was lifting heavy totes at Amazon. During his initial examination of Petitioner on August 8, 2022, Dr. Mekhail took a detailed history in which she stated her neck pain, along with numbness and tingling radiating down her left arm, had been present since the injury occurred (PX2, Tr. 24) Dr. Mekhail noted that, from Petitioner's description, her neck pain started immediately after the April 2022 incident and was consistent over time. Despite shoulder treatment being prioritized initially, her complaints of neck pain persisted, which led to her referral for an MRI of her cervical spine to investigate further (Px2, Tr. 18-19). Dr. Mekhail noted that Petitioner's shoulder pain was initially more prominent and intense, likely overshadowing her neck complaints. The severity of the shoulder pain led her medical providers to prioritize shoulder treatment, including surgeries performed by Dr. Shah, her orthopedic surgeon, to address a rotator cuff tear and other shoulder issues (PX2, Tr. 16-17) Petitioner exhibited symptoms like radiculopathy (pain radiating from the neck down the arm), which Dr. Mekhail attributed to a herniated disc at the C5-C6 level, matching the mechanism of injury she described and supporting his opinion on causation. He observed that the physical findings during her August 2022 examination aligned with the cervical spine injury timeline she provided, indicating the injury's impact on her neck (PX2, Tr. 25)

Dr. Mekhail discussed his recommendation for the Petitioner to undergo cervical decompression and fusion surgery at the C5-C6 level. The recommendation was based on the Petitioner's persistent symptoms and imaging results, which indicated degeneration and other abnormalities consistent with her complaints. Dr. Mekhail explained that the surgery aimed to alleviate pain and prevent further deterioration (PX2, Tr. 30).

Dr. Mekhail addressed questions about the exact timing of Petitioner's neck pain onset and whether it was directly attributable to the work incident. Dr. Mekhail pointed to a lack of neck pain complaints in Petitioner's medical records before August 2022 and addressed whether Petitioner's pain could result from degenerative changes unrelated to the work incident. Dr. Mekhail maintained that her symptoms and MRI results indicated an injury occurred, which was exacerbated by the work-related event rather than merely pre-existing degeneration (PX2 Tr. 31-32).

DEPOSITION TESTIMONY OF DR. JERRY BAUER

Dr. Bauer is a board-certified neurosurgeon who has been in practice since 1979. Dr. Bauer performs surgical procedures on the spine, including cervical decompression and fusion surgeries, conducting approximately one to two of these operations weekly. He has performed thousands of spinal operations throughout his career (RX2, Tr. 7).

Dr. Bauer conducted an Independent Medical Examination (IME) on the Petitioner on June 12, 2023, and reviewed her medical history, including records from various medical providers, incident reports, and an MRI from September 27, 2022 (RX2, Tr. 8-11). The Petitioner reported her job responsibilities, the incident details on April 10, 2022, and her subsequent pain. She did not mention any prior neck issues that pre-dated the work accident (RX2, Tr. 12).

Dr. Bauer opined that Petitioner's neck condition was unrelated to the April 10, 2022, workplace incident, primarily based on the delayed onset of her neck pain and absence of neck complaints in the initial treatment records. He noted that the first mention of neck pain appeared in August 2022, following an event at her cousin's house, months after the workplace incident (Tr. 18-19, 20-22).

Dr. Bauer's review indicated degenerative changes, including a disc osteophyte complex at C5-6, unrelated to the work injury; degeneration takes time to develop. He also observed a small disc herniation at C6-7, which he determined was asymptomatic and did not warrant surgical intervention (RX2, Tr. 17-18, 26-27).

Dr. Bauer concluded that Petitioner's degenerative disc disease and symptoms were not caused or aggravated by the April 10, 2022, incident. He also asserted that her current neck complaints did not justify surgery and noted that her issues were typical of degenerative changes rather than acute injury (RX2, Tr. 17, 26-27). Dr. Bauer's testimony emphasized her view that Petitioner's neck condition pre-existed the work incident, was not aggravated by it, and did not require surgical intervention directly related to the April 2022 work injuries.

Dr. Bauer mentioned an August 2022 incident in which the Petitioner experienced neck pain while seated at her cousin's home, which he viewed as non-injurious. He noted that her neck pain onset, reported months after the initial work incident, further reinforced her opinion that her neck issues were not work-related (RX2, Tr. 31-32).

Dr. Bauer acknowledged Petitioner's neck MRI showed degenerative changes at C5-C6 and a small, herniated disc at C6-C7, which he considered unrelated to her work injury. He argued that the disc issues were degenerative and existed before the incident. When asked whether Petitioner would need medical care regardless of the cause of the herniated disc, he clarified that while Petitioner might need treatment, it wasn't necessitated by the work injury but rather by preexisting conditions (RX2, Tr. 32-33). He further explained that the recommended surgery, a cervical fusion, was for the degenerative condition (disc osteophyte complex) at C5-C6—not for any acute injury linked to the work accident. Dr. Bauer emphasized that Dr. Mekhail's surgery recommendation did not target the C6-C7 herniation, which he also did not believe was symptomatic (RX2, Tr. 32-33). Dr. Bauer conceded, theoretically, that an injury could aggravate a preexisting degenerative condition, though he did not believe that it occurred in Petitioner's case. (RX 2, Tr. 33).

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission holds that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It's the function of the Commission to judge credibility of witnesses and resolve conflicts in medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665 (2009).

The Arbitrator finds the testimony of the Petitioner to be credible and consistent with medical records and history.

(F) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that the Petitioners Condition of ill-being is casually related to the work injury.

In reaching said conclusion the Arbitrator gives more weight and credibility to the opinion of Dr. Mekhail in the matter than the opinion of Dr. Bauer. Petitioner's medical history and testimony at trial was credible and consistent with the medical records. There was no medical records offered at the hearing that indicated the Petitioner had treatment for her neck that predated the work accident.

Arbitrator notes that Petitioner testified that she continues to suffer from neck pain that she testified has been present since she was initially injured.

The Arbitrator further weighs the opinions and conclusions of the doctors who treated and examined the Petitioner. Dr. Mekhail testified that Petitioner continues to suffer from significant neck pain which was aggravated by the work accident. Even though Dr. Bauer testified that Petitioner did not suffer injuries to her neck and relied partially on the fact that Petitioner had no initial complaints about the neck until four months after the work accident. The Arbitrator gives less weight to Dr. Bauer's opinions and conclusions. Arbitrator gives greater weight to Dr. Mekhail regarding her opinions on causation. The Arbitrator considered the fact Petitioner did not have any medical care for her neck that predated the work injury coupled with the significant injuries suffered to her shoulder, necessitating two shoulder surgeries. The medical records are consistent with Petitioner's credible testimony that she had pain traveling down her shoulder, into her elbow and hands which was evidence of radiculopathy soon after the work accident. The Arbitrator notes that both Dr. Mekhail and Dr. Bauer opined that the Petitioner is a surgical candidate, irrespective of the causation issue.

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that her current condition of ill-being is causally related to her work injury sustained on the date of the accident.

(J) Were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for reasonable and necessary medical services, the Arbitrator finds the following:

Having found Petitioner sustained a work-related injury during her employment with Respondent and having found her current condition of ill-being is causally related, Arbitrator finds all medical care provided to Petitioner to resolve her neck and shoulder pain has been reasonable and necessary. The Arbitrator finds the Respondent should be responsible for the following medical bills: \$3,850.00—Premier Healthcare Services (PX3); \$2,430.00—Stat Anesthesia Specialists, Ltd. (PX4); \$13,52.65—Flexus Medical (PX5); \$10,800.00--Premier Healthcare Services—Toxicology (PX6); \$46,448.75—Premier Healthcare Services-Medications (PX7); \$2,170--Parkview Orthopedic Group (PX9). Respondent shall pay these bills to Petitioner per the medical fee schedule.

(K) What temporary benefits are in dispute, the Arbitrator finds the following:

Having found that an accident occurred on or about April 10, 2022, which arose out of and in the course of Petitioner's employment by Respondent and having found Petitioner's current condition of ill-being is related to her work accident on April 10, 2022, Petitioner is responsible for temporary total disability from the date she was authorized off work up until the hearing date. Petitioner testified she has not worked since the date of accident. (Tr. 26-27). Petitioner was authorized to remain off work by Dr. Mekhail. (PX1 & Tr. 25-27). Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits from April 21, 2022, through October 8, 2024, representing 128 6/7 weeks at the weekly rate of \$508.99 totaling \$65,586.97. Respondent is entitled to a credit of \$31,310.34 for TTD and short-term disability benefits previously paid.

(K) & (O), Whether Petitioner is entitled to prospective medical care including the C5-C6 anterior cervical decompression and fusion with allograft procedure, the Arbitrator finds the following:

Incorporating all the prior findings of fact and conclusions above and having found Petitioner suffered an accident on April 10, 2022 causing cervical/neck complaints that causally related to the work accident, the Arbitrator further finds Petitioner is awarded prospective medical care as recommended by her treating doctor, Dr. Anis Mekhail in the form of a C5 – C6 anterior cervical decompression and fusion with instrumentation and allograft procedure.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013925
Case Name	Christi Rayburn v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0353
Number of Pages of Decision	16
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 8/18/2025

/s/Stephen Mathis, Commissioner

Signature

23WC013925

Page 1

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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christi Rayburn,

Petitioner,

vs.

NO. 23WC013925

State of Illinois/Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, prospective medical care, notice, permanent disability, 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 January 3, 2025, 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.

23WC013925

Page 2

August 18, 2025

O: 07/01/25

SJM/sj

044

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee H. Simonovich

Amylee H. Simonovich

SPECIAL CONCURRING OPINION

I concur with the Decision finding Petitioner sustained an accident arising out of the employment; however, I differ from the majority's reasoning. In affirming and adopting the Arbitrator's decision, the majority adopted the finding that Petitioner's accident arose from a risk distinctly associated with her employment. Based on the evidence adduced at the arbitration hearing, I would find Petitioner's accident arose from a neutral risk. I would further find that Petitioner established a compensable accident because her employment exposed her to an increased risk to a greater degree than that faced by the general public.

Petitioner was employed as a Correctional Medical Technician at Menard's Correctional Center where she delivered medications to the inmates. Petitioner testified the majority of her workday was devoted to walking from cell to cell throughout the facility which had six buildings, most of which had five floors. Petitioner testified there were two flights of stairs between each level and she ascended and descended the stairs dozens of times on a daily basis. Petitioner testified she previously wore a Fitbit which indicated she walked about 16,000 steps during a typical workday. On June 2, 2020, Petitioner sustained a right knee injury while descending a flight of stairs. Petitioner sought treatment at Perry County Health on June 8, 2020, and reported her knee "went out" on her and possibly twisted. (PX3 at 2) At trial, Petitioner testified her right knee twisted and popped while walking down the stairs. On cross-examination, Petitioner was asked if she recalled actually twisting her knee or if her knee just felt like it twisted. Petitioner testified it felt like it twisted. Petitioner testified she was walking straight down the stairs and was not turning at the time of her injury. There was no allegation or evidence of any defect or unsafe condition on the stairs that contributed to Petitioner's knee injury. There was no allegation or evidence that Petitioner was distracted by her employment responsibilities or workplace environment. Petitioner's Application for Adjustment of Claim described the accident as "walking down stairs." (PX2)

23WC013925

Page 3

To satisfy the “arising out of” prong, claimants must show their injury had its origin in some risk connected with the employment. *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, of which there are three categories: (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, including but not limited to, stray bullets, lightning strikes, and dog bites. As set forth in *McAllister*, the first step in the risk analysis is to determine whether the claimant’s injury arose out of an employment related risk -- a risk distinctly associated with the claimant’s employment. *McAllister*, at P46. A risk is distinctly associated with the employment if, at the time of the occurrence, the employee was performing: (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id.* at 46. Only if it is established that a claimant’s injury did not originate from a risk distinctly associated with the employment should the Commission consider applying a neutral risk analysis. *Id.* at P62.

Petitioner testified she was carrying a tote in her hand when her knee gave way on the stairs; however, she did not allege or offer any evidence that her carrying a tote had played a causative factor in her knee injury. As such, this is not a case in which the injury could be attributed in whole or in part to the possession of some object for purposes of identifying the risk of injury. Compare, *Nabisco Brands vs. Industrial Comm’n (Prendergast)*, 266 Ill. App. 3d 1103, 641 N.E.2d 578 (1994) (where claimant fell down stairs while carrying bakery knives weighing about 50-pounds.) This is also not a case where a claimant was distracted while walking. See *McReynolds vs. State of Illinois, Shawnee Correctional Center*, 21 IWCC 0592; 2021 Ill. Wrk. Comp. LEXIS 465, where a correctional officer, while walking up the stairs, turned his head to look over his shoulder when an inmate yelled out to him, causing the correctional officer to strike his toe against the edge of a step and fall forward onto his knees. Thus, the evidence in the instant case leaves us with the threshold question of whether the act of simply walking down stairs in the absence of any defect or unsafe condition presented an employment risk. If not, then we are to apply a neutral risk analysis.

In *McAllister*, the Supreme Court supplied accident scenarios with citations to prior cases to further explain the distinction between risks distinctly associated with the employment and neutral risks. The Supreme Court explained that “[e]xamples of employment-related risks include “tripping on a defect at the employer’s premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.” *McAllister*, at P40, citing *First Cash Financial Services vs. Industrial Comm’n*, 367 Ill. App. 3d 102, 853 N.E.2d 799 (2006). Regarding neutral risks, the Court cited with approval the Appellate Court’s decision in *Illinois Consol. Tel. Co. vs. Industrial Comm’n*, and noted that in the context of fall down accidents, falls on level ground or “while traversing stairs” are classified as having their origin in neutral risks. See *McAllister* at P44, citing *Illinois Consol. Tel. Co. vs. Industrial*

23WC013925

Page 4

Comm'n, 314 Ill. App. 3rd 347, 353, 732 N.E.2d 49, 54 (2000) (Rakowski, J., concurring opinion).

The risk of injury from traversing stairs has long been classified as a neutral risk. See *Elliot vs. Industrial Comm'n*, 153 Ill. App. 3d 238, 244, 505 N.E.2d 1062 (1987) (“The act of walking down the stairs itself does not establish a risk greater than those faced outside of work.”) The Supreme Court’s citation to *Illinois Consol. Tel. Co. vs. Industrial Comm'n* with approval must therefore be read as a continuing recognition that the risk of injury from the simple act of traversing stairs is to be classified as a neutral risk unless there was an unsafe condition on the stairs or some other employment related contributing factor.

After *McAllister* was decided, the Appellate Court confirmed this continuing recognition, noting that “Generally, traversing stairs is a neutral risk and injuries resulting therefrom are not compensable under the Act.” See *Town of Cicero vs. Illinois Workers' Compensation Comm'n*, 2024 IL App (1st) 230609WC, 2024 IL App (1st) 230609W (where the Appellate Court agreed with the employer’s argument that falls on stairs originate from neutral risks but nevertheless found the accident compensable after determining the Commission correctly concluded the claimant was a traveling employee.) And in *Buckley vs. Ill. Workers' Comp. Comm'n*, 2022 IL App (2nd) 21055WC-U, decided two years after *McAllister*, the Appellate Court affirmed the Commission’s application of a neutral risk analysis to a firefighter’s knee injury sustained while walking down a hallway. Notably, the underlying decision issued by the Commission revealed the claimant was going to inform the deputy chief that his crew was leaving to go on an errand. *Buckley vs. Grayslake Fire Protection Dist.*, 19 IWCC 0445 2019 Ill. Wrk. Comp. LEXIS 1447. Accordingly, there was no dispute that the claimant, while walking to the office of the deputy chief, was performing an act that the employee might reasonably be expected to perform incident to his assigned duties, and therefore the *Buckley* decision shows that a neutral risk analysis remains applicable for accidents sustained while walking if there was no hazard or defect present, even when the employee was engaged in a specific work related task such as walking to a meeting or to communicate with another employee.

I would therefore find that Petitioner’s knee injury while walking down the stairs originated from a neutral risk. Because Petitioner’s employment as a Correctional Medical Technical required her to traverse the stairways numerous times a day in order to deliver medications to the inmates throughout the facility, I would further find Petitioner was exposed to the risk of injury to a greater degree than the general public. See *Village of Villa Park vs. Illinois Workers' Comp. Comm'n*, 2013 IL App (2d) 130038WC.

For the above reasons, I concur with the majority’s opinion finding Petitioner sustained an accident arising out of her employment but disagree with the reasoning. I would modify the Arbitrator’s Decision and apply a neutral risk analysis and find Petitioner established a compensable accident because her employment presented an increased risk of injury due to the frequency with which she ascended and descended stairs in order to perform her job duties.

23WC013925

Page 5

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

August 18, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC013925
Case Name	Christi Rayburn v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/3/2025

/s/ William Gallagher, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 31, 2024 4.14%

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



January 3, 2025

/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

Christi Rayburn
 Employee/Petitioner

Case # 23 WC 13925

v.

Consolidated cases: n/a

State of IL/Menard C.C.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on November 7, 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 _____

ICarbDec 2/10 69 W. Washington, 9th Floor, Chicago, IL 60602 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On June 2, 2020, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$83,291.00; the average weekly wage was \$1,601.75.

On the date of accident, Petitioner was 57 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, for medical services provided to Petitioner, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall receive a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$1,067.83 per week for four and five-sevenths (4 5/7) weeks commencing July 23, 2020, through August 12, 2020, and January 19, 2024, through February 1, 2024 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$836.69 per week for 64.5 weeks because the injury sustained caused the 30% loss of use of the right leg, as provided in Section 8(e) of the Act.

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

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


 William R. Gallagher, Arbitrator

ICArbDec p. 2

January 3, 2025

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on June 2, 2020. According to the Application, Petitioner was "Walking down stairs" and sustained an injury to her "Right knee" (Arbitrator's Exhibit 2). This case was tried for a final award and Petitioner sought an award for payment of medical bills, temporary total disability benefits and permanent partial disability benefits. Respondent disputed liability on the basis of accident, notice and causal relationship (Arbitrator's Exhibit 1).

In respect to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of four and five-sevenths ($4 \frac{5}{7}$) weeks, commencing July 23, 2020, through August 12, 2020, and January 19, 2024, through February 1, 2024. While Respondent disputed liability for same, Respondent stipulated Petitioner was totally disabled during the aforesaid periods of time (Arbitrator's Exhibit 1).

Petitioner has worked for Respondent as a Correctional Medical Technician for approximately 14 years. Petitioner testified her job duties consisted primarily of delivering medications to the inmates throughout the facility. Petitioner carried the medications in a tote and would walk from one cell to another. Petitioner stated there were six buildings at the facility, most of which were five stories high. There are two flights of stairs to each level and Petitioner was required to ascend and descend flights of stairs dozens of times on a daily basis.

Petitioner testified that on June 2, 2020, she was walking down a flight of stairs. Petitioner had a tote in her hand and was proceeding to her next job. At that time, her right knee twisted/popped. Petitioner stated she "hobbled down the remaining stairs" and reported the accident to Angie Walter, her supervisor and Charge Nurse. Petitioner subsequently reported the accident to two other supervisors, Chad Friedrich, and Angie Crane. None of the above-named supervisors testified at trial.

Petitioner initially sought medical treatment on June 8, 2020, at Perry County Care where she was evaluated by Melissa Wyatt, a Nurse Practitioner. At that time, Petitioner advised NP Wyatt that she had right knee pain which began six days prior. Petitioner advised she was walking and her right knee "gave out" and she "possibly twisted it", but did not fall (Petitioner's Exhibit 3).

NP Wyatt examined Petitioner's right knee and noted tenderness over the patella. She ordered an x-ray of Petitioner's right knee which was negative for fracture, but was suggestive of subluxation of the patella. NP Wyatt diagnosed Petitioner with lateral subluxation of the patella and referred Petitioner to Dr. Joseph Byrne, an orthopedic surgeon (Petitioner's Exhibit 3).

Petitioner was evaluated by Dr. Byrne on June 29, 2020. At that time, Petitioner advised Dr. Byrne she had sustained a "twisting injury" to her right knee on May 1, but it gradually got better. Petitioner then sustained another "twisting injury" on June 1, which had not gotten better. Petitioner complained of right knee pain. Dr. Byrne obtained an x-ray of Petitioner's right knee which he opined revealed significant patellofemoral degenerative changes as well as medial compartment degenerative changes. He diagnosed Petitioner with right knee degenerative joint

disease, prescribed medication, and administered an injection into Petitioner's right knee (Petitioner's Exhibit 5).

An MRI scan of Petitioner's right knee was performed on July 1, 2020. According to the radiologist, the MRI revealed tears of both the medial and lateral meniscus, a popliteal cyst with evidence of cyst rupture, joint effusion, tricompartmental osteoarthritis with severe changes in the patellofemoral compartment, subchondral fracture of the medial tibial plateau, sprain/partial thickness tear of the medial collateral ligament and adjacent medial patellofemoral ligament, sprain of the lateral collateral ligament, mild patellar/quadriceps tendinosis, and lateral subluxation of the patella (Petitioner's Exhibit 4).

Dr. Byrne saw Petitioner on July 6, 2020. At that time, he reviewed the MRI scan of Petitioner's right knee. His interpretation of the MRI was consistent with that of the radiologist, specifically, he noted it revealed tears of the medial and lateral meniscus, a subchondral fracture of the medial tibial plateau, and partial tearing of the MCL. Dr. Byrne recommended Petitioner undergo arthroscopic surgery of the right knee consisting of partial medial and lateral meniscectomies and chondroplasty (Petitioner's Exhibit 5).

Dr. Byrne performed arthroscopic surgery on Petitioner's right knee on July 28, 2020. The procedure consisted of a partial medial meniscectomy, a partial lateral meniscectomy, loose body removal, and a medial femoral condyle chondroplasty (Petitioner's Exhibit 4).

Following surgery, Petitioner continued to be treated by Dr. Byrne who started physical therapy which Petitioner received from July 30, 2020, through September 14, 2020. When Dr. Byrne saw Petitioner August 12, 2020, he authorized Petitioner to return to work, but sit down work only. Dr. Byrne again saw Petitioner periodically between September and November, 2020. When he evaluated Petitioner on November 25, 2020, he noted Petitioner was doing well and had no complaints (Petitioner's Exhibits 5 and 6).

On April 14, 2021, Petitioner returned to Perry County Health, where she was evaluated by Brad Hennemann, a Nurse Practitioner. Petitioner complained of pain in the right knee which began the day before and thought she "over did it the past few weeks" and developed pain/swelling the day before. Petitioner did not describe a new event or injury. NP Hennemann prescribed pain medication and for Petitioner to follow-up in two weeks. When he saw Petitioner on April 27, 2021, Petitioner's pain symptoms had improved (Petitioner's Exhibit 3).

The Petitioner was seen by Dr. Byrne on June 14, 2021. At that time, Petitioner complained of significant right knee pain as well as swelling/catching. Dr. Byrne administered a steroid injection into Petitioner's right knee (Petitioner's Exhibit 5).

Dr. Byrne saw Petitioner on April 1, 2022, and September 16, 2022. On both occasions, Petitioner complained of experiencing an exacerbation of her right knee pain. Dr. Byrne administered an injection into Petitioner's right knee on both dates (Petitioner's Exhibit 5).

Petitioner was subsequently seen by Dr. Byrne on March 22, 2023, October 11, 2023, October 31, 2023, November 6, 2023, and December 18, 2023. On three of those visits, Dr. Byrne administered

an injection into Petitioner's right knee. He also continued to prescribe pain medication (Petitioner's Exhibit 5).

On December 14, 2023, Petitioner was evaluated by Dr. Matthew Bradley, an orthopedic surgeon. When seen by Dr. Bradley, Petitioner informed him she sustained a right knee injury in 2016 when she twisted it on some steps. The injury was treated conservatively and her condition improved. Petitioner advised she sustained a reinjury to her right knee when she again twisted it on some steps, but her condition did not improve afterward. Petitioner told Dr. Bradley that she was previously treated by Dr. Byrne and underwent surgery on July 28, 2020, but her right knee had not significantly improved. Petitioner advised she had been to physical therapy, taken medications, and received multiple injections. Petitioner complained of severe right knee pain as well as her knee locking when going from flexion into extension (Petitioner's Exhibit 7).

Dr. Bradley's examination of Petitioner's right knee revealed positive findings which included pain with catching/clicking. X-rays of the right knee revealed a severe loss of medial joint space with sclerosis. Dr. Bradley reviewed the operative report of July 28, 2020, and opined the debridement of the medial and lateral menisci would significantly increase contact joint pressure which led to a significant acceleration of the degenerative disease. Dr. Bradley opined the only treatment which would reliably and predictably improve her knee function was total knee replacement surgery. He recommended Petitioner undergo that surgery and she indicated she wanted to proceed with same (Petitioner's Exhibit 7).

In regard to causality, Dr. Bradley opined that the injury Petitioner sustained in 2020 in which she tore the menisci caused an exacerbation/acceleration of the underlying degenerative disease and Petitioner's symptomatology (Petitioner's Exhibit 7).

Dr. Bradley performed surgery on Petitioner's right knee on January 19, 2024. The procedure consisted of a right total knee arthroplasty (Petitioner's Exhibit 8).

At the direction of Respondent, Petitioner was examined by Dr. Timothy Farley, an orthopedic surgeon, on March 5, 2024. In connection with his examination of Petitioner, Dr. Farley reviewed medical records provided to him by Respondent which included the surgical report of January 19, 2024. According to his report, Petitioner informed him that she injured her right knee on June 2, 2020, as she was in the process of walking down stairs and felt her right knee pop with a sharp pain. However, Dr. Farley also noted that in the medical record dated June 8, 2020, Petitioner reported that she "probably twisted it" while walking (Respondent's Exhibit 1).

Dr. Farley noted Petitioner had just undergone total knee replacement surgery six weeks prior. On examination, he observed a decreased range of motion, stiffness and pain. In respect to causality, Dr. Farley opined there was not a causal relationship between the "reported incident" and Petitioner's current condition. He stated that a meniscus tearing is a very common situation in individuals over 50 years of age and the medical record did not demonstrate the "event" as ever happening on June 2, 2020. Irrespective of his opinion regarding causality, Dr. Farley opined the medical treatment Petitioner had received was reasonable and necessary (Respondent's Exhibit 1).

Dr. Bradley continued to treat Petitioner following surgery and periodically saw Petitioner from February 1, 2024, through October 10, 2024. Petitioner's right knee condition continued to improve. When Dr. Bradley saw Petitioner on May 23, 2024, he noted Petitioner was doing well and had an excellent range of motion of the right knee. He authorized Petitioner to return to work, but no repetitive steps. When he saw Petitioner on August 8, 2024, he noted Petitioner had a good range of motion, good strength, and absolutely no pain (Petitioner's Exhibit 7).

Dr. Farley was deposed on April 16, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Farley's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, he testified there was not a causal relationship between Petitioner's right knee condition and work history injury Petitioner related to him. Dr. Farley stated osteoarthritis takes "multiple years" to develop and does not happen "...from simply walking down steps." (Respondent's Exhibit 2; p 13).

On cross-examination, Dr. Farley agreed that all of the medical treatment Petitioner had received was reasonable and necessary, regardless of causation. This included the total knee replacement surgery (Respondent's Exhibit 2; p 23).

Dr. Bradley was deposed on May 8, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Bradley's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In respect to causality, Dr. Bradley testified there was a causal relationship between Petitioner's right knee condition and the accident of June 2, 2020. He noted Petitioner had informed him that she sustained a "twisting-type" injury while on some stairs, which he said was the type of injury which could cause a meniscus tear. Further, he stated that if there is arthritis in the knee, it does not require "...much of a twist" to cause a meniscus tear. Dr. Bradley described the accident as being an exacerbation of an underlying degenerative disease and an acute injury to the meniscus. Dr. Bradley acknowledged Petitioner had a prior right knee injury several years ago, but had been working full duty for months/years prior to the accident of June 2, 2020 (Petitioner's Exhibit 9; pp 18-19).

On cross-examination, Dr. Bradley was asked if Petitioner could have sustained the injury while going up/down stairs without a twisting motion. Dr. Bradley responded that this was "not likely." Further, such an injury would not occur just by putting weight or pressure on the knee (Petitioner's Exhibit 9; pp 32-33).

Petitioner testified that following the total knee replacement surgery, she worked light duty in the mailroom for several months. In August, 2024, Petitioner was able to return to work at her regular job at full duty. Petitioner stated the condition of the knee is much better than it was prior to undergoing the total knee replacement surgery; but she still experiences some right knee issues. Specifically, Petitioner stated the right knee lacks strength/endurance for which she takes over-the-counter medication. She described the range of motion of her right knee as being pretty good and that she no longer experiences right knee swelling.

On cross-examination, Petitioner testified that she spends approximately 70% of her work day delivering medications. She estimated she walks about 15,000 steps every day.

Conclusions of Law

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

The Arbitrator concludes Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent on June 2, 2020.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony that her job duties required her to ascend/descend multiple flights of stairs while at work on a daily basis and that while walking down a flight of stairs on June 2, 2020, her right knee twisted/popped was credible and un rebutted.

The Arbitrator finds that when Petitioner sustained the accident on June 2, 2020, she was in the process of performing an act incidental to the performance of her job duties. Such an accident is compensable pursuant to *McAllister v. Illinois Workers' Compensation Commission*, 181 N.E.3d 656, 672 (Ill. 2020).

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

The Arbitrator concludes Petitioner gave notice to Respondent within the time limit prescribed by the Act.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony that she reported the accident to her immediate supervisor and two other supervisors shortly after it occurred was un rebutted.

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

The Arbitrator concludes Petitioner's current condition of ill-being in respect to her right knee is causally related to the accident of June 2, 2020.

In support of this conclusion the Arbitrator notes the following:

While Petitioner previously sustained a right knee injury in 2016, her medical treatment at that time was limited to conservative care and she fully recovered from that prior injury.

Petitioner's primary treating physician, Dr. Bradley, opined Petitioner's right knee condition was related to the accident of June 2, 2020. This was based upon Petitioner having sustained a twisting type injury to her right knee which he opined caused meniscal tears and an exacerbation/acceleration of the underlying degenerative disease.

Respondent's Section 12 examiner, Dr. Farley, opined there was not a causal relationship between what he described as the "reported incident" and Petitioner's current condition. The Arbitrator notes that Dr. Farley's opinion is based primarily on his belief that Petitioner did not sustain a

"twisting" injury to her right knee and that she was doing nothing more than walking down steps and experienced an onset of symptoms. As noted herein, Petitioner did, in fact, sustain a "twisting" injury to her right knee on June 2, 2020.

Based upon the preceding, the Arbitrator finds the opinion of Dr. Bradley to be more persuasive than that Dr. Farley in respect to causality.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical services incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

There was no dispute regarding the reasonableness and necessity of the medical services provided to Petitioner.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of four and five-sevenths (4 5/7) weeks, commencing July 23, 2020, through August 12, 2020, and January 19, 2024, through February 1, 2024.

In support of this conclusion the Arbitrator notes the following:

Petitioner and Respondent stipulated Petitioner was temporarily totally disabled during the aforesated periods of time.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 30% loss of use of the right leg.

In support of this conclusion the Arbitrator notes the following:

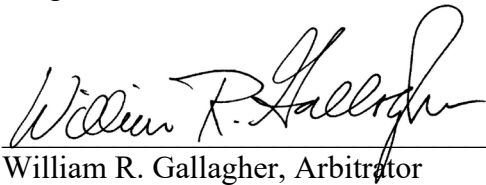
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner worked for Respondent as a Correctional Medical Technician and was able to return to work to that job. Petitioner's job duties required her to walk up/down stairs numerous times on a daily basis. The Arbitrator gives this factor significant weight.

Petitioner was 57 years old at the time she sustained the accident and 62 years old at the time of trial. While Petitioner will have to live with the effects of the injury for the remainder of her working and natural life, Petitioner is approaching normal retirement age. The Arbitrator gives this factor minimal weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

As a result of the accident, Petitioner sustained a significant injury to her right knee. As noted in the MRI of July 1, 2020, it revealed multiple abnormalities in Petitioner's right knee. Petitioner ultimately underwent two right knee surgeries, the first of which consisted of partial meniscectomies of both the medial and lateral meniscus, loose body removal and a medial femoral chondroplasty. Petitioner experienced numerous symptoms subsequent to the first surgery and underwent total knee replacement surgery on January 19, 2024. Petitioner has made a good recovery following the total knee replacement surgery, but continues to have some right knee symptoms consistent with the injury she sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

January 3, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031188
Case Name	Heather Ridenhour v. Master Graphics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0354
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Tracy Jones, Stephanie Seibold
Respondent Attorney	Catherine Cavenagh, Paul Berard, Ashley Krenz

DATE FILED: 8/18/2025

/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)
☒ Modify ☐ up	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HEATHER RIDENHOUR,

Petitioner,

vs.

NO: 21 WC 031188

MASTER GRAPHICS,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's Decision, however, corrects the following clerical and computation errors:

In the second paragraph under the Order section on page 2 of the Arbitrator's Decision, the Commission strikes the number of weeks of temporary total disability benefits of "28-37 weeks" and replaces it with "82 weeks". In the same paragraph, the Commission further amends the dates of temporary total disability from "March 26, 2021 through October 10, 2022" to "March 26, 2021 through October 20, 2022."

In the first paragraph on page 14 of the Arbitrator's Decision, the Commission modifies the TTD benefits from "3/26/21 through 10/10/22" to "3/26/21 through 10/20/22."

Finally in the seventh paragraph on page 14 of the Arbitrator's Decision, the Commission

strikes the two references to “10/10/22” and replaces them with “10/20/22.”

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$337.33 per week, the minimum allowable statutory rate, from March 26, 2021 through October 20, 2022, for a period of 82 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$337.33 per week, the minimum allowable statutory rate, for a period of 31.625 weeks, as provided in §8(e)(10) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$13,147.89 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act, as well as reimbursement of Petitioner’s out-of-pocket deductible totaling \$2,309.61.

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 \$53,886.62. 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.

August 18, 2025

/s/ Maria E. Portela
Maria E. Portela

MEP/dmm
O: 72425
49

/s/ Marc Parker
Marc Parker

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031188
Case Name	Heather Ridenhour v. Master Graphics
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Tracy Jones, Stephanie Seibold
Respondent Attorney	Paul Berard, Catherine Cavenagh

DATE FILED: 12/19/2024

*/s/ Paul Cellini, Arbitrator*Signature**INTEREST RATE WEEK OF DECEMBER 17 2024 4.16%**

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**

HEATHER RIDENHOUR

Employee/Petitioner

v.

MASTER GRAPHICS

Employer/Respondent

Case # **21** WC **31188**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Geneva**, on **September 25, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 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* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$18,046.60**; the average weekly wage was **\$347.05**.

On the date of accident, Petitioner was **45** years of age, *married* with **0** dependent children.

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

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

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

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

ORDER

The Arbitrator finds that the Petitioner sustained accidental injury to her right upper extremity which arose out of and in the course of her employment with Respondent on February 9, 2021, the manifestation date based on repetitive trauma, and that her right upper extremity condition is causally related to the February 9, 2021 accident.

Respondent shall pay Petitioner temporary total disability benefits of **\$337.33 per week**, the minimum allowable statutory rate, for **28-37 weeks**, commencing **March 26, 2021 through October 10, 2022**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit for weekly group disability payments made to Petitioner as provided in Section 8(j), and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay reasonable and necessary medical expenses of **\$13,147.89** as provided in Sections 8(a) and 8.2 of the Act, as well as reimbursement of Petitioner's out-of-pocket deductible totaling **\$2,309.61**.

Respondent shall be given a credit towards any awarded medical expenses that have been paid by Respondent, 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 **\$337.33 per week**, the minimum allowable statutory rate, for **31.625 weeks**, because the injuries sustained caused the loss of use of **12.5% of the right arm**, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **February 9, 2021** through **September 25, 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

DECEMBER 19 2024

STATEMENT OF FACTS

Petitioner has worked as a “jogger” for 16 years for Respondent, a printing company producing mainly flyers, pamphlets, and booklets. The job initially involves cleaning the press, supplying it, and setting up print jobs, and then mainly involves taking the finished product at the end of the line, weighing it, and packing it. Each press is very large and operated by five to six people performing various roles, including the pressman, first assistant, roll tender, and two joggers. Joggers are at the end of the process, receiving the paper product, which she referenced as “books”, where it is stacked in the stacker, and it would come to her from right to left. She would be standing and grabbing the produced papers at about waist level with her right hand and boxing them. She would grab 200 pieces at a time, varying in size, and she estimated doing this with her right upper extremity up to about 4000 times per shift, and another couple thousand times when working 12 hour shifts. The process was hectic as she had to keep up with the running machine and pay attention to the weight of a filled box on a scale to know when it was fully packed. Paper jams also have to be addressed and remedied. She would perform this same activity over and over for 8 to 12 hour shifts. Her work hours varied, in some months working 2 to 3 weeks straight, 12 hours per day, and in others having more days off. She worked full time other than quitting from 2007 to 2008 and initially returning part-time in 2008. In 2020, she was off work about 8 weeks in April and May 2020 due to the pandemic. She confirmed she is right hand dominant.

On 8/22/20, Petitioner’s Press 3 was producing election mail on heavy gloss paper and “jogging” 200 of the “books” at a time into a mail tray. While jogging towards the end of an 11 hour shift, she felt a popping in the right elbow and “lightning bolt” pain from her elbow to her fingertips, with severe pain, numbness, and difficulty grasping. Petitioner testified she reported exactly what happened to her supervisor, Eddie Stanger (“Eddie just said, okay, he said all right, and then that was that”), and tried her best to finish her shift. She was off work the next day, Sunday, and then returned to work on Monday and continued to work her regular job after this and used an elbow brace she purchased. She testified she continued to have pain but hoped it would improve over time. She needed to continue her income and support her family and testified that Respondent had

no replacement for her. She had good and bad days depending on the jobs she was given and how many hours she worked.

In February 2021, her Press 2 job was ending, and she was worried she'd be assigned to a strenuous and hectic press. Press 1. She told Stenger she was doing her best but hanging by a thread and asked not to be assigned to Press 1. While Stenger initially agreed, two days later the foreman called her, and she was then assigned to Press 1. She testified Press 1 involved moving stacks of approximately 5x6 or 5x7 inch papers, weighing between 5 and 7 pounds. During her second shift on that press, 2/9/21, Petitioner testified she felt debilitating pain from doing this job and couldn't continue. She advised Mr. Stenger that she severely injured herself doing the job, couldn't do it anymore, and had to see a doctor. She tried using ice and an elbow wrap to get through the rest of her shift. Asked if she spoke to anyone in authority or in Human Resources between August 2020 and February 2021, Petitioner testified "Eddie had probably come over to me I'd say no more than a handful of times and asked me how I was doing. And at that point I was in the middle of working and I would say my arm is hurting or I'm, I'm, you know, I'm, it's painful today I'm just trying to do the best I can." She didn't ask him about getting medical treatment through workers' compensation in that time. She did not return to work after 2/9/21, used ice and the wrap, and tried to minimize her right hand use.

On or about 2/24/21, Petitioner met with foreman John Hutchinson, supervisor Stanger, and Aricka Anderson from Human Resources. Before the meeting, Hutchinson asked how she was doing and that he was going to put her back on the schedule, and she advised that she hadn't even seen a doctor yet and could not do that. She was advised she could see any doctor she wanted. She testified she initially went to a "regular clinic", but had to establish a primary provider, who she saw in March. The initial medical report in evidence is from family medicine physician, Dr. Mull, on 3/3/21. Dr. Mull's 3/3/21 intake document indicates Petitioner was referred by Dr. Kimbell (Px2), who Petitioner testified was the primary provider, but the Arbitrator did not locate any records of Dr. Kimbell in evidence which predate 3/3/21.

The handwritten statement signed by Petitioner states: "August 27, 2020 was working on press 3 was working a 12 hour shift was working on election [packets?] felt a pain in my elbow all the way thru my hand and kept working still had pain but used an ace bandage and was on press 2 where the job is lighter and not so much work and less heavy lifting when I went to press 1 Feb 7 and Feb 8 started feeling extreme pain in my elbow through my hand put an ice bag on my ace bandage and struggled to make it thru my shift on Tuesday told my foreman that I couldn't work and needed to see a doctor." (Rx1).

On 3/3/21, Dr. Mull documented a 2/9/21 onset of right arm pain Petitioner related to her employment. She reported forearm and hand weakness and numbness, indicating she felt a pop in her elbow on 8/22/20 with symptom onset while working, and reported this to her employer. She was able to keep working, then on 2/9/21 "had symptom flare up to the point she was unable to work, she was dropping things with her right hand and the numbness was worse." She hadn't worked since. Dr. Mull noted tenderness over the ulnar and radial groove at the elbow and positive Phalen's and Tinel's at the right wrist on exam. Given the possibility of carpal or cubital tunnel, EMG testing was requested (Px2; Rx2) and performed on 3/8/21. The testing was noted as normal and Dr. Mull referred Petitioner to Dr. Srivastava for neurologic evaluation. (Px2; Rx4).

A 3/20/21 note of Dr. Kimball indicates Petitioner was to contact neurology to schedule a neurology appointment with Dr. Srivastava, Dr. Afzal, or Dr. Roth. Dr. Mull issued a 3/26/21 note stating Petitioner had been restricted from using her right arm since 2/9/21 and that this restriction remained in place pending re-evaluation. (Px2).

Petitioner testified she gave her husband, also an employee of Respondent, her work notes in March 2021, as well as a couple other times through September, 2021, to provide to Respondent. On the back, she asked to be

contacted if there were any questions of if a position was available within her work restrictions and was never contacted or offered employment until receiving a termination letter. She was asked to work on Press 1, which is where she was working when her pain increased, at the 2/24/21 meeting. She did not provide any further work notes after being terminated.

Petitioner testified that between March and September 2021, she did not work and was resting, trying to limit her use of the right hand. Petitioner testified that Dr. Mull provided notes restricting her to no right hand use as of 2/9/21, and that Dr. Srivastava then also held her off work. Petitioner testified she wasn't initially able to see Dr. Srivastava until Respondent's workers' compensation carrier determined if they were accepting her claim, and she then saw the doctor through her personal insurance only after they issued a denial letter. Leading up to seeing Dr. Srivastava, Petitioner testified: "Nothing had changed from when I had had my injury at work. Nothing was better."

Petitioner first saw Dr. Srivastava on 10/7/21, reporting persistent right forearm pain and numbness since August 2020. Petitioner advised "she works in printing lab where she has to do repeated movements of her arm of moving papers and constant rotation of her arm and she had severe pain and some swelling, and she has been having increasing pain in the right elbow and pain is worse with supination and pronation of elbow." After some initial improvement with bracing, she hadn't improved further and so had not worked since 2/21/21. Noting prior normal EMG testing, a repeat EMG was ordered, and Petitioner was to avoid repetitive work for 4 weeks. The 10/20/21 EMG was also within normal limits, while noting needle EMG examination of all tested muscles was normal, except "decrease MUP in Pronator Teres. NON specific?" Dr. Srivastava on 10/28/21 diagnosed right pronator teres syndrome and referred Petitioner to Ortho Illinois for further evaluation and steroid injection. (Px3; Rx5; Rx6; Rx7).

It is unclear if it is a typo, but a note of Dr. Srivastava holding Petitioner off work through 11/21/21 is dated 9/10/21 or 9/20/21, while the records show no evidence of a visit to Srivastava before 10/7/21. (Px4). Dr. Mull issued a 10/15/21 note advising Petitioner should have been excused from work since her 3/3/21 visit and noted she had been unable to be seen by neurology until 9/10/21. (Px2). There is no record of a 9/10/21 visit with Dr. Srivastava (Px3). Petitioner testified to ongoing right elbow pain and swelling, increased with movement, after her last visit with Dr. Srivastava on 10/28/21, at which point he referred her to Dr. Bear.

On 11/4/21, Dr. Bear's PA noted persistent right forearm pain with associated paresthesia since August 2020: "She says she works in printing lab where she has to do repeated movements moving papers and constant rotation of her arm, she had severe pain and some swelling, and she has been having increasing pain in the right elbow. Pain is worse with supination and pronation." The prior EMG findings were noted. Right lateral epicondylitis was diagnosed, and an injection and physical therapy were ordered, and Petitioner was to follow up with Dr. Bear. His 3/29/22 report indicates she reported temporary 80% improvement with the injection, and improvement in strength with therapy but not with pain or numbness with gripping and lifting. (Px4). Petitioner testified that neither the injection nor therapy helped her. Dr. Bear ordered a 4/5/22 MRI, and the impression was of moderately tendinopathic and hypertrophic extensor tendon origin with subtly frayed fibers and scant peritendinitis consistent with low grade lateral epicondylitis. (Px4; Rx8). Dr. Bear performed a repeat injection on 4/12/22 and also diagnosed a radial nerve lesion. With diagnoses of chronic right lateral epicondylitis and radial tunnel syndrome, Dr. Bear performed radial tunnel nerve decompression surgery and open extensor carpi radialis brevis debridement on 7/6/22. (Px4).

Dr. Bear was overall pleased with Petitioner's progress on 7/20/22, and after being issued a splint, on 8/8/22 Petitioner reported improvement with intermittent aching, stiffness, and pain at the lateral elbow with extension. She denied numbness or tingling. On 9/8/22, she reported sharp pain in the right forearm and lateral elbow with

extension and lifting. She advised Dr. Bear on 10/20/22 of forearm soreness after physical therapy but improvement. Noting significant improvement with surgery, Petitioner was to return as needed. (Px4).

Work notes of Dr. Bear state that Petitioner was restricted to 5 pounds lifting and mandatory brace use with the right upper extremity as of 11/5/21 and left handed only duty as of 7/20/22. His 10/20/22 note released Petitioner to unrestricted work as of 10/21/22. (Px4).

At the request of Petitioner's attorney, Dr. Bear issued a 4/11/23 narrative report stating: "The patient's symptoms began while working as a jogger. The symptoms developed over a 15 year career. Despite being off work for greater than 6 months, the symptoms did not improve. Based on the job description you provided me involving repeated movement of the arm such as moving papers and constant rotation of the arms to pull papers offline and also to pack paper boxes as well as operating the printing press, the patient's work activities can aggravate the condition of lateral epicondylitis and radial tunnel syndrome to a point where surgical treatment is needed." (Px5).

Dr. Neal (Arlington Orthopedic & Hand Surgery Specialists) performed a record review at Respondent's request on 8/1/23 pursuant to Section 12 of the Act. Based on the records, his assumption was that Petitioner's symptoms began in August 2020 and that Petitioner had worked full time for Respondent since 2015. He opined that if the onset of lateral epicondylitis or radial tunnel symptoms first occurred after she last worked on 2/9/21, it would be difficult to causally related the conditions to her job. It was relevant whether Petitioner was claiming a specific or repetitive trauma, as "(g)enerally, one cannot have it both ways." Her report on 3/3/21 of a pop in her elbow while working on 8/22/20, after undergoing no treatment, indicated to him a specific injury, not repetitive. Dr. Neal opined that Petitioner's complaints to Dr. Mull on 3/3/21 were not consistent with either radial tunnel syndrome or lateral epicondylitis. There was no tenderness over the lateral or medial epicondyle, or pain with resisted wrist extension, but rather symptoms of pain and numbness and weakness in the hand and forearm, which generally isn't an expected symptom of these two conditions. The only possible nerve compression referenced by Dr. Mull were distinctly different entrapment neuropathies, cubital and/or carpal tunnel syndrome. Dr. Neal believed it was likely Petitioner had pre-March 2021 records with her primary provider, Dr. Kimbell, but no such records were provided to him for review. He opined Dr. Mull's 3/3/21 reference to possible moderately severe depression could potentially be significant as "this condition certainly can affect perception of onset, duration, or etiology." The EMG was not definitive of an entrapment neuropathy, and EMG is frequently negative with radial tunnel syndrome. Based on Dr. Neal's review of a 3/23/21 "jogger" job description, "it will be assumed that there is significant hand and upper extremity use." Dr. Neal acknowledged Dr. Srivastava's 10/7/21 note specifically references increasing right elbow pain, which could be consistent with lateral epicondylitis. It also for the first time notes a diagnosis of a posterior interosseous nerve injury, which is an extension of the radial nerve and suggestive of radial tunnel syndrome. He could not say if Dr. Srivastava's exam supported lateral epicondylitis as it doesn't specifically note pain in the lateral epicondylar area or any provocative testing consistent with lateral epicondylitis. She hadn't worked since February 2021 and had no symptomatic improvement, suggesting a non-occupational process causing her symptoms. The doctor diagnosed pronator teres syndrome after the 10/28/21 EMG, which involves entrapment of the median nerve, not the radial or interosseous nerves involved with radial tunnel syndrome. Dr. Neal testified that the reference to decreased right pronator MUP in the second EMG may not have any clinical significance. The 11/7/21 report of Dr. Bear was the first to specifically document lateral epicondylar tenderness, an almost universal finding with lateral epicondylitis. The report notes pain with resisted wrist extension, also consistent with epicondylitis. This was the only diagnosis made on this date, as the record doesn't support radial tunnel syndrome. On 3/29/22, Dr. Bear documented lateral epicondylar pain, but no findings in support of radial tunnel or such diagnosis. The 3/4/22 MRI supported lateral epicondylitis. While he didn't note any forearm pain of significance on 3/29/22, on 4/12/22 elbow and forearm pain were noted. Dr. Neal opined that "if one had absolute confidence in all of the medical records" it could be argued that any

forearm pain related to radial tunnel syndrome diagnosed on 4/12/22 developed after 3/29/22 – “Whereas this is a narrow timeframe, radial tunnel syndrome had to start sometime if she indeed did have this condition. Dr. Neal also noted Dr. Bear documented symptoms since about February 2021, which would not be consistent with a work related August 2020 condition, and that if she stopped working in February 2021 its quite possible her symptoms began after she stopped working. This 4/12/22 report is the first documentation of both conditions, more than 16 months after August 2020. Based on the totality of the evidence, Dr. Neal opined that Petitioner’s work activities did not cause, aggravate, or accelerate lateral epicondylitis or radial tunnel syndrome. Dr. Neal also cited multiple medical studies. Given his opinion that Petitioner did not sustain any occupational condition related to her work, he found no diagnosis, determination of MMI, or need for work restrictions to be work related. Specifically asked about whether he agreed with Dr. Bear’s causal connection opinion, Dr. Neal reiterated the doctor did not explicitly state that there was a causal connection between Petitioner’s condition and her any specific or repetitive work injuries, but rather that her work activities could aggravate the conditions of lateral epicondylitis or radial tunnel syndrome. He went on to state that “I will assume (Dr. Bear) does not hold the opinion her work activities caused either condition. Therefore, Dr. Bear and I are in agreement that her work duties and activities in general and no work incident on any single day caused either of the conditions she had surgery for. Dr. Bear did not claim that any work injuries specifically or her work duties in general caused an acceleration of her preexisting conditions. I concur with this, assuming he holds this position.” Dr. Neal further stated that Dr. Bear could advise as to his definition of aggravation, but he defines it as a permanent worsening: “(Dr. Bear’s) statement about aggravation may in reality be a statement that he finds she had symptoms while working (if on is of the opinion she had either condition while working). This would not be unexpected. Lateral epicondylitis and/or radial tunnel may be symptomatic when not working, on vacation, when participating in sports, or while working. This does not mean that there is a permanent worsening (or aggravation) of the conditions just because there were symptoms at work. The mere manifestation of symptoms while at work may not be deemed occupationally related. Therefore, I do not find or agree that her work activities permanently worsened the conditions for which Dr. Bear performed surgery on and for, although it would not surprise me if she had symptoms while working. However, symptoms while working would be a manifestation of the symptoms from a non-occupational condition. Indeed, the records which support that continued symptoms occurred during an approximate six month period of time when she did not work would be relative evidence that her work activities and duties did not permanently worsen the condition because when she was not working for a significant period of time, there was no change in her symptoms.” Dr. Neal also referenced Dr. Bear’s 4/11/23 report and pointed out that “this is not a statement per se regarding causation” and Dr. Bear wasn’t stating Petitioner’s work caused her conditions but can aggravate the conditions. (Rx2).

Dr. Neal’s report also references a review of an Employer’s First Report of Injury, dated 2/24/21, noted an “ongoing” accident/injury to the right elbow to fingertips that was alleged to be due to repetitive movement. (Rx2).

Orthopedic surgeon Dr. Bear testified via evidence deposition on 1/30/24, noting he specializes in the upper extremities. Petitioner on 11/4/21 reported right forearm symptoms that began in August 2020, which she associated with her work activities. On 3/29/22, she had continued complaints of right lateral elbow pain. Injection helped 80%, but temporarily, so Dr. Bear obtained an MRI. While he may not have issued a work note on 3/29/22, given she wasn’t significantly improved, a 5 pound continuing restriction would have been reasonable. MRI showed evidence of lateral epicondylitis, and when Petitioner returned on 4/12/22 she had pain over both the lateral epicondyle and the radial tunnel. Given ongoing symptoms for over a year and no significant improvement with conservative measures, Dr. Bear recommended surgery for both conditions. Petitioner reported symptoms at that time at 8/10 at rest, 10/10 with activity. The 5 pound restriction would have continued through surgery, when she was taken off work completely. She did well after surgery and was continued on restrictions until her last visit on 10/20/22, when she was released to full duty. As to his 4/11/23 narrative report opinion that Petitioner’s work duties could aggravate lateral epicondylitis and radial tunnel

syndrome to a point where surgery is needed, Dr. Bear testified that work activities that could be causative would typically involve: “a repetitive power gripping, twisting, turning, lifting activities utilizing forceful gripping of the wrist and repetitive lifting activities of the wrist and elbow can predispose someone to develop or can aggravate the condition of lateral epicondylitis and radial tunnel syndrome.” (Px5).

On cross-exam, Dr. Bear agreed his PA examined Petitioner on 11/4/21, and that she reported an August 2020 onset of right arm paresthesias. His knowledge of her job activities came from Petitioner’s counsel, who indicated it came from Petitioner directly. He did not review any written company job description for a jogger. Dr. Bear defined “repetitive activity” as performing the exact same material handling activities day in and day out. He doesn’t know the weights of the materials Petitioner handled, but agreed heavier materials would put more stress on the arm than lighter materials. Dr. Bear testified: “If she’s lifting more than five pounds every day on a repetitive action, you know, more than five pounds would be considered enough to aggravate the condition of lateral epicondylitis and radial tunnel syndrome.” He agreed Petitioner’s EMG tests in March and October 2021 took place after she stopped working in February 2021, and both were essentially normal. He did not review Dr. Mull’s records, but even if he had he would not have known for sure how thoroughly Mull examined Petitioner or if he did the appropriate testing. Dr. Bear’s opinions are based on his own notes and what Petitioner reported to him, i.e. that she developed pain in August 2020, it got worse, she stopped working in February 2021, and it didn’t resolve with conservative treatment. Having all of Petitioner’s records to review would be helpful and potentially could impact his causation opinion, depending on what’s in the records. Physical exam findings with lateral epicondylitis would involve tenderness in a specific part of the elbow and with specific activities, including resisted wrist extension. If Petitioner had no lateral elbow pain, if specifically asked, or pain with resisted wrist extension, when examined by Dr. Mull in March 2021, she was at least not symptomatic of lateral epicondylitis at that time – “if he did an adequate physical exam and there were no symptoms, then I would say she clearly didn’t have it at that point in time.” For a condition to be work related, Dr. Bear agreed there needs to be some type of contemporaneous relationship between the onset of the symptoms and the job, and he would expect her to have symptoms while performing the work activities if work-related. Such work-related symptoms usually would improve once away from the job, but not always, and “sometimes it doesn’t get better when you take people off work even if it’s for 6 months.” Most of the time, lateral epicondylitis resolves on its own. Lateral epicondylitis can be idiopathic, but Dr. Bear couldn’t give a percentage as to how often this is the case. He agreed that people can experience symptoms of an underlying condition while performing various tasks without aggravating or worsening the condition. Throughout his treatment, Petitioner could have worked light duty with a 5 pound restriction, other than being off work for about 14 weeks post-surgery. Dr. Bear testified: “Once it started, it doesn’t go back to its baseline. Now many times it does, but in some cases, and it’s a minority of the cases, you could take people off work and they still have pain until they get the condition treated.” (Px5).

On redirect, Dr. Bear testified, as to Dr. Mull indicating in March 2021 that Petitioner was unable to use her right arm since 2/9/21, it would be important to him if the pain was lateral at that time and not in a different location than what she reported to Bear in November 2021 and there were similar findings. Most of the time the type of findings in Petitioner’s MRI heal on their own, but Petitioner’s did not. (Px5).

Dr. Neal also testified via deposition (4/5/24), indicating he is a general orthopedic surgeon with a one year fellowship in hand and upper extremity surgery. In preparing his 8/1/23, he was provided with a written job description for a “jogger” with Respondent, the Form 45, and Petitioner’s handwritten report (see Rx1). His impression at that time was significantly improved right elbow and forearm symptoms following lateral epicondylitis and radial tunnel syndrome post-surgery. These two conditions are distinctly different, with radial tunnel being a very rare nerve entrapment condition. He opined these conditions were not related to Petitioner’s work duties. Petitioner stopped working in February 2021 and her 3/3/21 medical exam showed no findings suggestive of lateral epicondylitis or radial tunnel and thus didn’t have those conditions at that time, making it

very difficult if not nearly impossible to relate the conditions to the work activities. EMGs don't have much value in diagnosing lateral epicondylitis or radial tunnel. Lateral epicondylitis most often resolves on its own without surgery. If it doesn't improve while being off work, that is relative evidence it is an intrinsic nonoccupational factor and not work related. The longer one remains off work with persistent symptoms, the more likely it is not work related. Petitioner indicated she did not improve while being off work, and these conditions were not documented in her records until she had been off work for some time. Based on his knowledge of her job duties, Dr. Neal opined Petitioner's job could potentially cause lateral epicondylitis as the job description noted power grasping with the right hand and constant lifting up to 10 pounds, occasional lifting up to 50 pounds. He testified "it can be work related if there is enough force and repetition or force and posture abnormalities based on the medical literature. That said, the totality of the evidence in this case led him to conclude her job did not, in fact, cause the lateral epicondylitis. (Rx3).

Petitioner's case has aspects of specific trauma in late August 2020, with a "pop" noted, and repetitive trauma. What may have been a soft tissue strain perceived as a "pop" had nothing to do with what appears to be a more gradual, progressive condition that developed over time, leading to surgery, after she stopped working. While it's reasonable to consider these conditions could have been aggravated by her job duties, there would need to be evidence of one or both conditions coming up while she was working, "otherwise it's not a very logical argument that there was an acceleration or an acceleration phenomena." Some of the medical literature supports a causal relationship between work activities and lateral epicondylitis, some don't. The ones that do indicate a combination of significant force and repetition or force and posture, with "reasonable or strong evidence that those job activities could cause lateral epicondylitis." A person's job's risk factors must be evaluated, and Dr. Neal acknowledged Petitioner's job activities involved risk factors that could have caused it. However, Petitioner has other risk factors, like being a female in her 40's or 50's, and it developed in her case after she stopped working. Dr. Bear only opined that Petitioner's work duties could have caused her lateral epicondylitis or radial tunnel, not that they did cause it. To Dr. Neal's understanding, a work related aggravation would involve a permanent worsening, and Dr. Bear did not comment as to what he considered an "aggravation" to be. (Rx3).

On cross, Dr. Neal agreed Petitioner's handwritten note states on 8/27/20 she was working on a press and felt pain in her elbow to her hand, testifying that it's possible this was work related, or its possible it was a manifestation of symptoms while working. She continued to work after August 2020 with no evidence of further treatment until March 2021, so it's unclear how long her symptoms may have persisted. He agreed that examining and talking to Petitioner, versus just reviewing her records, could have influenced his opinion. An examination with a board certified orthopedic surgeon in August 2020 would also have been helpful. Dr. Mull's indication of weakness of right grip would only be related to lateral epicondylitis or radial tunnel if the "weakness" was due to pain, not actual intrinsic weakness, as such weakness would not implicate lateral epicondylitis. This condition can occur with or without grip issues. Based on Petitioner's medical records, no other diagnoses were made until she was diagnosed with lateral epicondylitis and radial tunnel. Whatever symptoms she had in March 2021 may have dissipated by the time she saw Dr. Bear, especially if you are of the opinion she didn't have these conditions in March 2021. A finding of pain over the lateral epicondyle, the outer portion of the elbow, is extremely likely in cases of lateral epicondylitis. The only way to tell if a physician made such finding is if it was documented in the records, and in March 2021, Dr. Mull specifically found the lateral epicondyle to be nontender, which strongly indicates there was no lateral epicondylitis at that time. Pain with wrist extension is also provocative for lateral epicondylitis. Radial tunnel normally would involve distal radial forearm pain, and Dr. Bear did not note any other of the "rather esoteric" tests used to diagnose it were performed. Dr. Bear did not diagnose radial tunnel at the initial visit. Dr. Neal couldn't comment on Dr. Mull's 3/3/21 notation of tenderness over the radial groove at the elbow as there is no such groove at the elbow. The positive Tinel's and Phalen's Dr. Mull documented would be supportive of carpal tunnel syndrome, a wrist/hand nerve compression condition, and he noted this as a possible diagnosis. Dr. Neal did agree the 3/3/21

note reflects findings of tenderness somewhere at the elbow (“it certainly suggests that he thinks there’s something at the elbow”). An inner elbow complaint would not be consistent with lateral epicondylitis. Petitioner reported a specific “pop” in her elbow in this case in August 2020, “so for whatever reason, she might have had an acute strain if that’s an accurate recollection; but just because you felt a pop in your elbow does not necessarily mean it has anything to do with a subsequent set of symptoms which became different later in time.” A “pop” is not typical in a lateral epicondylitis presentation, but Dr. Neal testified that the vast majority of people who report a “pop” in his 20 years of experience involve work injuries, while non workers compensation patients don’t ever come in and report a pop. (Rx3).

Petitioner testified she received an October 29, 2021 certified mail letter from Respondent which stated she was terminated. The letter (Px1) is dated 10/31/21 and indicates she was being terminated immediately, stating she declined a light duty (one-handed) job offer on 2/24/21 in the presence of pressroom management and HR, and had not shown up for work or contacted her supervisor since, resulting in unexcused absences. It was noted that their employee handbook references three days of unexcused absences being considered as quitting the job. She was offered Cobra benefits following the 10/31/21 termination of her health insurance. A non-disclosure agreement was also referenced. (Px1).

Petitioner agreed she had some ongoing forearm pain but resolved numbness after surgery and was released in October 2022. She testified she continues to have pain and numbness in the elbow and top of her right forearm that comes and goes. She hasn’t worked anywhere since being terminated by Respondent. She testified that she asked to return to work with Respondent after her termination but was not wanted back, though evidence was not produced to indicate how she made this request or determination. She never received any short or long term disability benefits. Her medical bills were put through her group coverage with Respondent until she was terminated, after which they were submitted after December 2021 through her husband’s coverage.

On cross-exam, Petitioner acknowledged that she worked with various presses during her employment with Respondent, and with various sizes and weights of paper/booklets. The products could be from flyer to magazine size with varying page numbers. While they didn’t occur on every shift, Petitioner testified that Respondent’s presses would often jam and would have to be shut down until the jam was resolved. She indicated that virtually her entire time standing at the press would involve grabbing the output product. She would get two 10 minute breaks and a 20 minute lunch per shift. Asked how she estimated she did 4000 such product grabs per shift, Petitioner testified that two joggers perform 1.6 to 1.8 million grabs per shift, which she divided by two and then by 200, the number that would be grabbed at one time. As a foundation, Petitioner testified that knowing the number of grabs was part of her job and she had personal recall of how much it would be at the end of her shifts. The only time this would vary would be when the press would break down. Otherwise, 1.6 to 1.8 million was a regular day’s total. All of the press workers help to get a job restarted when a jam happens. She agreed that on presses with a lighter paper, a stack could weigh 1 to 2 pounds, and that’s what she was working on on 8/22/20. Asked if she had any prior right elbow issues, she testified the job was strenuous and “everything hurt” sometimes. She never sought treatment for her right elbow until after 8/22/20. As to the job discussed on the day of the 2/24/21 meeting, Petitioner testified it was to work on a press, and there is no light duty working on a press. She denied being offered a job with left hand use only. She never personally provided her work notes to Respondent, just through her husband. She acknowledged being released to return to unrestricted work since 10/20/22. Other than with Respondent, Petitioner testified she has sought other employment but provided no details. She hasn’t sought treatment since 10/20/22.

Aricka Anderson, Respondent’s HR specialist, testified that when she learned that Petitioner had a possible work injury, she asked her to come in on 2/24/21 to provide more information and to complete an accident report so they could correctly submit her claim as either workers’ compensation or short-term disability. The meeting included Anderson, foreman Hutchinson, and Stanger, Petitioner’s supervisor at the time. She asked

Petitioner about her injury, said she should probably see a doctor, and asked her to complete the statement, which she identified as Rx1. During the meeting the Petitioner was crying and upset that she wouldn't be able to work for Respondent again, which Anderson didn't understand her already saying at that point. To Anderson's knowledge, 2/24/21 was the first time Petitioner reported an 8/22/20 accident date. At the meeting, John Hutchinson offered Petitioner a light duty one-handed position, involving inserting labels into trays, but Petitioner refused it. Petitioner did file for unemployment benefits, which was denied. On cross, Anderson testified that she asked Hutchinson and Stanger if Petitioner had previously reported anything to them about the claimed 8/22/20 injury, and "As far as Ed (Stanger) told me is that she did mention her arm being sore, he couldn't remember the exact day, um, and he says he asked if she wanted to fill out a report and that she said no." He did not say she reported an injury related to work or that her job duties caused an injury, just that her arm was sore.

Eddie Stanger is currently Respondent's plant and maintenance manager. He was Petitioner's supervisor in 2020 and 2021. He testified that at the 2/24/21 meeting, Petitioner's injury/accident was discussed and she was asked her to write a statement (Rx1). Stanger testified that this meeting was the first time the Petitioner reported an August 2020 injury. Towards the end of August 2020, Petitioner indicated that her arm was sore but did not report it as work related and declined completing a report or getting it looked at. The first time she indicated anything about a work injury was the 2/24/21 meeting. They also discussed light duty, and she was offered a job tagging labels on mail trays that can be performed one-handed but declined. He did not recall Petitioner indicating she didn't want to work on Press one between August 2020 and 2/24/21. On cross, Stanger acknowledged Petitioner saying her arm was sore in August 2020 but recalled no other discussions about it until 2/24/21. She did see her wear a brace on her arm after that. While the difficulty of jobs on each press varied, he agreed there were times where Press 1 was known for heavier jobs, which would involve heavier paper.

In rebuttal testimony, Petitioner's recall was while they were talking at the 2/24/21 meeting, Aricka said it sounded like Petitioner had tennis elbow and if that was the case she might not be able to work again, and that is when she started crying. She denied saying she wouldn't ever return to work with Respondent. Petitioner denied being offered a light duty labeling job at the meeting. Additionally, she had performed and was familiar with the labeling job and testified it could not be performed with one arm. Petitioner testified Stanger was aware in both August 2020 and February 2021 that her symptoms involved a work injury because she told him what she was doing when she hurt her right arm when it happened each time, and he never asked her to complete an accident report in August. She denied Respondent ever offering her any job between February 2021 and October 2021.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, and WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent on 2/9/21 on a repetitive basis. The Arbitrator is also addressing causation in this section as the issues of "arising out of" and causation intertwine in repetitive trauma claims.

In consolidated case 21 WC 10188, Petitioner claimed an 8/22/20 repetitive work injury. However, the evidence adduced at hearing indicated that Petitioner's claim was, in fact, based on a specific trauma involving a "pop" to the right elbow, symptoms into her hand with numbness like a lightning bolt, and ongoing symptoms resulting in the use of a brace. The Arbitrator in that case determined that the Petitioner failed to prove a specific trauma to the right arm on 8/22/20 by the preponderance of the evidence.

In this case, the Petitioner acknowledged that she continued to have worsening symptoms following the alleged 8/22/20 incident. However, the un rebutted evidence also shows that she sought no medical treatment after 8/22/20 and continued to work her full regular duties until 2/9/21, a period of almost six months. She did utilize an over the counter elbow brace. She continued to work in her regular job, which clearly involves significant and almost constant use of her dominant right upper extremity.

As in the 21 WC 10188 matter, counsel indicated that this claim involved a repetitive trauma. In this case, the Petitioner did not indicate any sort of specific trauma, just that she had a significant pain increase to where she was unable to continue to work on 2/9/21. Her testimony, which was un rebutted, was that she works basically standing at the end of a printing press, takes large stacks of whatever paper product is being produced with her right hand, and moves them to a box on a scale. She testified that other than the initial job set-up process and dealing with paper jams, this is the essentially the entirety of her job. She estimated performing this task approximately 4,000 times per shift based on the ultimate daily output, and this could increase by up to another couple thousand times if she worked a 9 to 12 hour shift. This job task performed over and over again is a significant piece of evidence in the Arbitrator's decision. The Petitioner has shown that her work activities increased the risk of injury to her right upper extremity.

Dr. Bear has opined that Petitioner's work duties can aggravate a lateral epicondylitis condition. He testified that repetitive power, gripping, twisting, turning, and lifting activities, involving utilizing forceful, gripping of the wrist and use of the elbow predispose someone to develop or aggravate the condition of lateral epicondylitis and radial tunnel syndrome. Dr. Neal appears to agree with this premise, though he opined Petitioner's work duties did not do so in this case. After Dr. Neal initially indicated that Petitioner's job did not involve enough force and repetition, this was based on a communication from Respondent regarding Petitioner's job description which was not entered into evidence, and he later acknowledged Petitioner's job duties were a type that could cause lateral epicondylitis. The nature of Petitioner's work duties do involve performing the same activity with her right hand and arm on average 4,000 times per shift. The Arbitrator finds that the medical opinions in this case support that Petitioner's lateral epicondylitis condition is causally related to the 2/9/21 work accident.

The initial report of Dr. Mull supports that Petitioner did in fact complaint of her elbow. While it is not clear whether the complaint was specific to the lateral elbow, the fact remains that it appears to the Arbitrator that Petitioner's complaints have remained significantly consistent since that time and have since been determined to evidence lateral epicondylitis and radial tunnel syndrome. Dr. Neal's causation opinion relies in part on the lack of documentation of lateral elbow complaints at the initial visit with Dr. Mull, but as noted there are specific elbow findings on exam. Whether Dr. Mull was knowledgeable in making the specific diagnosis based on upper extremity expertise is unclear, and she did not see hand expert Dr. Bear until November. She testified that it took that long to see Dr. Bear because her group health insurance would not cover the visit unless it was denied by workers' compensation, and Petitioner had to wait for the completion of that process.

The Arbitrator acknowledges that the evidence indicates that right upper extremity symptoms started with the alleged 8/22/20 accident, which the Arbitrator found Petitioner failed to prove in case 21 WC 10188, and that some of the Petitioner's statements relate her condition back to that date. However, while she did complain of ongoing pain after that time and utilized a brace, she continued to work without seeking any treatment. She continued to work in a job with heavy right arm use. She continued to work until she essentially broke down during an 11 hour shift and was unable to continue. She is not a physician and may not have recognized the meaning and diagnosis of her symptoms. The Arbitrator believes the preponderance of the evidence supports that a change in condition occurred on 2/9/21 that constitutes an aggravation of the preexisting lateral epicondylitis condition. The Arbitrator also notes that Dr. Bear also believes that Petitioner has a radial tunnel condition that also is causally related and is to be addressed. Given that Dr. Neal really did not dismiss this,

noting it and lateral epicondylitis are mainly clinical diagnoses, the Arbitrator further finds the radial tunnel condition is also causally related to the 2/9/21 accident.

The Arbitrator finds that the Petitioner sustained accidental injuries which arose out of and in the course of her employment with Respondent on 2/9/21, and that this resulted in a causally related aggravation of her lateral epicondylitis and radial tunnel syndrome conditions.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that she reported to supervisor Stanger on 2/9/21 that her pain was unbearable due to her work duties. Stanger testified that Petitioner did not report such injury. Petitioner testified this was her last day of work. One would think that Respondent would have taken further steps to determine Petitioner's work status if she remained off work after 2/9/21. In determining an accident date, or "manifestation" date, in a repetitive trauma situation, it is important when the Petitioner was reasonably aware of both her condition and its relationship to her employment. Given she did not have any diagnosis or medical visit before 2/9/21, the Arbitrator believes this date best defines the accident date given it was the date that her right arm broke down and she was unable to continue working. In essence, the greater weight of the evidence supports that 2/9/21 was the proverbial straw that broke the camel's back. Petitioner and Respondent's witnesses all recounted a 2/24/21 meeting where Petitioner was asked to prepare a statement as to her alleged work injury. Notice of the alleged accident and injury was provided within 45 days of the 2/9/21 accident as required by Section 6(c) of the Act.

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 following the 2/9/21 injury date, as contained in the evidentiary record, were reasonable and necessary for the injuries she sustained as a result of her 2/9/21 injury. The medical records, diagnoses, treatment carried out, and treatment recommendations are noted and supported by the preponderance of the evidence as showing reasonable and necessary treatment related to the 2/9/21 accident. The Arbitrator finds that the Respondent is liable for the treatment provided and the related expenses, which are set forth in Petitioner's Exhibit 7.

The Arbitrator finds that Respondent is responsible for the outstanding medical expenses totaling \$13,147.89, and reimbursement of Petitioner's out-of-pocket expenses while utilizing her personal group health insurance, namely her deductible (see Px7) totaling \$2,309.61, for a total award of \$15,457.50. The parties have stipulated if there is an award of medical bills Respondent is entitled to an 8(j) credit as long as Respondent produces proof of entitlement to the credit. The credit is agreed to be at the actual charge, the Fee Schedule amount, or a negotiated rate, whichever is lesser. Respondent shall pay bills per the Section 8.2 Medical Fee Schedule and after any applicable 8(j) credit either directly to Petitioner or the providers, at Petitioner's election. Respondent must provide proof of payment. In reliance on such credits and to the extent of same, the Respondent shall hold the Petitioner safe and harmless from the claims of any providers or payors. Arbx5 is the written stipulation.

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:

Incorporating the findings above, the Arbitrator further finds that Petitioner is entitled to TTD benefits from 3/26/21 through 10/10/22, the date she was released by Dr. Bear to regular work at MMI.

The testimony was consistent that a meeting with Petitioner was held by Respondent's HR representative on 2/24/21. Respondent's witnesses testified that Petitioner was offered a light duty labeling job. Petitioner denied this job offer, testifying also that she had experience with the labeling job testified to and that it could not be performed one-handed.

On 10/31/21, Respondent notified Petitioner she was immediately being terminated and referencing Petitioner declining a light duty, one-handed, job offer on 2/24/21. There was no testimony indicating why Petitioner was terminated in late October 2021 after declining a job eight months prior.

On 3/26/21, Dr. Mull restricted Petitioner to no right arm use, opining this restriction was needed going back to 2/9/21. There then is a large gap in treatment between March 2021 and September 2021. Petitioner testified credibly that she was not able to seek treatment as she was waiting to see Dr. Srivastava, the neurologist she had been referred to, but could not see due to lack of approval or denial from Worker's Compensation. When Petitioner saw Dr. Srivastava in October 2021 and was restricted repetitive tasks for four weeks. Petitioner's primary care provider then issued a 10/15/21 note indicating Petitioner should be excused from work due to a medical condition between 3/3/21 and 9/10/21. On 11/4/21, Dr. Bear's PA gave Petitioner a 5 pound weight restriction.

The Arbitrator finds that TTD benefits began as of 3/26/21, the first indication in the medical records indicating a specific restriction. There may have been a prior light duty note issued, but the Arbitrator did not locate such note in the evidentiary record. On 3/26/21, Dr. Mull specified that Petitioner was restricted to left handed work duties. It is difficult to accept post-dated off work notes for prior time periods after Petitioner treated on 3/3/21.

There is a dispute as to whether a light duty job offer was presented on 2/24/21 and whether the job was do-able with one hand. The Arbitrator believes its reasonable that a written light duty note be presented to Respondent before an expectation of benefits. Petitioner testified she provided Respondent with the note through her husband, another Respondent employee. Respondent witnesses did not testify about this. The Respondent not then sending a termination letter to Petitioner shortly after the alleged light duty job offer does raise a question in the mind of the Arbitrator. Evidence of a written job offer from Respondent prior to October 2021 was not presented.

Following her 7/6/22 surgery, Petitioner was held off work until being released to regular work duties as of 10/10/22. The greater weight of the evidence supports entitlement to TTD benefits from 3/26/21 to 10/10/22.

Pursuant to the agreed stipulation (Arbx5), Respondent is entitled to credit for any Section 8(j) weekly disability payments obtained through a policy that Respondent pays at least in part and shall hold Petitioner safe and harmless with regard to any claims on the benefits so credited.

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 jogger at the time of the accident. Following surgery, she was ultimately released to full duty. She had already been terminated by Respondent at that point, so she did not return to her regular job. No medical evidence was presented which opines that Petitioner was or is unable to return to the same job she had with Respondent. Her job with Respondent as a jogger involved heavy use of the right upper extremity. This factor carries moderate weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 45 years old at the time of the accident. Neither party presented medical evidence that would tend to show how the Petitioner's age impacts any permanent partial disability resulting from the 2/9/21 work accident. This factor carries no real weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that evidence was not presented which would tend to show that the Petitioner has a loss of earning capacity as a result of the work accident and post-surgical sequelae. This factor carries minimal 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 Petitioner was diagnosed with right lateral epicondylitis and radial tunnel syndrome. She underwent surgery which included an ECRB debridement and radial tunnel release following failure of conservative care. She testified to ongoing symptoms in her dominant right arm including pain in the elbow and forearm and numbness. Petitioner was discharged to full duty work and at MMI on 10/20/22. This factor carries the most significant weight in the Arbitrator's permanent partial disability 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 12.5% of the right arm pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009557
Case Name	Judy Foltz v. Gully Transportation, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0355
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	John Powers
Respondent Attorney	Theodore Powers

DATE FILED: 8/18/2025

/s/ Kathryn Doerries, Commissioner

Signature

DISSENT

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Judy Foltz,

Petitioner,

vs.

NO. 20 WC 009557

Gully Transportation Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 28, 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 Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$13,400.00. 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.

August 18, 2025

O: 07/01/25

KAD/swj

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee H. Simonovich
Amylee H. Simonovich

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. I view the evidence differently and would find that Petitioner failed to prove she sustained an accident arising out of her employment. In my opinion, the Arbitrator incorrectly classified the risk of injury as a risk distinctly associated with the employment. Instead, I believe Petitioner's accident arose from a neutral risk and would find Petitioner failed to prove a compensable accident because she was not exposed to an increased risk.

Petitioner's job was located in the basement level where the hallways were also used for deliveries. In order to mitigate the risks of falls from debris or water tracked inside, Respondent contracted with an outside vendor that supplied safety rugs which were replaced every week. On February 10, 2020, Petitioner was delivering bank reports upstairs when she tripped on a rug located near the base of a stairway and sustained a metatarsal fracture in her left foot which necessitated open reduction with internal fixation. On the day of the accident, Petitioner presented to Quincy Medical Group where she reported she tripped and fell but could not recall exactly how the accident happened. At trial, Petitioner initially testified she felt her foot go underneath the corner of the rug and later testified she felt the rug beneath her foot when she tripped. On cross-examination, Petitioner was asked to clarify whether her foot was underneath or on the rug, at which point Petitioner testified she tripped on the "edge" of the rug. The Arbitrator found Petitioner "tripped on the edge of the rug." (Arbitration Decision at 6) I agree with this finding. The Arbitrator, however, then determined Petitioner's accident resulted from a risk distinctly associated with her employment. I disagree and would classify the risk of injury from the rug in question as a neutral risk.

Photos depicting the rug were admitted into evidence which may or may not have been the same rug that was present on the date of the accident. Other rugs of the same type were located in the hallways. The rugs depicted in the photos appeared to be low profile or tightly woven flatweave mats with rubber-backed bottoms and rubber edging on all four sides. They were in excellent condition. Due to the frequency with which the rugs were removed and replaced, there is no reason to believe the rug in question was old or frayed and Petitioner never alleged the rug itself was unsafe or defective. In fact, Petitioner admitted on cross-examination that she was unable to identify any defect or unsafe condition. She also agreed there was nothing on the surrounding floor that could have contributed to her trip and fall. Additionally, there was no evidence that rug itself moved or slid when Petitioner fell. There was also no evidence suggesting the lighting was insufficient. Furthermore, though Petitioner testified she was in the process of delivering bank reports upstairs, she provided no information regarding the number or size of the documents she was carrying and she never alleged that the documents in her possession played a contributing factor. Petitioner also admitted she was not in a hurry, and Petitioner did not claim she was distracted by the task she was performing or by anything

associated with her employment. Petitioner was simply walking on the floor when her foot contacted the edge of the rug.

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.* The first step is to determine whether the claimant’s injuries arose out of an employment related risk—a risk distinctly associated with the claimant’s employment. *McAllister*, at P46. A risk is distinctly associated with the employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id.* at 46. Only if it is established that a claimant’s injury did not originate from a risk distinctly associated with the employment should the Commission consider applying a neutral risk analysis. *Id.* at P62. When a workplace injury is found to have originated from a neutral risk, the injury is not compensable unless the employment contributed to the injury by increasing the employee’s exposure to the neutral risk, either quantitatively or qualitatively, to a greater degree than the general public. *Id.* at 44.

In *McAllister*, the Supreme Court supplied accident scenarios with citations to prior cases to further explain the distinction between risks distinctly associated with the employment and neutral risks. The Court explained that “[e]xamples of employment-related risks include “tripping on a defect at the employer’s premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.” *McAllister*, at P40, citing *First Cash Financial Services vs. Industrial Comm’n*, 367 Ill. App. 3d 102, 853 N.E.2d 799 (2006). The Court defined neutral risks as “risks that have no particular employment or personal characteristics.” *Id.* at 44. The Court then cited with approval the Appellate Court’s decision in *Illinois Consol. Tel. Co. vs. Industrial Comm’n*, where the Appellate Court noted that falls on level ground or stairs are classified as having their origin in neutral risks in the absence of an unsafe condition or hazard. See *McAllister* at P44, citing *Illinois Consol. Tel. Co. vs. Industrial Comm’n*, 314 Ill. App. 3d 347, 353, 732 N.E.2d 49, 54 (2000) (Rakowski, J., concurring opinion). The *McAllister* decision also cited with approval the Appellate Court’s decision in *Springfield Urban League vs. Illinois Workers’ Comp. Comm’n*, 2013 IL App (4th) 120219WC. See *McAllister*, at P44. In the *Springfield Urban League* case, the claimant was attending a mandatory meeting at a school gymnasium and tripped on a rug while exiting the building. The claimant described the mat as *bunched up* midway along the length of the rug, causing her to trip and fall forward. The Appellate Court rejected the employer’s neutral risk position, explaining that the case did not involve “the risks inherent in walking on a mat *which confront all members of the public*” because the evidence established that the “claimant tripped on a *kinked or bunched* section of the floor mat as she was leaving the building.” (Emphasis added.) *Id.* at P29. Notably, the Appellate Court did not say that rugs and mats are in and of themselves an unsafe hazard; rather, the Court rejected the employer’s neutral risk position because the rug was unsafe due to the rug being kinked or bunched up.

The Supreme Court's citation to *Springfield Urban League* with approval must be read as a continuing recognition that the risk of injury from rugs and floor mats are to be classified as a neutral risk unless the rug or mat was defective or bunched up or kinked in some fashion or not slip-resistant. About two years after *McAllister* was decided, the Appellate Court issued a decision in *Buckley vs. Ill. Workers' Comp. Comm'n*, 2022 IL App (2nd) 21055WC-U. In that case, a firefighter sustained a knee injury while walking down a carpeted hallway inside the fire station. Before his shift began, the claimant used the treadmill and his knee felt stiff. He then responded to a call involving a vehicle accident. Upon arriving back at the fire station, the claimant's knee felt uncomfortable and he was unable to straighten his right leg. After attending a meeting, the claimant noticed he walked with a limp. The claimant then went to another area of the fire station where he conducted a verbal training session. After leaving the training session, the claimant walked down a hallway to speak to the deputy chief when he heard a popping sound and his knee gave way. There was no evidence of any tripping hazards and there was no issue with the carpeting. The Appellate Court's recitation of the facts failed to explain the reason for the claimant's need to speak with the deputy chief; however, the underlying decision issued by the Commission revealed the claimant was going to inform the deputy chief that his crew was leaving to go on an errand. See *Buckley vs. Grayslake Fire Protection Dist.*, 19 IWCC 0445 2019 Ill. Wrk. Comp. LEXIS 1447. Accordingly, there was no dispute that the claimant, while walking to the office of the deputy chief, was performing an act that the employee might reasonably be expected to perform incident to his assigned duties. Nevertheless, the Commission, after determining the claimant had not sustained an injury while responding to the motor vehicle accident or while returning to the firehouse, applied a neutral risk analysis and determined that the claimant failed to prove the knee injury sustained while walking down the hallway arose out of his employment. After the circuit court affirmed the Commission's decision, the claimant filed a motion to reconsider based on the Illinois Supreme Court's decision in *McAllister*. The circuit court denied the claimant's motion. On further appeal to the Appellate Court, the claimant argued that the Commission erred by applying a neutral risk analysis. The Appellate Court disagreed:

The Commission employed a neutral risk analysis only after determining that the claimant's injury had no particular employment characteristics. Specifically, the Commission found that the evidence failed to show that the claimant sustained any kind of specific accident or injury while responding to the vehicle accident or while returning to the firehouse while seated in the cramped quarters of the fire engine. ***That left only the claim that the claimant had injured his knee while walking at work. Such claims are subject to a neutral risk analysis.*** (Emphasis added.) *Id.* at P62.

The *Buckley* decision thus establishes that a neutral risk analysis remains applicable for accidents sustained while walking if there was no hazard or defect present, even when the employee is engaged in a specific work related task such as walking to a meeting or to communicate with another employee.

As mentioned, the Arbitrator in the case at bar found Petitioner "tripped on the edge of the rug." (Arbitration Decision at 6) There was no finding of any defect. There was no evidence that the rug was frayed, torn, bunched or curled up or kinked. There was no evidence that the rug

slid or moved when Petitioner stepped on the rug. In light of the *Buckley* decision and the *McAllister* Court's citation to *Springfield Urban League* with approval, I believe a neutral risk analysis should have been applied. Additionally, the Commission's decision in *Wilson vs. University of Illinois*, 22 IWCC 0473; 2022 Ill. Wrk. Comp. LEXIS 486, where the Commission determined that patterns in tile flooring and a tightly woven rug on the floor did not present any legitimate height differences or pose a hazard, supports the application of a neutral risk analysis in this case.

Parenthetically, when determining the type of risk present in claims involving fall-down injuries, we should remain mindful of the dichotomy between defects on the premises and intentional design elements on the premises. See *Caterpillar vs. Industrial Comm'n*, 129 Ill. 2d 52, 541 N.E.2d 665 (1989), where the Court applied a neutral risk analysis where the claimant twisted his ankle stepping off a curb onto a downward slope which was "apparently intended for drainage." *Id.* at 60. See also *Vaughan vs. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200253WC-U, where the Appellate Court affirmed the Commission's decision finding the configuration and height differential between a sidewalk and sloping blacktop parking lot "was by design and not a defect." (Emphasis added.) *Id.* at P34-35. In *Vaughan*, which was decided after *McAllister*, the Appellate Court further noted that, "[t]he possibility of mis-stepping while stepping from a sidewalk, over a curb and onto a slanted surface in close proximity to an access ramp is not a risk peculiar to claimant's employment where there is simply no evidence of a defect." (Emphasis added.) *Id.* at P35. Consistent with these decisions, the mere presence of a rug or mat where no defect is present, particularly when placed in order to mitigate the risk of falls, should be considered a design element and not a defect.

Petitioner cited four decisions in her brief bearing on this issue; however, the facts in three of those cases are distinguishable and I question the continuing validity of the fourth case. Petitioner's brief cited *Springfield Urban League vs. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, which as described above, had evidence establishing the claimant tripped on a "kinked or bunched section" of the floor mat. *Id.* at P29. Petitioner's brief also cited *Goff vs. State of Illinois, Department of Human Services*, 10 IWCC 1211; 2010 Ill. Wrk. Comp. LEXIS 1263. In that case, the claimant was carrying file folders to meet a client, and while walking fast believing she was late, the claimant fell on a rug or weather mat which was described as having an "upturned ruffle in its edge." Petitioner next cited *Flores vs. Silgan White Cap*, 12 IWCC 316; 2012 Ill. Wrk. Comp. LEXIS 416, where the claimant fell on a small area rug in a vestibule which was found to have moved slightly when the claimant stepped on it. In each of these three cases, there was something unsafe about the rug or mat in question.

The fourth case cited in Petitioner's brief, *Cervantes vs. Follett Educational Services*, 13 IWCC 103; 2013 Ill. Wrk. Comp. LEXIS 64, is of questionable validity. The claimant tripped on a rug and there was no evidence of any defect. The Commission determined the claimant was exposed to a hazard because the rug contained a "raised area...inside the rubber matted area." Commissioner Mario Basurto issued a dissent:

I respectfully dissent with the opinion of the majority. The facts are not in dispute. The only question is a matter of law. Is the mere presence of a rug an increased

risk? I don't see how that precedent can be set without imposing a near impossible burden on employers. Therefore, this matter should be reversed.

The facts are simple, straight forward and not in dispute. The majority quotes and relies on the following. The Petitioner testified, "I was walking to the cafeteria, and there was a rug in front of the cafeteria and I tripped on it." The condition of the rug is also not in dispute. "The rug contains a raised area...inside the rubber matted area". There was a rug in front of the cafeteria. No evidence or testimony that there was any defect in the rug. No indication, that it was frayed, rippled, or upturned. There was simply a "rug in front of the cafeteria". Having a "raised area...inside the rubber matted area" is not an alleged defect but merely the description of a rug, with a rubber matted area. Is having a rug, a "special risk or hazard", per University of Illinois vs. Industrial Commission? 365 Ill.App.3d 906 (2006) (underlining in original.)

For this to be a compensable accident, the mere presence of a rug must be found to be a special risk or hazard. The existence of a rug in of itself must be an increased risk. That is far too onerous of a burden to place on employers and this case should be reversed.

Given the Appellate Court's decision in *Buckley* and Commission's decision in *Wilson vs. University of Illinois*, supra, I would decline to follow *Cervantes*.

I would further find that Petitioner's claim fails under a neutral risk analysis. Though Petitioner testified she might go upstairs three or four times a day and up to five or six times a day (T. 9-10), Petitioner's accident did not occur on the stairs. Petitioner's accident occurred on a flat level floor with a safety rug placed at the base of the stairs. As the general public engages in walking every day and frequently encounters rugs and mats at entrances, I would find that Petitioner's employment did not expose her to an increased risk of injury under the facts presented. See *Springfield Urban League vs. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, P29 ("Contrary to employer's argument, this case does not involve the risks inherent in walking on a mat *which confront all members of the public* . . . claimant tripped on a kinked or bunched section of the floor mat." (Emphasis added.)

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

August 18, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC009557
Case Name	Judy Foltz v. Gully Transportation, Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	John Powers
Respondent Attorney	Theodore Powers

DATE FILED: 3/28/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 26, 2024 5.105%

STATE OF ILLINOIS)
)SS.
 COUNTY OF ADAMS)

☐	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**

JUDY FOLTZ

Employee/Petitioner

v.

GULLY TRANSPORATION, INC.

Employer/Respondent

Case # **20** WC **009557**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy**, on **February 7, 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 **February 10, 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 **\$34,424.00**; the average weekly wage was **\$662.00**.

On the date of accident, Petitioner was **62** years of age, *single* with **0** dependent children.

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

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

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 **\$16,842.46** under Section 8(j) of the Act.

ORDER

Respondent shall be given a credit of \$16,832.46 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 \$397.20/week for 33.4 weeks, because the injuries sustained caused the 20% loss of the left foot, as provided in Section 8(e) of the Act.

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

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

Edward Lee
Signature of Arbitrator

March 28, 2024

FINDINGS OF FACT

On February 10, 2020, Judy Foltz (Petitioner) worked as a clerk in the safety department for Gully Transportation, Inc. (Respondent). The safety department was located in the basement of Respondent's building. Because the building did not have an elevator, Petitioner was required to go up and down a flight of stairs to get to Respondent's other offices and departments on the ground floor. The stairs led to a short hallway that was connected to another hallway in the basement forming a T-section. At the base of the stairs was always a rectangular rug with a rubber strip around the edge of the rug. The hallway that ran horizontal to the stairs likewise had a similar rug. There was an approximate twelve-inch gap of exposed linoleum floor tile separating the two rugs. Respondent had a janitor, who vacuumed the rugs, and a service that would periodically replace the rugs with fresh rugs. Prior to February 10, 2020, Petitioner worked for Respondent for approximately 34 years. Petitioner would go up and down these stairs three to six times per day.

On February 10, 2020, Petitioner was in the process of taking bank reports upstairs to the accounting department. As she turned the corner to enter the short hallway at the base of the stairs, Petitioner felt her foot catch on the edge of the rug causing her to fall. Petitioner testified she was unsure as to whether her left foot or right foot caught on the rug, because the accident happened so quickly. She was wearing flat shoes and denied ever having any issues with her legs suddenly going out from under her prior to the fall. After she fell, Petitioner noticed she had a hard time getting up and her left foot was hurting. Nancy Watley was standing at the top of the stairs and asked Petitioner whether she was okay. Petitioner limped back to her office.

Later that same day, Petitioner was seen by Dr. Hans Raj at Quincy Medical Group. Dr. Raj noted, "Patient reports she fell at work this morning. Patient reports she does not recall exactly how the injury happened, but she tripped and fell. She reports that when she stood up she noticed significant pain in her foot." (PX. 1, pg. 7) A left foot x-ray revealed a displaced mid shaft fracture of the fifth metatarsal. (PX. 1, pg. 8) Petitioner was provided with a CAM walking boot, advised to be non-weightbearing as much as possible and to follow up with podiatry. (PX. 1, pg. 8)

On February 18, 2020, Petitioner began treating at Quincy Medical Group with Dr. Shwetal Patel. (PX. 1, pg. 17) Dr. Patel opined that due to the moderate displacement of the fracture, Petitioner required surgery to repair the fracture. (PX. 1, pg. 18)

On March 6, 2020, Dr. Patel performed surgery on Petitioner's left foot to reduce the fracture's displacement using 22-gauge cerclage wire. (PX. 2, pg. 2)

Petitioner continued working up to March 6, 2020. Following her surgery, Respondent paid her full salary until she returned to work in April 2020.

On March 24, 2020, Petitioner followed up with Dr. Patel, who reported Petitioner did not have any signs of deep vein thrombosis (DVT) but did have expected swelling of her left foot. (PX. 1, pg. 40) On April 8, 2020, Dr. Patel again noted Petitioner did not have any signs of DVT but continued having swelling as expected. (PX. 1, pg. 43) On April 15, 2020, Dr. Patel removed the cast from Petitioner's left foot. Petitioner was instructed to remain non-weightbearing until that weekend and then transition to the CAM walking boot. (PX. 1, pg. 43) On April 27, 2020, Dr.

Patel advised Petitioner to transition to wearing a regular shoe and to have the CAM walking boot on hand in the event she did any significant ambulation not the following two weeks. Dr. Patel discharged Petitioner from care. (PX. 1, pg. 52)

On May 7, 2020, Petitioner returned to Dr. Patel reporting left heel pain in her heel. (PX. 1, pg. 58) Dr. Patel diagnosed Petitioner's symptoms as being suggestive of plantar fasciitis and administered a Kenalog injection. (PX. 1, pg. 59) On May 27, 2020, Petitioner reported to Dr. Patel that the injection helped tremendously. Dr. Patel advised Petitioner to wear good shoes, avoid walking barefoot and stretch her Achilles. As for continued left foot swelling, Dr. Patel advised wearing compression stocking as an option. (PX. 1, pg. 63)

On August 19, 2020, nurse practitioner Mary Decker of Quincy Medical Group examined Petitioner's left leg. Ms. Decker noted Petitioner had undergone a Gel-ONE injection to her left knee on December 4, 2019. However, since undergoing surgery to her foot, Petitioner had been noticing increased discomfort to her entire left leg along with left ankle swelling. (PX. 1, pg. 70) Petitioner was diagnosed as having left knee osteoarthritis and left ankle swelling. (PX. 1, pg. 73) On August 24, 2020, Petitioner was instructed to go back to wearing her CAM walking boot. (PX. 1, pg. 78)

On August 26, 2020, Petitioner returned to Dr. Patel with symptoms of bilateral burning, tingling and numbness in both feet. Dr. Patel recommended an EMG/NCV. (PX. 1, pg. 80-81) An EMG was performed on September 2, 2020 revealing left peroneal neuropathy. (PX. 1, pg. 104)

On January 21, 2021, Petitioner was seen at Hannibal Hospital for what she reported as chronic left leg pain due to nerve damage from her March 6, 2020 foot surgery. She reported her pain had become worse in the 3-4 weeks prior to being admitted to the hospital. (PX. 3, pg. 5) A left leg ultrasound was positive for DVT from the left groin to the left popliteal vein. (PX. 3, pg. 11-13) Dr. Eli Denney indicated the inciting event for her DVT was unclear. (PX. 3, pg. 15) On January 28, 2021, Dr. Arvin Abueg of Quincy Medical Group diagnosed Petitioner as having a deep vein thrombosis of the proximal vein of her left lower extremity. (PX. 1, pg. 173) Petitioner continued following up at Quincy Medical Group through September 29, 2021. (PX. 1)

Respondent submitted into evidence some of Petitioner prior medical treatment records. On April 11, 2005, fell from a step stool sustaining a left tibial plateau fracture and underwent surgery on April 13, 2005. (PX. 8 A) On October 20, 2014, Petitioner reported to Quincy Medical Group that she had left leg discomfort. (RX. 8 B) On October 30, 2014, she reported pain radiating from her back to her left leg. (RX. 8 C) On September 19, 2016, Petitioner was admitted to Blessing Hospital with a low back pain as a result of tripping and falling while taking out trash. (RX. 8, D) The note indicates Petitioner tripped on her heels. Petitioner explained she was wearing high heels at the time. On June 15, 2018, Petitioner reported to Quincy Medical Group that she had been having left knee pain for two days. (RX. 8 E) On June 26, 2018, she again reported to Quincy Medical Group that she had been having left knee pain since June 13, 2018. Petitioner was diagnosed with post-traumatic osteoarthritis of the left knee (RX. F) On July 3, 2018, Petitioner returned to Quincy Medical Group with left knee pain and requested a steroid injection to her left knee. (RX. 8 G) On May 2, 2019, Petitioner was seen at Quincy Medical Group in follow up to a cataract surgery to her right eye on April 4, 2019. (RX. 8, H) On December 4, 2019, Petitioner reported left knee pain that significantly limited her ability to climb stairs at work, which she had to do multiple times per day. (RX. 3 & 4) On February 6, 2020,

Petitioner reported left leg swelling. She was concerned that she might have a blood clot in her left leg. She also had bilateral calf and ankle swelling that was worse on the left. She had achiness and burning to the lateral aspect of her ankle and foot at the end of the day. (RX. 5 & 6) Respondent's Exhibits 9 and 10 are post-accident records from Quincy Medical Group already discussed above.

Petitioner is currently 66 years old and has been retired since September 10, 2021. She continues noticing pain and swelling in her left foot after walking for 30 minutes to an hour. Petitioner continues taking Gabapentin daily.

CONCLUSIONS OF LAW

1. Accident

Regarding item (C), whether an accident occurred that arose out of and in the course of employment by Respondent, the Arbitrator concludes Petitioner's February 10, 2020 accident arose out of and in the course of her employment with Respondent.

Respondent disputed whether Petitioner's injury arose out of her employment. No dispute exists as to whether Petitioner was in the course of her employment at the time of the accident.

An injury arises out of the employment if the injury originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. McAllister v. Ill. Workers' Compensation Comm'n, 2020 IL 124848 ¶ 36, 181 N.E.3d 656, 450 Ill.Dec. 304 (Ill. 2020). A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: (1) acts he or she was instructed to perform by the employer; (2) acts that he or she had a common law or statutory duty to perform; (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id* P. 46.

In this case the Petitioner was in the process of taking bank reports upstairs to the accounting department. As she turned the corner to enter the short hallway at the base of the stairs, she felt her foot catch on the edge of the rug causing her to fall. Accordingly, the Arbitrator finds that the Petitioner was subject to a risk distinctly associated with her employment as she was engaged in an activity that an employee might reasonably be expected to perform incident to her assigned duties. Thus, the Arbitrator finds the Petitioner's accident arose out of her employment with the Respondent.

The Respondent in support of its position that Petitioner's fall injury arose from a personal risk, submitted into the record various medical records showing at previous times prior to February 10, 2020 Petitioner had issues involving her left knee and swelling in her foot so as to create an inference that Petitioner's fall occurred due to a personal risk. However, circumstantial evidence can only support an inference which is reasonable and probable, not merely possible. First Cash Financial Services v. Industrial Comm'n, 367 Ill.App.3d 102, 853, N.E.2d 799, 804 (Ill.App.2006).

The Arbitrator finds Petitioner's risk of falling on the rug due to a personal risk is **not** the most probable inference that can be drawn from the facts. None of the medical records indicating

Petitioner had any issues with falling due to internal weakness leading up to her accident. The Arbitrator concludes Petitioner's fall was due to tripping over the rug and was an accident that arose out of her employment.

2.Causal Connection

Regarding item (F), whether Petitioner's condition of ill-being is causally related to the injury, the Arbitrator finds the fracture to Petitioner's fifth metatarsal was causally related to her February 10, 2020 fall.

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*, 2013 IL App (1st) 120469WC ¶ 78, 991 N.E.2d 430, 448 (2013).

On February 6, 2020, Petitioner reported left leg swelling. She was concerned that she might have a blood clot in her left leg. She also had bilateral calf and ankle swelling that was worse on the left. She had achiness and burning to the lateral aspect of her ankle and foot at the end of the day. (RX. 5 & 6) After fracturing her foot on February 10, 2020, Petitioner noticed immediate swelling in her left foot. Although she has reported swelling in her ankle prior to the fall, the arbitrator notes pain and swelling following a fracture is a common occurrence.

As for the treatment received at Hannibal Hospital on January 21, 2021 for DVT, the arbitrator concludes the evidence does not support a causal connection to the February 10, 2020 accident. The treating physician monitored Petitioner's condition of ill-being for the development of DVT for several months following her March 6, 2020 surgery. There is no medical opinion within the records relating DVT discovered on January 21, 2021 to Petitioner's accident.

3. Medical Expenses

Regarding item (J), whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent paid all appropriate charges for all reasonable and necessary services, the Arbitrator concludes Respondent is entitled to a \$16,832.46 credit for payments made by Petitioner's group health insurance, which was through Respondent. Respondent shall hold Petitioner safe and harmless for any and all claims that may be made against Petitioner by reason of having received such payments only to the extent of said credit.

At the arbitration hearing, Petitioner submitted an itemization showing her group health insurance (Blue Cross Blue Shield of Illinois) through Respondent paid \$16,832.46 on her behalf and a \$1,265.00 Hannibal Hospital bill for services provided on January 21, 2021.

The Arbitrator finds the itemization for Blue Cross reflects the negotiated rate for services paid on behalf of Petitioner. The Arbitrator concludes these payments were for services related to

Petitioner's February 10, 2020 accident. Petitioner stipulated Respondent contributed to her health insurance policy with Blue Cross and is entitled to credit under Section 8(j) of the Act.

In regards to the \$1,265.00 Hannibal Hospital bill, the Arbitrator finds the medical treatment provided was not causally related to Petitioner's February 10, 2020 accident and Respondent is, therefore, not liable for this bill.

4. Nature & Extent

Regarding item (L), the nature and extent of the injury, the arbitrator concludes as a result of her February 10, 2020 accident Petitioner sustained 20% loss of use of her left foot.

Pursuant to §8.1b of the Illinois Workers' Compensation Act, the follow criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

Regarding subsection (i) of §8.1b(b), the Arbitrator notes there was no permanent partial impairment rating provided. Therefore, the Arbitrator gives no weight to this factor.

Regarding subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner worked as a clerk in Respondent's safety department. Part of her job duties required climbing up and down stairs three to six times per day. The Arbitrator gives some weight to this factor.

Regarding subsection (iii) of §8.1b(b), the age of the employee, the arbitrator notes at the time of the injury, Petitioner was 62 years old. The Arbitrator gives little weight to this factor.

Regarding subsection (iv) of §8.1b(b), the employee's future earning capacity, the Arbitrator notes Petitioner returned to her previous line of employment and continued working until retiring on September 10, 2021. The Arbitrator gives moderate weight to this factor.

Regarding subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes on March 6, 2020 Petitioner underwent an open reduction with internal fixation to repair a fracture of her fifth metatarsal in her left foot. (PX. 2) Following surgery, Dr. Shwetal reported Petitioner continued having pain and swelling in her left foot. The Arbitrator gives significant weight to this factor.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC036296
Case Name	Valarie Johnson v. City of Chicago Department of Streets & Sanitation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0356
Number of Pages of Decision	22
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Charles Given
Respondent Attorney	Derrick Lloyd

DATE FILED: 8/19/2025

/s/Amylee Simonovich, Commissioner

Signature

13WC36296

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Valarie Johnson,
 Petitioner,

vs.

NO: 13 WC 36296

City of Chicago Department of Streets and Sanitation,
 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, prospective medical, temporary disability, permanent disability, whether the Arbitrator abused her discretion in denying Respondent's Motion to re-open proofs and whether the Petitioner exceeded her choice of two 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 12, 2024, is hereby affirmed and adopted.

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

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

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

August 19, 2025

o: 8/12/25

AHS/rm

051

/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Kathryn A. Doerries

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	13WC036296
Case Name	Valarie Johnson v. City of Chicago/ Department of Streets & Sanitation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Charles Given
Respondent Attorney	Derrick Lloyd

DATE FILED: 11/12/2024

/s/ Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 6, 2024 4.26%

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Valarie Johnson
 Employee/Petitioner

Case # **13** WC **036296**

v.

Consolidated cases: _____

City of Chicago Department of Streets & Sanitation
 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 **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **August 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 **Whether Petitioner exceeded her two choices of medical providers and Respondent's Motion to Reopen Proofs**

FINDINGS

On **December 24, 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* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$67,481.70**; the average weekly wage was **\$1,297.73**.

On the date of accident, Petitioner was **44** years of age, *single* with **1** dependent child.

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

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

Per the Parties stipulation, Respondent shall be given a total credit of **\$530,626.93** for payments of temporary total disability benefits, temporary partial disability benefits, and maintenance benefits paid by Respondent through August 5, 2024, the date of arbitration. See Ax2.

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

ORDER

Per the Parties stipulation, Respondent shall pay Petitioner temporary total disability benefits of **\$865.15/week** for **425 and 4/7 weeks**, commencing **December 25, 2012** through **February 19, 2021**, as provided in Section 8(b) of the Act. See Ax1, No. 8.

Respondent shall pay Petitioner maintenance benefits of **\$865.15/week** for **180 and 3/7 weeks**, commencing **February 20, 2021** through **August 5, 2024**, the date of arbitration, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$734.40/week**, commencing **August 6, 2024**, until Petitioner reaches the age of 67 or five 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.

The Arbitrator finds that Petitioner did not exceed her two choices of medical providers.

Respondent's Motion to Reopen Proofs is **denied**.

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

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



Signature of Arbitrator

November 12, 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on August 5, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois. Issues in dispute include (1) maintenance benefits, (2) the nature and extent of the injury, and (3) whether Petitioner exceeded her two choices of medical providers. Arbitrator's Exhibit ("Ax") 1. At arbitration, Respondent stipulated as to the issue of causal connection. Tr. at 89-90; Ax1 at No. 4. The Arbitrator notes that at arbitration, the issue of a credit claimed by Respondent in the amount of \$420,072.10 for TTD benefits paid and a credit in the amount of \$110,979.02 for maintenance benefits paid was in dispute. After proofs were closed, the Parties stipulated to a credit in the amount of \$530,626.93 for TTD, TPD, and maintenance benefits paid by Respondent through August 5, 2024, the date of arbitration. See Ax2, which the Arbitrator considers to be a part of the record. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

At the time of the injury, Petitioner was 49 years of age, single, with no dependent children. Ax1 at No. 6. Petitioner is right-hand dominant. Transcript of Proceedings ("Tr.") at 10. Petitioner worked at Respondent since 1995. Tr. at 11. On December 24, 2012, Petitioner was employed at Respondent as a sanitation laborer through Local Union 1001. Tr. at 11, 26, 28. Petitioner worked from 6 a.m. to 2:30 p.m., Monday through Friday. Tr. at 26.

Petitioner testified that prior to December 24, 2012, she was not having any problems with her left shoulder or her neck. Tr. at 21.

Duties

Petitioner testified that her job duties as a sanitation laborer included pulling carts, climbing up and down the truck, cleaning up, lifting anything that was out of containers, and sweeping. Tr. at 27. Petitioner testified that she had to lift up to 100 pounds. Tr. at 28.

Accident

Petitioner testified that on December 24, 2012, "[w]e were working on – I can't remember the street, but we were working and I run the truck on the right side. So I was operating the truck. I pushed the truck onto the lift to lift it up and as it was going up it tipped over and fell on me on my left [shoulder]." Tr. at 11-12.

On cross examination, Petitioner testified that she is claiming injuries to only her cervical spine and left shoulder. Tr. at 39.

Summary of Medical Records

On December 24, 2012, Petitioner reported to MercyWorks following a work accident. Petitioner's Exhibit ("Px") 1 at 30. Petitioner reported that she placed a cart full of construction debris on the flipper and then the cart fell off the flipper. Petitioner injured her left arm, shoulder, and back while trying to catch the cart. Petitioner described the pain as being along the left shoulder and radiating to the base of the neck, left scapular area, and down along the lateral arm. Petitioner's diagnosis was a left shoulder sprain. Petitioner was prescribed ibuprofen and Flexeril and was taken off work.

Petitioner returned to MercyWorks on December 28, 2012. Px1 at 31. Petitioner reported that her pain remained 7/10 and remarked that it was worse at night. Petitioner had limited range of motion and tenderness over the

AC/RC. It was recommended that Petitioner participate in physical therapy three times a week. Petitioner was kept off work.

Petitioner followed up at MercyWorks on January 14, 2013, at which time an MRI of the left shoulder was ordered. Petitioner was kept off work. Px1 at 31.

Petitioner underwent an MRI of the left shoulder on January 18, 2013, which demonstrated (1) 7 x 5 x 4 mm partial tear, anterior aspect, insertion of the supraspinatus tendon, (2) no evidence of complete rotator cuff disruption, (3) intact glenoid labrum and biceps tendon, (4) degenerative changes, left acromioclavicular joint, and (5) suspected 16 x 11 x 7 mm ganglion. Px2 at 93-94.

On January 24, 2013, Petitioner returned to Mercy Works. Px1 at 32. It was noted that the MRI of the left shoulder showed a partial tear anterior aspect insertion of the supraspinatus tendon. Petitioner's symptoms were unchanged. Petitioner's diagnosis was a left shoulder rotator cuff tear. Petitioner was referred to Dr. Michael Maday.

Petitioner saw Dr. Michael Maday at Midland Orthopedic Associates on January 30, 2013. Px2 at 39-41. Dr. Maday reviewed the January 18, 2013 MRI and noted that it revealed a significant partial-thickness tear of the supraspinatus involving the undersurface. Dr. Maday noted that he believed that the tear involved more than 50-percent of the supraspinatus. A subacromial injection was administered. Petitioner was prescribed Norco and meloxicam. Petitioner was kept off work.

Petitioner returned to Dr. Maday on February 13, 2013. Px2 at 42-43. Petitioner reported slight improvement following the injection. Dr. Maday recommended that Petitioner continue physical therapy to work on terminal motion and strengthening. Dr. Maday's diagnosis was partial thickness rotator cuff tear. Petitioner was kept off work.

Petitioner followed up with Dr. Maday on March 6, 2013, at which time Petitioner reported no significant improvement in symptoms. Px2 at 44. Dr. Maday recommended that Petitioner continue physical therapy. Dr. Maday noted that if Petitioner did not have significant improvement and continued to rely on Norco, she would likely be a candidate for an arthroscopic surgery. Petitioner was kept off work.

Petitioner next saw Dr. Maday on April 3, 2013. Px2 at 46. Petitioner reported persistent shoulder pain and that she could not lift her arm without significant pain. Petitioner was no longer participating in physical therapy as she was denied further coverage. Dr. Maday noted that due to conservative treatment measures having failed, there was nothing more that he could offer Petitioner besides arthroscopic surgery. Dr. Maday prescribed Norco. Petitioner was kept off work. Petitioner followed up with Dr. Maday on April 24, 2013. Px2 at 48-49. Dr. Maday continued his surgical recommendation and kept Petitioner off work.

Petitioner returned to Dr. Maday on May 22, 2013, at which time Dr. Maday continued to recommend surgery and kept Petitioner off work. Px2 at 51-52.

Petitioner attended 15 sessions of physical therapy at MercyWorks between January 13, 2013 and June 7, 2013. Px1 at 31, 32-33.

On June 27, 2013, Petitioner underwent a (1) left shoulder arthroscopy, (2) extensive debridement, (3) subacromial decompression, (4) debridement of the rotator cuff, and (4) labral repair. Px2 at 97-103; Px7 at 1-3. Petitioner's postoperative diagnosis was left shoulder partial rotator cuff tear with impingement and labral tear.

Petitioner followed up with Dr. Maday on July 10, 2013. Px2 at 54. Dr. Maday noted that at the time of surgery, Petitioner had a partial bursal-sided tear of the supraspinatus and a labral tear causing instability, as well as a large subacromial spur impinging on the supraspinatus. Petitioner reported postoperative neck pain. Dr. Maday ordered physical therapy. Petitioner was kept off work.

Petitioner again saw Dr. Maday on July 30, 2013. Px2 at 56. Petitioner complained of pain that she believed was muscular or nerve-related in nature. Petitioner reported that she had been attending physical therapy but was still having significant pain. Dr. Maday reiterated Petitioner's need to decrease her dependence on narcotic pain medication. Petitioner was prescribed a lower dose of Norco and a muscle relaxer. Petitioner was instructed to continue physical therapy. Dr. Maday noted that if Petitioner did not note any significant improvement, a cervical spine work-up would be considered. Petitioner was kept off work.

Petitioner attended 30 sessions of physical therapy at Midland Orthopedic Associates from July 16, 2013 through September 30, 2013. Px2 at 85-91.

Petitioner next saw Dr. Maday on October 2, 2013. Px2 at 59. Petitioner complained of bilateral arm symptoms radiating into the arms and shoulders. Dr. Maday noted diffuse tenderness over the trapezius and scapulothoracic area and neck on exam. X-rays of the cervical spine were obtained and revealed no significant bony abnormalities. Dr. Maday's assessment was status post shoulder surgery with neck pain. Dr. Maday prescribed Neurontin and Norco and ordered an MRI of the cervical spine. Petitioner was to continue therapy for her shoulder but hold off on therapy for the neck until the MRI was obtained.

Petitioner underwent a cervical spine MRI on October 9, 2013, which demonstrated (1) a large central and right-sided disc herniation, causing cord compression at C3-4, (2) a small central disc herniation at C4-5, and (3) mild degenerative and hypertrophic changes at C1 and C2. Px2 at 95-96; Px3 at 86-87.

Petitioner again saw Dr. Maday on October 11, 2013, at which time Petitioner continued to complain of neck and arm pain. Px2 at 60. Dr. Maday noted diffuse tenderness about the trapezius on exam. Dr. Maday reviewed the cervical spine MRI and noted that its findings were consistent with a large disc herniation. Dr. Maday noted that the disc herniation was the likely cause of the majority of Petitioner's symptoms and recommended that Petitioner discontinue shoulder therapy until the neck symptoms improved. Dr. Maday prescribed a Medrol Dosepack and referred Petitioner for an injection to improve her symptoms. Petitioner was kept off work. Dr. Maday noted that if Petitioner's symptoms did not improve, she would be a surgical candidate.

On November 19, 2013, Petitioner saw Dr. Ebby Jido at the Pain Center at Advocate Christ Medical Center. Px3 at 170-171; Px5 at 42-43. Petitioner complained of neck and shoulder pain. On exam, Dr. Jido noted a positive Spurling, weakness in the left upper extremity, and paresthesia involving the left hand and right shoulder area. Dr. Jido recommended a cervical epidural steroid injection with IV sedation and that Petitioner continue use of Norco. Dr. Jido noted that if injections were of no benefit, there would be a switch to long-acting opioids in the future.

On December 11, 2013, Dr. Maday noted that Petitioner had difficulty moving her shoulder secondary to neck pain. Px2 at 61. Dr. Maday noted that Petitioner was scheduled for a cervical spine injection on January 3, 2014. Dr. Maday recommended that Petitioner proceed with the injection, and that once her neck symptoms had improved or resolved, he would begin further aggressive strengthening for her shoulder.

Petitioner underwent a cervical epidural steroid injection at C6-7 on February 6, 2014. Px5 at 106-107. Petitioner reported minimal relief and was prescribed a second cervical epidural steroid injection. Px5 at 74.

Petitioner next saw Dr. Maday on March 26, 2014. Px2 at 62. Petitioner reported no significant improvement after the cervical injection and no improvement in shoulder symptoms. Dr. Maday's assessment was cervical spine pain with decreased motion and strength in her shoulder. Dr. Maday noted that Petitioner's shoulder would not improve until her neck symptoms were controlled. Dr. Maday recommended that Petitioner finish treatment for the cervical spine, and once improved or resolved, he would begin further aggressive strengthening of the shoulder.

Petitioner underwent a cervical epidural steroid injection on April 10, 2014. Px3 at 173-174; Px5 at 162-163.

Petitioner returned to Dr. Maday on May 28, 2014. Px2 at 63. Petitioner continued to complain of pain and reported numbness and tingling into the left upper extremity. Dr. Maday's assessment was status post shoulder surgery following shoulder injury with neck pain with cervical radicular symptoms. Dr. Maday referred Petitioner to Dr. Charles Slack or Dr. Theodore Fisher for an opinion as to care and treatment of her cervical spine. Petitioner was kept off work.

On June 20, 2014, Petitioner saw Dr. Charles Slack at Illinois Bone and Joint Institute ("IBJI") for a cervical spine evaluation. Px3 at 64-65. Petitioner reported continued neck and left arm pain, noting that it varied in quality (sharp, dull, throbbing, and aching). On exam, Dr. Slack noted that forward flexion and extension caused neck pain, slightly decreased muscle strength of the left biceps and triceps, decreased sensation in the radial aspect of the left forearm and ulnar aspect of the right forearm, and positive Hoffman's in the bilateral upper extremities. Dr. Slack's diagnoses were persistent cervical derangement with radicular symptoms and a large C3-4 disc herniation with positive Hoffman's of the upper extremities. An updated cervical MRI was recommended. Dr. Slack noted that at that time, Petitioner was a surgical candidate, however, additional imaging would provide further information. Petitioner was kept off work.

Petitioner underwent a cervical spine MRI on July 8, 2014, which demonstrated (1) right paracentral protrusion/herniation, C3-4 intervertebral disc, less pronounced than previously observed in October 2013; (2) slight-to-moderate bulging, C4-5, C5-6, and C6-7 intervertebral discs; and (3) degenerative changes with osteophytes and slight narrowing of the C3-4 and C4-5 intervertebral disc spaces. Px3 at 82-83.

Petitioner returned to Dr. Slack on July 24, 2014, and continued to report pain in the neck and across the shoulders into the upper arms and radiating down the left arm with some numbness and tingling. Px3 at 62-63. Dr. Slack referred Petitioner to Dr. Theodore Fisher for evaluation of hyperreflexia and pathologic reflexes in her upper extremities to determine whether to have a third cervical epidural injection or surgery.

On September 4, 2014, Petitioner saw Dr. Theodore Fisher at IBJI. Px3 T 58-60. Petitioner complained of neck pain, left side greater than right, as well as right-sided arm pain starting at the elbow and left-sided arm pain with numbness and tingling extending to the third, fourth, and fifth digits of the left hand. X-rays were obtained and revealed loss of normal cervical lordosis. Dr. Fisher reviewed the October 2013 and July 2014 MRIs and noted that the disc herniations at C2-3 had slightly reabsorbed but were still present and a disc herniation at C4-5. Dr. Fisher's assessment was C3-4 and C4-5 herniated nucleus pulposus. Dr. Fisher recommended Petitioner undergo a C3-4 and C4-5 ACDF procedure, since there had been lack of improvement with nonoperative measures.

Petitioner followed up with Dr. Fisher on September 18, 2014 and November 12, 2014. Px3 at 51-56. On November 12, 2014, Dr. Fisher continued to recommend the ACDF procedure. Petitioner followed up with Dr. Fisher on December 10, 2014, August 12, 2015, September 15, 2015, October 30, 2015, December 11, 2015, and January 22, 2016. Px3 at 34-49. On December 10, 2014, Petitioner reported that she would like to move forward with surgical intervention. On August 12, 2015, Dr. Fisher recommended a new cervical spine MRI,

however, on September 15, 2015, he noted that Petitioner should hold off on the MRI until obtaining an angiogram. On January 22, 2016, Petitioner had not yet been cleared for surgery by her cardiologist.

Petitioner underwent a cervical spine MRI on March 23, 2016, which demonstrated (1) multilevel degenerative changes, most pronounced at C3-4 and C4-5, (2) mild central/right paracentral posterior disc protrusions at C3-4 and C4-5, which possibly contact the ventral aspect of the cervical cord, without evidence of cord edema, as well as mild-to-moderate central canal stenosis at both levels, and (3) somewhat diffuse T1 hypointense marrow signal throughout the cervical spine, likely representing hematopoietic marrow. Px3 at 73-75.

Petitioner returned to Dr. Fisher on March 25, 2016. Px3 at 31-32. Dr. Fisher reviewed the MRI results and noted that they were similar to the prior MRI. Dr. Fisher noted that they had a note from Petitioner's primary care physician clearing her for surgery but did not have the cardiologist's note. Dr. Fisher's diagnosis was C3-4 and C4-5 herniated nucleus pulposus. Dr. Fisher recommended an anterior microdiscectomy and total disc replacement, rather than a fusion, to protect the adjacent levels.

On April 26, 2016, Petitioner underwent a C3-4 and C4-5 anterior microdiscectomy and total disc replacement with use of an operative microscope. Px3 at 93-95; Px7 at 4-6. Petitioner's postoperative diagnoses were C3-4 herniated nucleus pulposus and C4-5 herniated nucleus pulposus. Petitioner testified that the delay in treatment between September 2014 and April 2016 was because she was waiting for clearance by her cardiologist. Tr. at 17.

Petitioner followed up with Dr. Fisher on May 18, 2016. Px3 at 29-30. Petitioner reported that overall, she was doing well, but complained of some periscapular pain and neck stiffness. The numbness and radiating arm pain that she experienced prior to surgery had resolved. Dr. Fisher noted that Petitioner had been compliant with wearing the cervical brace. X-rays were obtained and demonstrated the disc replacements at C3-4 and C4-5, which remained well-seated, and no evidence of instability. Dr. Fisher noted that Petitioner would begin physical therapy upon approval by insurance.

Petitioner followed up with Dr. Fisher on June 24, 2016. Px3 at 26-27. Petitioner reported near complete resolution of preoperative upper extremity radicular symptoms but was still experiencing cervical spine pain. X-rays were obtained and demonstrated evidence of C3-4 and C4-5 ACDF without evidence of failure or loosening, with disc spaces in the appropriate position. Dr. Fisher recommended a pain management consult, as well as continued physical therapy and home exercise program. Petitioner followed up with Dr. Fisher on July 29, 2014. Px3 at 23-24.

Petitioner again saw Dr. Jido on August 9, 2016, at which time Dr. Jido recommended cervical facet blocks with possible rhizotomy if relief was achieved and short-lived. Px5 at 248-249.

Petitioner returned to Dr. Maday on August 16, 2016, and reported pain radiating into the left shoulder. Px2 at 5. Dr. Maday ordered a left shoulder MRI.

On August 31, 2016, Petitioner underwent an MRI of the left shoulder, which demonstrated (1) mild-to-moderate supraspinatus tendinosis with small low grade partial thickness tear, (2) asymmetric degree of fluid within the biceps tendon sheath as compared to the glenohumeral joint fluid, consistent with biceps tenosynovitis, (3) operative changes related to anterior/inferior glenoid labral repair, and (4) operative changes related to subacromial decompression, no residual subacromial spur. Px2 at 17-18.

Petitioner followed up with Dr. Maday on September 13, 2016. Px2 at 6. Dr. Maday recommended physical therapy and noted that he believed that the majority of Petitioner's complaints were neck-related, however, there was a component of her shoulder that was causing pain.

Petitioner followed up with Dr. Fisher on September 21, 2016. Px3 at 18-21. Petitioner reported a numbing sensation to the arm and forearm with activity, which resolved immediately when she rubbed it.

Petitioner returned to Dr. Maday on October 25, 2016. Px2 at 7. Petitioner reported improved symptoms following therapy but was still having significant neck symptoms with radicular pain. Dr. Maday's assessment was shoulder pain with decreased motion, improved with therapy. Dr. Maday recommended Petitioner continue a course of therapy. Dr. Maday again noted that he felt that the majority of Petitioner's symptoms were from her neck.

Petitioner followed up with Dr. Fisher on November 4, 2016. Px3 at 18-21. Petitioner reported recurrent left upper extremity symptoms with pain in the left forearm into the hand.

Petitioner next saw Dr. Maday on November 29, 2016, and reported improved shoulder symptoms. Px2 at 8. Dr. Maday recommended continued therapy.

Petitioner attended 48 sessions of physical therapy at ATI Physical Therapy between June 3, 2016 and November 29, 2016. Px4 at 741-827.

On December 9, 2016, Petitioner reported that her symptoms were steadily improving with therapy, however, she still had continued left-sided neck pain. Px3 at 16-17. X-rays of the cervical spine were obtained and demonstrated evidence of C3-4 and C4-5 Mobi-C disc replacements, normal cervical lordosis, and no instability noted on flexion-extension. Dr. Fisher's diagnoses were status post C3 to C5 discectomy/disc replacement and left shoulder rotator cuff disease. Dr. Fisher recommended left cervical facet injections at C3-4 and C4-5 and physical therapy or an exercise program.

On December 27, 2016, Dr. Maday noted that Petitioner had just received authorization the day prior for her last set of physical therapy sessions. Px2 at 10. Dr. Maday recommended Petitioner finish a course of therapy over the next three weeks. Dr. Maday noted that Petitioner was undergoing treatment for her neck, and that he anticipated no further treatment for her shoulder within the next 2 months, and that she would be at MMI for her shoulder. Dr. Maday noted that Petitioner was not capable of performing her duties.

On January 20, 2017, Petitioner reported continued neck pain, with pain extending to the left shoulder. Px3 at 14-15. Petitioner denied upper or lower extremity radicular symptoms. Dr. Fisher's diagnosis status post C3-4 and C4-5 disc replacement. Dr. Fisher recommended left C3 through C5 facet injections and recommended physical therapy and a home exercise program.

Petitioner was discharged from Dr. Maday's care on January 31, 2017. Px2 at 11. He noted that he did not believe that Petitioner was capable of performing her duties and recommended a continued home exercise program.

Petitioner attended 31 sessions of physical therapy at ATI Physical Therapy between September 29, 2016 and February 10, 2017. Px4 at 877-948.

Petitioner followed up with Dr. Fisher on March 3, 2017. Px3 at 12-13. Petitioner reported continued left-sided neck pain. Dr. Fisher's diagnosis was status post cervical disc replacement with left-sided neck pain. Dr. Fisher

recommended Petitioner continue with a home exercise program and continue treatment with her pain management.

Petitioner underwent left cervical facet injections at C2-3, C3-4, C4-5, C5-6, and C6-7 on April 7, 2017. Px3 at 90; Px5 at 353.

On April 28, 2017, Petitioner saw Dr. Fisher and reported that overall, her radicular symptoms had completely resolved following the first round of facet injections. Px3 at 10-11. Dr. Fisher noted that Petitioner was still having some mild tightness in the left upper trapezius and a little bit of pain on the right side and was scheduled for right-sided cervical facet injections. Dr. Fisher's diagnosis was status post C3-4 and C4-5 total disc replacement.

Petitioner underwent right cervical facet injections at C2-3, C3-4, C4-5, C5-6, and C6-7 on June 12, 2017. Px3 at 89; Px5 at 399-400.

On June 23, 2017, Petitioner saw Dr. Fisher, at which time Petitioner reported that the second set of facet injections provided significant relief, temporarily. Px3 at 8-9. Petitioner also reported that her left upper extremity symptoms had not changed, but that her neck pain was overall improved. Dr. Fisher's diagnosis was status post C3-4 and C4-5 total disc replacement. Dr. Fisher recommended that Petitioner proceed with the radiofrequency ablation for the cervical facet arthropathy that she was being limited by.

Petitioner underwent cervical frequency ablation at C2 through C6 on September 7, 2017. Px3 at 17-18, 230-231. On September 29, 2017, Petitioner reported 40-percent improvement, but continued to have daily pain. Px3, Part 2 at 82-83. Petitioner also reported having continued pain her left shoulder with activity.

Petitioner followed up with Dr. Fisher on November 29, 2017, at which time Petitioner reported developing hypersensitivity over the right trapezius muscle one week after the radiofrequency ablation procedure Px3, Part 2 at 80-81. Petitioner reported that it had improved over the past three weeks, but persisted to the point where she was not in therapy for that part of the neck and even a t-shirt rubbing the area irritated her. She reported that the left side of her neck felt good after the procedure. Dr. Fisher recommended that Petitioner move ahead with a cervical epidural steroid injection to decrease her hypersensitivity.

Petitioner attended 12 sessions of physical therapy at ATI Physical Therapy between October 12, 2017 and December 12, 2017. Px4 at 645-678.

Petitioner saw Dr. Fisher on January 31, 2018. Px3, Part 2 at 78-79. Petitioner reported no change in her symptoms regarding neck pain. Dr. Fisher's impression was status post C3-4 and C4-5 total disc replacement with bilateral shoulder impingement. Petitioner was kept off work.

On April 18, 2018, Dr. Fisher ordered a cervical spine MRI and recommended physical therapy, as well as that Petitioner proceed with a cervical epidural steroid injection. Px3, Part 2 at 76-78.

Petitioner attended 10 sessions of physical therapy at ATI Physical Therapy between March 8, 2018 and April 23, 2018. Px4 at 572-603.

A cervical spine MRI with contrast was obtained on May 8, 2018 and demonstrated status post cervical fusion at C3-4 and C4-5. Px3, Part 2 at 123. A cervical spine MRI without contrast was obtained on May 8, 2018 and demonstrated (1) likely status post anterior cervical disc fusion C3-4 and C4-5, with evaluation of the spinal canal significantly degraded by artifact, and no obvious spinal stenosis at these levels, (2) stable mild spinal

canal narrowing at C5-6 and C6-7 secondary to posterior disc osteophyte complexes, and (3) straightening of normal cervical lordosis, which may be due to positioning and/or underlying muscle spasm. Px3, Part 2 at 125-126.

On June 1, 2018, Dr. Fisher noted that Petitioner had failed conservative treatment, and recommended a fusion of the total disc replacements. Px3, Part 2 at 73-74.

Petitioner saw Dr. Jido on June 5, 2018, at which time Dr. Jido noted that Petitioner presented as referral by Dr. Fisher for a consideration of a spinal cord stimulator. Px3, Part 2 at 189-191. Dr. Jido noted that he discussed with Petitioner that a spinal cord stimulator would be considered if no further surgery was performed. Dr. Jido noted that he would like Petitioner to have a second opinion regarding the cervical fusion.

Petitioner followed up with Dr. Fisher on July 6, 2018, at which time she reported that she was seeking a second opinion. Px3, Part 2 at 71-72.

Petitioner saw Dr. Richard Lim at Midwest Orthopedic Consultants on July 20, 2018 for a second opinion. Px3, Part 2 at 185-188. Dr. Lim noted that Petitioner had been sent to him for a second opinion by her pain management physician prior to undergoing a spinal cord stimulator or pain pump implant. Dr. Lim's impression was degeneration of cervical disc. Dr. Lim agreed with Dr. Fisher's cervical fusion recommendation and recommended a posterior cervical fusion at C3-4 and C4-5.

Petitioner followed up with Dr. Fisher on July 27, 2018, August 31, 2018, and September 28, 2018. Px3, Part 2 at 65-70. On August 31, 2018, Dr. Fisher's diagnoses were (1) cervicgia, (2) coronary artery disease, and (3) status post cervical disc arthropathy. Px3, Part 2 at 67-68. Dr. Fisher recommended surgery in the form of fusion in the posterior cervical spine. On September 28, 2018, Dr. Fisher's diagnoses were (1) status post C3-5 total disc replacement, (2) cervicgia, and (3) bilateral shoulder impingement. Px3, part 2 at 65-66. Dr. Fisher continued to recommend a C3-5 posterolateral fusion.

Petitioner followed up with Dr. Fisher on November 9, 2018, December 28, 2018, January 25, 2019, February 27, 2019, May 1, 2019, and May 29, 2019. Px3, Part 2 at 54-64. Dr. Fisher awaited cardiac clearance for surgery. On May 1, 2019 and May 29, 2019, Dr. Fisher noted that he now had surgical clearance from Petitioner's cardiologist.

On June 10, 2019, Petitioner underwent a (1) C3-4, C4-5 posterolateral fusion, (2) C3-4-5 posterolateral instrumentation, (3) right C3-4 and C4-5 keyhole laminotomy/foraminotomy, (4) locally harvested autograft, (5) morcilized allograft, and (6) use of an operative microscope. Px3, Part 2 at 115-116; Px7 at 7-8. Petitioner's postoperative diagnosis was C3-4 and C4-5 facet arthropathy, foraminal stenosis status post total disc replacement. Petitioner testified that the delay in treatment between June 2018 and June 2019 was because she was waiting for clearance by her cardiologist. Tr. at 19.

Petitioner followed up with Dr. Fisher on June 19, 2019, July 12, 2019, August 7, 2019, September 4, 2019, October 9, 2019, November 13, 2019, December 13, 2019, January 24, 2020, March 4, 2020, March 31, 2020, May 6, 2020, June 17, 2020, and July 22, 2020. Px3, Part 2 at 37-53, 84; Px3, Part 3 at 54-55, 56-59, 6263. On June 19, 2019, July 12, 2019 and August 7, 2019, Dr. Fisher noted that Petitioner was to refrain from lifting more than five pounds. Petitioner was kept off work on September 4, 2019, and physical therapy was ordered. On October 9, 2019, Dr. Fisher noted that Petitioner may increase lifting up to 15 pounds with slow progression with physical therapy. On July 22, 2020, Dr. Fisher noted that there was a setback in Petitioner's improvement because therapy was withheld for a period due to COVID-19, and for that reason, Dr. Fisher ordered additional physical therapy.

Dr. Fisher ordered work conditioning on August 19, 2020. Px3, Part 3 at 52-53.

Petitioner attended 54 sessions of physical therapy at ATI Physical Therapy Between February 5, 2020 and August 20, 2020. Px3, Part 3 at 91-92. Px4 at 68-535.

Petitioner followed up with Dr. Fisher on September 16, 2020, October 16, 2020, and November 20, 2020. Px3, Part 3 at 42-43, 45-46, 48-49. Dr. Fisher recommended Petitioner continue work conditioning.

Petitioner attended 33 sessions of work conditioning between August 25, 2020 and November 20, 2022. Px3, Part 3 at 78-79. Px4 at 68-69. At discharge, it was noted that Petitioner continued to demonstrate difficulty with functional lifting progression due to continued pain in her shoulder and back.

On January 8, 2021, Dr. Fisher recommended a Functional Capacity Evaluation ("FCE"). Px3, Part 3 at 40-41; Px4 at 10-17. Dr. Fisher's diagnoses were cervicalgia, status post anterior cervical disc replacement followed by posterior cervical fusion, and coronary artery disease.

Petitioner underwent an FCE on January 12, 2021, which was valid. Px3, Part 3 at 70-77; Px6. Petitioner demonstrated a light physical demand level. Petitioner was able to lift above shoulder level occasionally up to 12.6 pounds, from desk to chair 17 pounds occasionally, and from chair to floor 10.4 pounds occasionally. Petitioner was able to carry up to 22 pounds occasionally with the right arm and up to 17 pounds occasionally with the left arm. Petitioner's standing was limited to three to four hours per day in 40-minute durations and Petitioner's walking was limited to four to five hours per day in moderate durations.

Petitioner returned to Dr. Fisher on February 19, 2021. Px3, Part 3 at 35-36; Px8 at 5. Petitioner was evaluated following an FCE. Petitioner reported that the FCE irritated her cervical symptoms. Dr. Fisher's diagnosis was status post anterior cervical disc displacement and posterior fusion. Dr. Fisher stressed the importance of a routine exercise program and discussed possible work options with Petitioner based on the FCE results. Dr. Fisher found Petitioner at maximum medical improvement ("MMI"). Dr. Fisher completed a City of Chicago Work Status Report which reflects the restrictions of no lifting greater than 15 pounds, no climbing, and no pushing/pulling/carrying more than 22 pounds. Px8 at 5; Px16.

Petitioner next saw Dr. Fisher on March 26, 2021, May 26, 2021, July 28, 2021, November 5, 2021, February 9, 2022, June 15, 2022, and August 24, 2022. Px3, Part 3 at 8-10, 15-17, 20-24, 30-31, 31-33, 64; Px3, Part 4 at 38-40, 48-50. Petitioner had continued complaints of neck pain and symptoms. Dr. Fisher referred Petitioner to pain management to help with the chronic pain. On May 26, 2021, x-rays of the cervical spine were obtained, which demonstrated no evidence of hardware failure or loosening, and the appearance of fused facet joints with degenerative changes distally. On August 24, 2022, Dr. Fisher referred Petitioner to his partner, Dr. Michael Chioffe for continued follow up care.

Petitioner saw Dr. Michael Chioffe at IBJI on December 2, 2022, March 8, 2023, September 8, 2023, and February 21, 2024. Px3, Part 4 at 8-11, 19-21, 24-26, 29-33. Dr. Chioffe recommended a repeat MRI of the cervical spine. On February 21, 2024, Dr. Chioffe noted that if further pathology was noted in an updated MRI, he would consider treating it, otherwise he would place Petitioner at MMI and order another FCE if no pathology was found or if Petitioner did not obtain an updated MRI.

Petitioner has not had any additional treatment in the form of therapy, MRIs, injections, or surgery since beginning treatment with Dr. Chioffe. Tr. at 37-38. Petitioner testified that she continues to see Dr. Chioffe because she needs paperwork filled out for her pension benefits. Tr. at 38. Petitioner testified that at the time of arbitration, she did not want to undergo any additional medical treatment. Tr. at 38.

On cross examination, Petitioner agreed that she saw a chiropractor, Dr. Kat Aleman, and that she began seeing Dr. Aleman on October 2, 2014. Tr. at 49. Petitioner has also been seeing her primary care physician, Dr. Daisy, for the past five years. Tr. at 50. Prior to seeing Dr. Daisy, Petitioner's primary care physician was Dr. Lindsey, and Petitioner saw Dr. Lindsey at the time of the December 24, 2012 accident. Tr. at 50. Petitioner testified that Dr. Lindsey did not prescribe her any medication or treatment related to the December 24, 2012 accident, and that Dr. Daisy has prescribed her medication and treatment as a result of the December 24, 2012 accident. Tr. at 51.

Earnings/TTD and Maintenance Benefits

Petitioner testified that Respondent did not accommodate the light duty restrictions given to her by Dr. Fisher on February 19, 2021. Tr. at 26. Petitioner has not been offered employment by Respondent after the February 19, 2021 release. Tr. at 32. Petitioner filled out documentation for an accommodated position at Respondent. Tr. at 30, 40. Petitioner was not offered employment within her restrictions by Respondent after completing the documentation. Tr. at 30. Petitioner testified that at the time of arbitration, she would be earning \$46.54 per hour as a sanitation laborer. Tr. at 29.

On cross examination, Petitioner agreed that she indicated that she had limitations in sitting, standing, and walking in the documentation for an accommodated position. Tr. at 41-42. Petitioner agreed that she did not injure her low back or her legs. Tr. at 42. Petitioner agreed that she was paid TTD and maintenance benefits in the amount of \$873.85 per week. Tr. at 54-55.

On redirect examination, Petitioner agreed that the restrictions she indicated in the accommodated position documentation were consistent with the restrictions given to her by Dr. Fisher and the ATI Summary Report. Tr. at 56-57. Petitioner agreed that she has been receiving benefits from Respondent since December 25, 2012 through the week prior to arbitration. Tr. at 60. Petitioner agreed that she understood another benefit check had been issued, however, she had not yet received it. Tr. at 60-61. Petitioner agreed that she is not alleging any missed benefits payments from December 25, 2012, besides the check that she had not yet received which was payable through August 5, 2024. Tr. at 62. Petitioner has been off work since December 24, 2012. Tr. at 62.

Vocational Efforts

Petitioner met with vocational counselor, Kari Stafseth-Zamora of Vocamotive on November 1, 2022 via Zoom at Respondent's request. Tr. at 30-31, 42. Petitioner did not meet with Ms. Stafseth-Zamora after November 1, 2022, and vocational services with Ms. Stafseth-Zamora were not authorized by Respondent. Tr. at 31. Petitioner met with vocational counselor, Jacqueline R. Bethel of Medvoc Rehabilitation on June 11, 2024 via Zoom at Respondent's request. Tr. at 31-32. Petitioner did not meet with Ms. Bethel after June 11, 2024 and vocational services with Ms. Bethel were not authorized by Respondent. Tr. at 32. Petitioner graduated from high school in 1986. Tr. at 32-33. Petitioner has a driver's license, but she does not drive because of her limited range of motion. Tr. at 34. Petitioner is not restricted from driving, but she does not feel comfortable driving. Tr. at 34, 44-45.

Petitioner conducted an independent job search after she met with Ms. Stafseth-Zamora in November 2022. Tr. at 34-35. Petitioner used job search engines such as Indeed and Job Search Help. Tr. at 35. Petitioner looked for jobs such as a greeter, cashier, and in customer service. Tr. at 35. Petitioner looked for such jobs because she thought that she could do them. Tr. at 35. Petitioner does not have any training on how to search for employment. Tr. at 35. Respondent has not offered her any training. Tr. at 35. Petitioner kept written logs of her job searches and did them every two weeks. Tr. at 36; Px12.

As of the date of arbitration, Petitioner had not retired or resigned from her employment at Respondent. Tr. at 38.

On cross examination, Petitioner agreed that she completed two years of college. Tr. at 48. Petitioner testified that she looked for jobs within her restrictions, but Petitioner could not recall what those restrictions are. Tr. at 39. Petitioner testified that she looked for jobs that she could do from home. Tr. at 39-40. Petitioner agreed that she reported to Ms. Stafseth-Zamora that she regularly falls, and that she cannot stoop, squat, kneel, or climb stairs. Tr. at 43, 46. Petitioner agreed that no doctor has related any of the falls to the December 24, 2012 accident. Tr. at 43. Petitioner's driver's license was expired at the time she met with Ms. Stafseth-Zamora, and Petitioner told Ms. Stafseth-Zamora that she did not have a valid driver's license. Tr. at 44. Petitioner agreed that she told Ms. Stafseth-Zamora that she does not have any computer skills, does not own a computer, and does not have email. Tr. at 48. Petitioner agreed that she maintains an active Facebook account, that she regularly posts photos on her Facebook account, and that an email address is necessary for a Facebook account. Tr. at 48-49.

On redirect examination, Petitioner testified that the restrictions she used when job searching were the restrictions given to her by Dr. Fisher and the ATI Summary Report. Tr. at 57. Petitioner testified that she did not look for any other job, besides jobs that she could do online, then testified that she meant jobs that she could apply for online. Tr. at 58. Petitioner testified that she did not understand what "targeting work from home jobs" meant, which was then explained, and she indicated that she understood the difference. Tr. at 58. Petitioner agreed that she applied for jobs online but did not look for work from home jobs. Tr. at 58-59. Petitioner testified that she looked for positions in customer service, as a cashier, and as a greeter. Tr. at 59.

On recross examination, Petitioner testified that she has not looked for any other jobs besides as a greeter, cashier, or in customer service. Tr. at 63.

Petitioner's Current Condition

Regarding her cervical spine, Petitioner testified that she cannot do a lot of things that she used to and needs to have a chair in the bathtub so that she can wash up. Tr. at 21. She cannot wash her own hair and has to go to the barber to have her hair done. Tr. at 21. Petitioner cannot lay her head/lean her neck back to have her hair done anymore. Tr. at 22. Petitioner agreed that no doctor has told her that she has to go to a barber instead of beauty salon. Tr. at 53. Petitioner testified that she now cooks using a little skillet. She cannot lift and does not have strength. Tr. at 21. Petitioner testified that she has limited range of motion in her neck. Tr. at 22. Petitioner testified that air conditioning causes pain in her shoulder. Tr. at 22. Petitioner cannot lift a gallon of milk, and when she tries to lift a gallon of milk, she notices shooting pain through her left arm, her shoulder, and down her spine through her leg and her leg goes numb. Tr. at 22-23, 52. Petitioner uses a cane that was prescribed by her primary care doctor. Tr. at 23. Petitioner did not have the cane with her at arbitration because she was dropped off. Tr. at 23. Petitioner testified that the cane assists her in the morning because she is stiff when she first gets up. Tr. at 24. The cane was prescribed to Petitioner by her primary care doctor for a personal condition unrelated to the December 24, 2012 accident. Tr. at 45.

Petitioner testified that she takes nerve medication and Norco 5s, which are prescribed by her primary care doctor. Tr. at 24, 25, 49. Petitioner takes both medications twice a day. Tr. at 25. She tries to do as much as she can to relieve the pain and does a little exercise. Tr. at 24. Petitioner testified that she tries to walk from her bedroom to the front of the house in the mornings. Tr. at 24.

Regarding her left shoulder, Petitioner testified that she cannot do things overhead, like change a light bulb. Tr. at 25. She cannot play with her grandson or lift too much. Tr. at 25. Petitioner has difficulties with putting on a

bra and a t-shirt, and with cooking. Tr. at 26. She cannot lift a skillet, and it takes her longer to fold her clothes. Tr. at 26.

On cross examination, Petitioner agreed that no doctor has diagnosed any low back or leg injuries as a result of the December 24, 2012 accident. Tr. at 53.

On redirect examination, Petitioner testified that walking stairs puts pressure on her neck and right leg. Tr. at 59. Petitioner agreed that she does not have right leg related restrictions. Tr. at 60.

Respondent's Section 12 Exam by Dr. Jose Perez-Sanz

Petitioner underwent an Independent Medical Evaluation ("IME") with Dr. Jose Perez-Sanz on April 10, 2013. Px13. Dr. Perez-Sanz opined that Petitioner had shoulder pain, which may be related to impingement, or bursal inflammation with a lesion in the supraspinatus tendon which he did not believe was full-thickness, and some findings suggestive of neck problems. Dr. Perez-Sanz opined that because Petitioner denied any prior issues, causal connection fell to the work injury. Dr. Perez-Sanz opined that because Petitioner had failed to improve with conservative treatment, it would not be unreasonable to consider examination under anesthesia with arthroscopy surgery, and that his expectation was that a subacromial decompression and acromioplasty would be done. Dr. Perez-Sanz opined that Petitioner had not yet reached MMI and that she could not return to work with unrestricted job duties. Dr. Perez-Sanz opined that Petitioner could return to work with the restrictions of ground-level work only and lifting up to five pounds occasionally.

Respondent's Section 12 Exam by Dr. Daniel Troy

Petitioner underwent an IME with Dr. Daniel Troy on May 8, 2014. Rx3. Regarding the left shoulder, Dr. Troy opined that she continued with postoperative limitations of motion secondary to cervical and trapezial muscular spasms. Regarding the cervical area, Dr. Troy opined that Petitioner continued with a significant amount of cervical and periscapular spasms. Dr. Troy opined that the treatment that Petitioner had received had been appropriate and medically necessary. Dr. Troy opined that Petitioner should be enrolled in an aggressive physical therapy program three to four times a week for eight weeks and evaluated for an at-home E-stim unit, as well as increase her home compliance. Dr. Troy opined that Petitioner required no further testing, epidural steroid injections, radiofrequency, or trigger point injections. Dr. Troy opined that Petitioner should be taking Flexeril 5mg three times daily, on a regular basis, as well as 600mg of Ibuprofen three times daily on a regular basis and possibly an H2 blocker for gastro protective measures. Dr. Troy opined that Petitioner had not yet reached MMI and would most likely reach MMI approximately 12 weeks from the date of his exam with appropriate therapy and a home exercise program. Dr. Troy opined that Petitioner could return to work in a sedentary/sit-down role and was unable to return to her position as a laborer at that time.

Respondent's Section 12 Exam by Dr. Carl Graf

Petitioner underwent an IME with Dr. Carl Graf on October 11, 2023, which was limited to the cervical spine. Rx6. Dr. Graf opined that Petitioner's diagnosis was cervical disc herniation at C3-4 and C4-5 now status post anterior cervical disc replacement followed by posterior cervical fusion with ongoing complaints which were out of proportion to the evaluation. Dr. Graf opined that Petitioner's cervical spine diagnosis was causally related to the December 24, 2012 injury. Dr. Graf opined that Petitioner's treatment had been reasonable, and that no further treatment was necessary. Dr. Graf agreed with Petitioner's treating physician's finding that she reached MMI on March 26, 2021, and that she could work at the light physical demand level as dictated by the FCE. Dr. Graf provided an AMA Impairment Rating of 5-percent.

Dr. Graf prepared an IME Addendum Report on December 27, 2023, following his review of the FCE Audit by Joseph Castronovo. Rx7; Rx9. Dr. Graf opined that following his review of the FCE Audit, he agreed with the conclusion that Petitioner was capable of returning to unrestricted work duty at the medium physical demand level on a fulltime basis. He noted that the FCE Report noted similar findings of symptom magnification as he had noted in his evaluation.

Dr. Graf prepared an additional IME Addendum Report on March 15, 2024, following his review of Petitioner's job description. Rx8. Dr. Graf opined that based upon his review of the job description, he agreed with the conclusion that Petitioner was capable of returning to unrestricted work at the medium physical demand level, per the US Department of Labor standard, however, because the job description indicated a requirement of lifting and carrying between 75 and 100 pounds, Petitioner could not return to her previously held position.

Respondent's Section 12 Exam by Dr. Troy Karlsson

Petitioner underwent an IME with Dr. Troy Karlsson on November 27, 2023, which was limited to the left shoulder and arm. Rx4. Dr. Karlsson reviewed 1-inch of printed records and no radiographs were provided for his review. Dr. Karlsson opined that Petitioner's diagnoses were partial-thickness rotator cuff tear, impingement, and labral tear. Dr. Karlsson noted that Petitioner's current complaint were beyond any objective findings. Dr. Karlsson noted that Petitioner's 4/5 strength throughout the entire upper extremity was a sign of symptom magnification, as there was no organic explanation for it. Dr. Karlsson opined that the work accident of December 24, 2012 led to Petitioner's need for shoulder therapy, shoulder injection, and eventual shoulder surgery by Dr. Maday. Dr. Karlsson opined that Petitioner had reached MMI for her shoulder condition and that no further treatment was necessary. Dr. Karlsson noted that Petitioner would not regain any decreased motion. He also noted that Petitioner would be at MMI six months after the surgery performed by Dr. Maday. Dr. Karlsson opined that treatment including MRI, injection, pre- and postoperative therapy, was reasonable, necessary, and causally related to the work accident until six months post-surgery. Dr. Karlsson opined that Petitioner should not do any overhead work.

Dr. Karlsson prepared an IME Addendum Report on December 29, 2023, following his review of the FCE Audit by Joseph Castronovo. Rx5; Rx9. Dr. Karlsson noted that his review of the FCE Audit had changed his opinions. Dr. Karlsson opined that Petitioner was able to work with full capabilities with no restriction regarding her left shoulder. He noted that Petitioner was not found to have a full-thickness tear or need a repair of the rotator cuff. He also noted that Petitioner's professed limitations in motion and strength could not be relied upon, and that he expected that this far out from surgery, Petitioner could be at full work activities with no restriction. He also noted that Ms. Castronovo's report supported his previous finding of symptom magnification, in that she was able to do more in work conditioning that she demonstrated during the FCE.

FCE Audit by Joseph Castronovo

At Respondent's request, Joseph Castronovo completed an audit of the January 12, 2021 FCE. Rx9. Mr. Castronovo took issue with, among other things, the qualifications of the examiner, the effort level put forth by Petitioner, and ATI's practice of performing an assessment versus an evaluation. Mr. Castronovo opined that the results of the FCE were neither valid nor reliable for purposes of determining Petitioner's capabilities.

Vocational Evaluation/Labor Market Survey Report by Kari Stafseth-Zamora

Petitioner offered the Vocational Evaluation/Labor Market Survey Report by Ms. Kari Stafseth-Zamora dated December 8, 2022 as its Px15, which was admitted without objection.

Ms. Stafseth-Zamora noted that Petitioner began working at Respondent on December 20, 1995. She also noted that Petitioner graduated from Hubbard Hight School, graduating in 1996, and completed two years at Truman College, but did not complete any associate degree.

Ms. Stafseth-Zamora opined that Petitioner did not present with any meaningful transferability of skill. Ms. Stafseth-Zamora noted that because Petitioner had been employed at Respondent since 1995, she had not had to engage in job search activities in over 25 years. Ms. Stafseth-Zamora also noted that while still employed, Petitioner had not worked since December 24, 2012, and opined that it was expected that Petitioner would have greater difficulty adjusting returning to work. Ms. Stafseth-Zamora opined that Petitioner lost access to her preinjury job and line of occupation as a laborer. Ms. Stafseth-Zamora opined that Petitioner was alternatively employable, with job targets including positions as a dispatcher, cashier, customer service representative, office clerk, and similar positions. Ms. Stafseth-Zamora opined that at the time of the labor market survey, expected wages were most likely within the range of \$16.00 and \$22.00 per hour. Ms. Stafseth-Zamora opined that Petitioner was a candidate for vocational rehabilitation. Ms. Stafseth-Zamora noted that petitioner had lost access to her preinjury occupation and was facing a loss of wages. Ms. Stafseth-Zamora also noted that Petitioner was not equipped to manage the transition of a return to work on her own, and that without implementation of vocational rehabilitation services, continued unemployment was likely to result. Ms. Stafseth-Zamora noted that given her restrictions, Petitioner should participate in computer training to include development of keyboarding proficiency and skills in use of Microsoft Office programs. Ms. Stafseth-Zamora's proposed vocational plan included vocational testing, basic and advanced computer skills training, job seeking skills instruction, vocational counseling, vocational counseling and behavioral self-management, and supervised and independent job search.

Vocational Rehabilitation Evaluation Report by Jacqueline R. Bethell

Respondent offered the Vocational Rehabilitation Evaluation Report by Ms. Jacqueline R. Bethell dated June 12, 2024 as its Rx10, which was admitted without objection.

Ms. Bethell opined that based upon Petitioner's work history and the restrictions assigned to her by Dr. Fisher, Petitioner can perform work in positions such as a customer service clerk, light assembler, and unskilled cashier. Ms. Bethell opined that per the Bureau of Labor Statistics Occupational Employment and Wage Statistics ("OEWS") as of May 2022, and her experience, these positions typically pay in the range of \$16.00 to \$20.00 per hour. Ms. Bethell opined that based upon Dr. Graf's opinion that Petitioner could return to work in the medium physical demand level and Petitioner's work history, Petitioner was capable of performing work as a warehouse worker, janitor, or machine operator. Ms. Bethell further opined that based on the Bureau of Labor Statistics OEWS and her experience, Petitioner could anticipate earning around \$17.00 to \$23.00 per hour.

CONCLUSIONS OF LAW

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

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

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign

weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

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

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

The issues of accident and causation are not in dispute.

Wage differential awards are preferred when the claimant has presented sufficient evidence to show a loss of earning capacity. See *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721 (3d Dist. 2000). To qualify for a wage differential award under Section 8(d)1 of the Act, a claimant must prove (1) partial incapacity which prevents her from pursuing her "usual and customary line of employment," and (2) an impairment in earnings. 820 ILCS 305/8(d)1. To prove an impairment in earnings, a claimant must prove her actual earnings for a substantial period before the accident and after she returns to work, or if she is unable to return to work, she must prove what she is able to earn in some suitable employment.

Here, the overall evidence demonstrates that Petitioner is unable to return to her "usual and customary line of employment." Petitioner was assigned permanent restrictions by Dr. Maday and Dr. Fisher that prevent Petitioner from returning to her job as a sanitation laborer at Respondent. The FCE results also demonstrate that Petitioner is unable to return to her job as a sanitation laborer, where Petitioner demonstrated physical capabilities in the light physical demand level. The vocational assessments prepared by Ms. Stafseth-Zamora and Ms. Bethell also indicate that Petitioner lost access to her "usual and customary line of employment" with Respondent.

The overall evidence also demonstrates an impairment in earnings. Ms. Stafseth-Zamora opined that Petitioner was employable in positions including a dispatcher, cashier, customer service representative, office clerk, and similar positions. Ms. Stafseth-Zamora opined that at the time of the labor market survey, expected wages were most likely within the range of \$16.00 and \$22.00 per hour. Further, Ms. Bethell similarly opined that (1) Petitioner could perform work in positions including a customer service clerk, light assembler, and unskilled cashier based on the restrictions assigned to her by Dr. Fisher and (2) expected wages were most likely within the range of \$16.00 and \$20.00 per hour. The Arbitrator notes that Petitioner's job search logs reflect a job search beginning on December 23, 2022 through July 19, 2024, and that most entries were for positions consistent with those proposed by Ms. Stafseth-Zamora and Ms. Bethell. See Px12.¹ Petitioner testified that her job search has been unsuccessful.

The Arbitrator notes that it is not disputed that at the time of arbitration, Petitioner would earn \$1,861.60 per week (\$46.56 per hour) as a sanitation laborer at Respondent. See Px14.²

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she is entitled to a wage differential award under Section 8(d)1 of the Act. The Arbitrator also finds that Petitioner is able and qualified to perform in positions consistent with the opinions of Ms. Stafseth-

¹ Px12 was admitted without objection.

² Px14 was admitted without objection.

Zamora and Ms. Bethell. Relying on the labor market survey prepared by Ms. Stafseth, which is the only labor market survey in evidence, the Arbitrator further finds that the average amount which Petitioner is able to earn in such employment is \$19.00 per hour or \$760.00 per week. Accordingly, the Arbitrator finds that Respondent shall pay Petitioner permanent partial disability benefits of \$734.40/week, commencing August 6, 2024 until Petitioner reaches the age of 67 or five 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.

Issue K, whether Petitioner is entitled to maintenance benefits, the Arbitrator finds as follows:

Petitioner claims that she is entitled to maintenance benefits for the period of February 20, 2021 to August 5, 2024, the date of arbitration. Ax1 at No. 8. Respondent disputes Petitioner's claim and demands strict proof thereof. Ax1 at No. 8.

Petitioner was assigned permanent restrictions by Dr. Fisher on February 19, 2021, which prevent Petitioner from returning to her position as a sanitation laborer at Respondent. Respondent has not offered Petitioner an accommodated position within her permanent restrictions. Respondent has also not offered Petitioner any vocational services, and Petitioner has been conducting a self-initiated and self-directed job search since December 23, 2022. Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to maintenance benefits for the period of February 20, 2021 to August 5, 2024, the date of arbitration.

Issue O, (i) whether Petitioner exceeded her two choices of medical providers and (ii) Respondent's Motion to Reopen Proofs, the Arbitrator finds as follows:

i. Whether Petitioner exceeded her two choices of medical providers

Respondent claims that Petitioner's treatment with Dr. Lim exceeded her two choices of medical providers. The Arbitrator notes that Petitioner was referred to Dr. Maday by MercyWorks in January 2013. Dr. Maday then referred Petitioner to Dr. Jido for pain management in October 2013 and to Dr. Slack and Dr. Fisher in May 2014. Dr. Slack referred Petitioner to Dr. Fisher in July 2014. Dr. Fisher referred Petitioner to Dr. Jido in June 2016 and June 2017. Petitioner returned to Dr. Maday for left shoulder complaints in August 2016. On June 5, 2018, Dr. Jido referred Petitioner for a second opinion regarding the recommended cervical fusion. Petitioner then saw Dr. Lim for a second opinion in July 2018, with Dr. Lim noting that Petitioner had been sent to him by her pain management physician. On August 24, 2022, Dr. Fisher referred Petitioner to his partner, Dr. Michael Chioffe, for continued follow up care. Accordingly, the Arbitrator finds that Petitioner did not exceed her two choices of medical providers.

The Arbitrator notes that Petitioner testified that she sought chiropractic treatment with Dr. Aleman, as well as treatment with her primary care physician, Dr. Daisy. Respondent also claims Petitioner's treatment with Dr. Aleman and Dr. Daisy exceeded her two choices of medical providers. The Arbitrator notes, however, that Petitioner is not claiming liability for services provided to Petitioner by Dr. Aleman or Dr. Daisy, no records of treatment for Dr. Aleman or Dr. Daisy were offered, and that the issue of unpaid medical bills is not in dispute. Accordingly, the Arbitrator cannot find that Petitioner's treatment with Dr. Aleman or Dr. Daisy exceeded her two choices of medical providers.

ii. Respondent's Motion to Reopen Proofs

Respondent filed a Motion to Reopen Proofs on August 15, 2024. Respondent requested proofs be reopened to allow Respondent to introduce Respondent's Exhibit 12, retirement paperwork signed by Petitioner on August 9, 2024. Respondent's Motion to Reopen Proofs was denied on August 19, 2024.

Petitioner was assigned permanent restrictions by Dr. Maday and Dr. Fisher, which prevent Petitioner from returning to her position as a sanitation laborer at Respondent. Additionally, while Petitioner applied for an accommodated position at Respondent, Respondent has not offered Petitioner an accommodated position within her restrictions. Additionally, the Arbitrator notes that at Respondent's request, Petitioner met with two vocational counselors, Ms. Kari Stafseth-Zamora and Ms. Jacqueline R. Bethell, and that Ms. Stafseth prepared a vocational rehabilitation plan for Petitioner. Respondent has not offered Petitioner any vocational rehabilitation services. Petitioner has been conducting a self-initiated and self-directed job search. Further, at the time of arbitration, Petitioner had not retired or resigned from her position at Respondent. Accordingly, the Arbitrator finds that Petitioner's retirement was not voluntary, and was instead occasioned by the circumstances of her claim. See *Schmidgall v. Industrial Comm'n*, 268 Ill. App. 3d 845 (4th Dist. 1994). As such, Respondent's Motion to Reopen Proofs is denied.



ANA VAZQUEZ, ARBITRATOR

November 12, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC040045
Case Name	Ken Barhoumeh v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0357
Number of Pages of Decision	23
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Phillip Johnson, Neil Schelhammer
Respondent Attorney	Christopher Jarchow

DATE FILED: 8/19/2025

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ken Barhoumeh,

Petitioner,

vs.

NO: 10 WC 040045

City of Chicago,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the Arbitrator's finding that the law of the case applies and modifies the Decision to clarify the awards of TTD and credit previously made by this Commission in the October 5, 2016 Decision.

The Commission adds the following paragraph to the top of page two of the Arbitration Decision Order, "The 2016 Commission decision previously awarded TTD totaling 145 weeks for Arbitration cases 10WC040045, 12WC005993, and 13WC001783. The same Commission decision awarded Respondent a credit of \$157,972.27 for the TTD voluntarily paid in said cases. That award of TTD and credit remain intact as the law of the case applies."

The Commission strikes the first sentence of the last paragraph of the Arbitration Decision Order which states, "Respondent shall be entitled to a credit of \$157,981.71 for TTD benefits paid prior to trial in 10WC040045, 12WC005993, 13WC001783."

The Commission modifies the first sentence of the last paragraph on page one of the Arbitration Decision Order, striking "2015" and replacing it with "2016".

Finally, the Commission modifies the paragraph relating to Issue (N) on page 16 of the Arbitration Decision, striking the paragraph in its entirety and replacing it with, "Pursuant to the

Commission's October 5, 2016 Decision, Respondent was previously provided a credit of \$157,972.27 for TTD benefits paid under the adjudicated cases of 10WC040045, 12WC005993, and 13WC001783. The \$34,833.96 TTD credit for 16WC034125 was provided in the July 17, 2024 arbitration order related to that specific claim."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on July 17, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner, on case numbers 10WC040045, 12WC005993, and 13WC001783, PPD benefits of 120.005 weeks at the rate of \$669.64 statutory maximum as Petitioner's compensable injuries caused disability of 12% man as a whole for the right shoulder, 12.5% loss of use of the right leg, 5% loss of use of the right ankle, and 5% loss of use of man as a whole for the lumbar and cervical spine, as provided in Section 8(d)(2) and 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.

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

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. No bond is affixed for removal of this cause to the Circuit Court.

AUGUST 19, 2025

O: 07/29/25

AHS/kjj

051

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Kathryn A. Doerries
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	10WC040045
Case Name	Ken Barhoumeh v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	<i>Corrected Decision</i>
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Phillip Johnson, Neil Schelhammer
Respondent Attorney	Christopher Jarchow

DATE FILED: 7/17/2024

/s/ Jennifer Bae, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JULY 16, 2024 4.985%

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

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

CORRECTED
ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ken Barhoumeh

Employee/Petitioner

v.

City of Chicago

Employer/Respondent

Case # **10WC040045**

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 **Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **February 15, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 10, 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 **\$64,480.00**; the average weekly wage was **\$1,240.00**.

On the date of accident, Petitioner was **56** 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

The Arbitrator's decision was filed at the Illinois Workers' Compensation Commission on December 22, 2015. Arbitrator Black found Petitioner failed to prove that Petitioner's current conditions of ill-being were causally related to any of the alleged work accidents. *Id.* Arbitrator Black likewise denied Plaintiff's demand for temporary total disability benefits and payment of medical expenses. *Id.* Finally, Arbitrator Black denied Petitioner's demand for attorneys' fees and penalties, finding that Respondent's denial of benefits was neither unreasonable nor vexatious. *Id.*

Petitioner filed a Petition for Review of the Arbitrator's decision on all issues at the Illinois Workers' Compensation Commission on January 11, 2016. *Id.* The Commission issued its decision on October 5, 2016. *Id.* The panel of Commissioners unanimously affirmed Arbitrator Black's arbitration order with modified language regarding TTD benefits. *Id.*

Petitioner filed a judicial review to the Circuit Court of Cook County. *Id.* In June 2017 the Honorable Carl Anthony Walker entered an order confirming the decision of the Illinois Workers' Compensation Commission finding that its decision was not against the manifest weight of the evidence. *Id.* Neither party filed any further appeals of the Circuit Court's decision, and that decision became final and conclusive. *Id.* The October 5, 2016, decision of the Illinois Workers' Compensation Commission is therefore the law of the case and the issues litigated in that prior decision will not be subject to any further consideration.

The 2015 Commission decision placed Petitioner at maximum medical improvement relative to the October 10, 2010, February 5, 2012, and December 21, 2012, claims. The Commission further denied the left ankle and right knee replacement. The arbitrator is bound by that decision.

Respondent shall pay Petitioner, on case numbers 10 WC 040045, 12WC005993, and 13WC001783, PPD benefits of 120.005 weeks at the rate of \$669.64 statutory maximum as Petitioner's compensable injuries caused disability of 12% man as a whole for the right shoulder, 12.5% loss of use of the right leg, 5% loss of use of the right ankle, and 5% loss of use of man as a whole for the lumbar and cervical spine, as provided in Section 8(d)2 and Section 8(e) of the Act.

Respondent shall be entitled to a credit \$of \$157,981.71 for TTD benefits paid prior to trial in 10WC040045, 12WC005993, 13WC001783. The TTD credit of 16WC034125 shall be addressed in the arbitration order related to that specific claim.

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.

Jenifer Bae

Signature of Arbitrator
ICArbDec p. 2

July 17, 2024

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

CORRECTED
ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR'S DECISION

KEN BARHOUMEH,	)	
	)	
Petitioner,	)	
	)	10WC040045
v.	)	12WC005993
	)	13WC001783
CITY OF CHICAGO,	)	16WC034125
	)	
Respondent.	)	

This matter proceeded to hearing on February 15, 2024, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include employer/employee relationship, accident, notice, causal connection, average weekly wage, medical bills, total temporary disability ("TTD"), and nature and extent. (Arbitrator's Exhibit "AX" 1; AX 2; AX 3; AX 4)

PROCEDURAL HISTORY

Case number 10WC040045, 12WC005993, and 13WC001783 proceeded to trial under Section 19(b) of the Illinois Workers' Compensation Act on August 27, 2015, and September 21, 2015. The primary issue in dispute at the 2015 hearings included whether Ken Barhoumeh's ("Petitioner") conditions of ill-being was causally related to his alleged work accident while employed with the City of Chicago ("Respondent") Additional issues in dispute included prospective medical treatment, payment of medical bills, temporary total disability benefits, attorneys' fees, and penalties against Respondent.

The Arbitrator's decision was filed at the Illinois Workers' Compensation Commission on December 22, 2015. (Petitioner's Exhibit "PX" 25) Arbitrator Black found Petitioner failed to prove that Petitioner's current conditions of ill-being were causally related to any of the alleged work accidents. *Id.* Arbitrator Black likewise denied Plaintiff's demand for temporary total disability benefits and payment of medical expenses. *Id.* Finally, Arbitrator Black denied Petitioner's demand for attorneys' fees and penalties, finding that Respondent's denial of benefits was neither unreasonable nor vexatious. *Id.*

Petitioner filed a Petition for Review of the Arbitrator's decision on all issues at the Illinois Workers' Compensation Commission on January 11, 2016. *Id.* The Commission issued its decision on October 5,

2016. *Id.* The panel of Commissioners unanimously affirmed Arbitrator Black's arbitration order with modified the language regarding TTD benefits. *Id.*

Petitioner filed a judicial review to the Circuit Court of Cook County. *Id.* In June 2017 the Honorable Carl Anthony Walker entered an order confirming the decision of the Illinois Workers' Compensation Commission finding that its decision was not against the manifest weight of the evidence. *Id.* Neither party filed any further appeals of the Circuit Court's decision, and that decision became final and conclusive. *Id.* The October 5, 2016, decision of the Illinois Workers' Compensation Commission is therefore the law of the case and the issues litigated in that prior decision will not be subject to any further consideration. *Irizarry v. Industrial Comm'n*, 337 Ill.App.3d 598, 606–07, (2003)

During the pendency of the review in case numbers 10WC040045, 12WC005993, and 13WC001783 Petitioner picked up a new date of accident of July 8, 2016. Petitioner filed an Application for Adjustment of Claim which received case number 16WC034125. Case number 16WC034125 was not addressed in the earlier trial.

STATEMENT OF FACTS

A. Disputes and Stipulations

The parties stipulate that the Petitioner sustained injuries that arose out of and in the course of his employment on October 10, 2010, February 5, 2012, and December 21, 2012, respectively. (AX 1; AX2; AX 3) The parties further agree that prior to trial Respondent paid \$157,981.71 in TTD benefits as it relates to 10WC040045, 12WC05993, and 13WC01783. Disputed issues for those three claims include causation, medical bills, TTD liability.

As it relates to the above-noted claims, the Arbitrator is bound by the findings of the Illinois Workers' Compensation Commission of October 5, 2016, under the law of the case doctrine. The Commission found that Petitioner was a 56-year-old public way inspector who failed to prove that his current condition of ill-being related to his right knee, left ankle, shoulder, cervical spine, and lumbar spine was causally related to his employment with Respondent. *Id.* While the Commission found that Petitioner achieved a state of maximum medical improvement ("MMI"), the Commission awarded TTD benefits for a period of October 10, 2010, through May 10, 2011; February 5, 2012, through July 14, 2012; and December 21, 2012, through September 24, 2014. *Id.*

The Commission affirmed that Respondent was only responsible for bills voluntarily paid. *Id.* The Commission denied Petitioner's demand for payment of prospective medical benefits. *Id.* The Commission likewise noted that Respondent had a credit for \$157,981.71 for previously paid TTD benefits. *Id.*

16WC0034125 was not litigated at the 2015 hearing. As it relates to 16WC034125, The primary issues in dispute include accident, causation, medical bills and TTD benefits. The parties stipulate that prior to trial \$34,833.96 was paid in TTD benefits for which Respondent is owed a credit. (AX 4)

As it relates to the testimony and evidence presented at the 2015 hearing, the Arbitrator adopts the findings and conclusions of the Commission's October 5, 2016, Decision and Opinion on Review, as she is obligated under the law of the case. The relevant factors are highlighted below.

B. 10WC040045 – Date of Accident October 10, 2010

On February 15, 2024, Petitioner testified that he was employed by Respondent as a public way inspector and construction compliance officer. (Transcript "T." 22) Petitioner testified that his wage was in the \$50,000's. (T. 23) Petitioner testified that he worked as a public way inspector for 24 years. Petitioner testified that he is a certified construction worker underground for sewer and plumbing work. *Id.* Petitioner testified that his job duties entailed inspecting construction sites, electrical work, and plumbing work that involved underground infrastructures in the city. (T. 24) Petitioner testified that he was a field worker 99% of the time. *Id.* Petitioner testified that he gets complaints from commissioners or 811 and 911 complaints. *Id.* Petitioner testified that he had to travel the entire city of Chicago in a vehicle provided by the city. (T. 25) Petitioner testified that he was required to use the city vehicle. (T. 25-26)

Petitioner also testified that he investigated everything from citizen complaints to building and sidewalk excavations. (T. 25-26) Petitioner testified that he received the assignment from a supervisor, followed guidelines, and educated others on safety and procedures regarding that project. (T. 27-28)

Petitioner testified that, on October 10, 2010, he was on duty and was instructed, by the deputy commissioner, to respond to a residential neighborhood because there was a gas explosion. (T. 28-33) Petitioner testified that someone hit a gas line, that the person was excavating without a permit, and that the person damaged city property and sewer line. *Id.* Petitioner testified that there were emergency responders already there. *Id.* Petitioner testified that this occurred at a residential property. *Id.* Petitioner testified that the location was in the north side near Milwaukee and Austin/Montrose. *Id.* Petitioner testified that once he got there, as a city inspector, he spoke with the police, contractor, and person who was excavating. *Id.* Petitioner testified that he argued with the contractor after the contractor refused to give Petitioner his driver's and contractor's license. *Id.*

Petitioner testified that as he was walked around the excavation scene, he stepped on a thin piece of plywood, covered with sand, that was set up by the contractor in case someone passed by. (T. 34-35) Petitioner testified that the contractor broke the sewer line and covered it with plywood instead of steel. *Id.* Petitioner testified that he did not notice the plywood and that he stepped on it, fell 10-12 feet, landed in the bottom of the excavation, hit his head, hit his shoulder, and landed on his back. *Id.* Petitioner testified that he remembers falling and that one of the policemen tried to catch him before he fell. *Id.*

Petitioner testified that the fire department took him to Our Lady of Resurrection Medical Center. (PX 2; T. 35-37)

Petitioner testified that before October 10, 2010, his shoulder and knee, head, and right hip, right ankle, and back were good and had no problems. (T. 30-31) Petitioner testified that he was not working with any restrictions for any of these body parts and working full duty.

On October 13, 2010, Petitioner followed up with his primary care physician, Dr. Omar Alsamman, M.D.. (PX 6) On November 1, 2010, Petitioner presented to Dr. Japhlet Aranas, M.D., who diagnosed Petitioner with a meniscal tear in the right knee and referred Petitioner to Northwest Orthopedic and Sports Medicine, where Petitioner was first seen by Dr. Alan McCall, M.D.. (PX 1) On November 4, 2010, Dr. McCall administered a right knee steroid injection. Petitioner was referred to Dr. Christopher Mahr, M.D., at Northwestern Orthopedic and Sports Medicine for a surgical consultation. *Id.*

On January 31, 2011, Dr. Mahr performed a right shoulder arthroscopy, subacromial decompression and right rotator cuff repair. (PX 5; PX 7)

On March 24, 2011, Petitioner complained of right ankle pain to Dr. Mahr. Petitioner reported that it had been present since the original injury although he had not improved with conservative care.

On April 6, 2011, Petitioner underwent a right ankle MRI which showed a distal Achilles tendinosis. Dr. Mahr performed a right ankle injection on April 26, 2011. (PX 4)

On May 10, 2011, Petitioner was seen by Dr. Scott Kale, M.D., for a Section 12 independent medical examination (“IME”) (PX 5) Dr. Kale opined that Petitioner was at MMI and could return to work immediately. Dr. Kale diagnosed Petitioner with a “well healed right shoulder, well healed right knee, and mild low back strain.” *Id.* Dr. Kale noted there was a possible right ankle strain with intermittent headaches and completely normal functioning of daily activities. *Id.*

Petitioner continued to complain of lateral sided ankle pain. Dr. Mahr reviewed Petitioner’s MRI of the lumbar spine which he interpreted as showing degenerative changes with moderate spinal stenosis at L3-4 and L4-5 with lateral recessed narrowing. *Id.*

On September 22, 2011, Petitioner presented to Dr. William Davidson, M.D., for a neurological consultation. Dr. Davidson reviewed Petitioner’s MRI and MRA which he found as “absolutely normal.” (PX 17)

On October 17, 2011, Petitioner was evaluated by Dr. Jay Levin, M.D., for a second Section 12 examination at the request of the Respondent. (2015 trial RX 1) Dr. Levin found that Petitioner reached MMI and was able to return to work relative to his right knee. *Id.*

At the 2015 trial Petitioner submitted medical bills from Resurrection Medical Center, ProHealth Medical, Northwest Orthopedic & Sports Medicine, and Dr. Alsamman. (PX 25) The Commission

denied payment of these bills stating that Respondent is only responsible for those for which it voluntarily paid.

C. 12WC005993– Date of Accident February 5, 2012

Petitioner testified that on February 5, 2012, he worked for Respondent as a field services specialist for construction compliance. (T. 45) Petitioner testified that he was driving the city vehicle, with his siren on, in response to a call of a sinkhole. (T. 47-50) Petitioner testified that he was hit by another driver. *Id.* Petitioner testified that he was working with restrictions for his neck and back from the 2010 accident. *Id.* Petitioner testified that he experienced pain in his neck and back, as a result of the auto accident. *Id.*

Petitioner testified that he was taken by ambulance to South Shore Hospital. (PX 13; T. 50) Petitioner reported significant pain to the low back and right side. *Id.* On February 22, 2012, Petitioner returned to Dr. Alsamman with continued back pain, right knee pain, and right ankle pain, which was worse since the previous visit. (PX 6) Dr. Alsamman recommended Petitioner continue taking his pain medications and see an orthopedic surgeon. *Id.* On February 24, 2012, Petitioner saw Dr. Mahr and complained of lower back pain, right knee pain, and right ankle pain. (PX 5) The records noted that he was worse since the previous visit. *Id.* Dr. Mahr recommended Petitioner continue PT and return to work light duty beginning the following Monday, February 27, 2012. *Id.* Petitioner participated in PT throughout February and March 2012. (PX 6)

On May 23, 2012, Petitioner underwent a lumbar MRI which revealed bulging discs at L3-4, L4-5, and L5-S1. (PX 5)

On May 29, 2012, Dr. Mahr noted that Petitioner continued to complain of right knee pain, especially with twisting movements. (PX 5) Dr. Mahr administered a lidocaine injection to Petitioner's right knee at that visit and continued to keep Petitioner off work. *Id.* Petitioner continued to participate in physical therapy throughout May and June of 2012 as instructed by Dr. Alsamman and Dr. Mahr. (PX 6)

On July 3, 2012, Dr. Alsamman noted Petitioner was "totally incapacitated" and instructed Petitioner to remain off work and continue his pain medications and PT. (PX 6)

On October 24, 2012, Petitioner presented to Section 12 examiner Dr. Karen Levin, M.D., for an IME. (2015 trial RX 6) Dr. Levin opined that the symptoms were significantly out of proportion to either injury and that they were lasting too long. *Id.* Dr. Levin opined that Petitioner was at MMI from a neurological standpoint and that Petitioner could work full duty. *Id.*

On November 23, 2012, Petitioner returned to Dr. Mahr who reviewed the left knee MRI revealing a medial meniscal tear. (PX 5) Dr. Mahr recommended a left knee arthroscopy and partial medial meniscectomy and administered an injection into the left knee while in the office that day. *Id.* In April 2013, Dr. Mahr performed surgery on the left knee. (2015 trial RX 2)

At the 2015 trial Petitioner submitted medical bills from Resurrection Medical Center, ProHealth Medical, Northwest Orthopedic & Sports Medicine, and Dr. Alsamman. (PX 25) The Commission denied payment of these bills stating that Respondent is only responsible for those for which it voluntarily paid.

D. 13WC001783 – Date of Accident December 21, 2012

Petitioner testified that, on December 21, 2012, he was employed by Respondent as a public way inspector and had the same job duties as he previously testified. (T. 54-55) Petitioner testified he went to a prescheduled meeting, with his supervisor, Mike Vargas, located at 30 North LaSalle Street. (T. 55-56) Petitioner testified that when he walked out of his car onto uneven ground, he tripped. (T. 57-58) Petitioner testified that he felt immediate left ankle pain. *Id.* Petitioner testified that Mr. Vargas took him to MercyWorks for treatment for his left ankle. (T. 59)

On December 27, 2012, Petitioner reported to Dr. Mahr with a “new complaint” of left ankle pain after his December 21, 2012, accident at work, and continued to complain of left knee pain. (2015 trial RX 2) Dr. Mahr recommended Petitioner undergo left ankle surgery and a right knee replacement.

On January 2, 2013, Petitioner reported to Dr. Alsamman that he had pain in his left ankle after he sprained his ankle while getting out of his car and fell to the ground. (PX 6) Dr. Alsamman indicated Petitioner was “totally incapacitated” due to his left ankle injury, and recommended an MRI of the left ankle. *Id.*

On February 8, 2013, Petitioner underwent an MRI on his left ankle, which revealed a ruptured anterior talofibular ligament (“ATFL”) and split tearing of the inframalleolar and posterior tibialis tendon. *Id.*

On March 19, 2013, Petitioner saw Dr. Alsamman again, and reported severe left ankle pain, right knee pain, back pain, and depression. *Id.* Dr. Alsamman recommended Petitioner remain off work and continue PT and medications. *Id.*

On May 7, 2013, Petitioner reported to Dr. Alsamman because of severe left knee pain and severe left ankle pain. *Id.* Dr. Alsamman continued physical therapy, medications, and recommended that Petitioner see an orthopedic surgeon. *Id.* On May 16, 2013, Dr. Mahr administered a corticosteroid injection into Petitioner’s left ankle. (2015 trial RX 2)

On May 20, 2014, Petitioner returned to Dr. Mahr and continued to report right knee pain. (PX 5) Petitioner continued to complain of pain in his ankles. *Id.* Dr. Mahr performed another injection into the right knee. *Id.* Dr. Mahr’s further noted, “I went over the treatment options with the patient. At this point we will continue to pursue conservative measures. I believe that he is a candidate for total knee arthroplasty. We would perform this if conservative treatment fails.” (PX 5 at 19)

Petitioner was evaluated by Section 12 Dr. Bryan Neal, M.D., for an IME at the request of the Respondent. Dr. Neal concluded that petitioner's right knee osteoarthritis and total knee arthroplasty is not casually related to petitioner's October 10, 2010, date of accident. Dr. Neal explained that the medical records from Resurrection Hospital document that petitioner admitted to right knee swelling for the two months preceding October 10, 2010. Dr. Neal relied on the x-ray taken that day – which found osteoarthritis, which would have predated the October 10, 2010, injury. Finally, Dr. Neal concluded that given petitioner's little right knee treatment in 2012 Petitioner would have recovered from the 2010 work injury. (2015 trial RX 2)

At the 2015 trial Petitioner submitted medical bills from Resurrection Medical Center, ProHealth Medical, Northwest Orthopedic & Sports Medicine, and Dr. Alsamman. (PX 25) The Commission denied payment of these bills stating that Respondent is only responsible for those for which it voluntarily paid.

Petitioner testified that he currently has right shoulder pain and right knee pain. (T. 42-43) Petitioner testified he has difficulty recollecting certain items. *Id.* Petitioner testified that he has constant pain in his head. *Id.* Petitioner testified that his hip is also still “very painful.” *Id.* Petitioner testified that following the 2012 motor vehicle accident he had difficulty raising his arm. Petitioner testified that his right ankle is still swollen. *Id.* Petitioner testified that he is very limited in what he can do personally and that he has the assistance of family members who are certified therapists. (T. 44) Petitioner testified that he cannot drive, lift his grandchildren, help friends with electrical or plumbing work, and cannot step on a ladder because he is afraid to fall. *Id.* Petitioner testified that he has a hard time walking on his left ankle and that it is swollen. (T. 59-60) Petitioner testified that when he walks on that left ankle, he has shooting pains in his back. *Id.*

E. 16WC034125 – Date of Accident July 8, 2016

Petitioner testified that, on July 8, 2016, that he was working for Respondent as a public way inspector. (T. 61-62) Petitioner testified that he was instructed, by his supervisor, to go to 22nd Street in Chicago to review the cleanup of a parade. *Id.* Petitioner testified issued citations from California Avenue to Pulaski Street. *Id.* Petitioner testified that as he was in his city vehicle writing these tickets, he was struck in the back of the head by a brick by a group of teenagers. (T. 63-65) Petitioner testified he drove a couple of blocks and called 911 and his supervisor. (T. 66) Petitioner testified that the police but did not complete an accident report. (T. 69) Petitioner testified that he was in pain in his neck and that there was blood on his neck and back of the head. (T. 71)

On July 10, 2016, Petitioner went to Presence St. Mary emergency room and reported dizziness and back pain. (PX 14) Petitioner was diagnosed with a concussion and post-concussion vertigo. *Id.*

On July 12, 2016, Petitioner presented to US Health Works Medical Group and saw Dr. James John, M.D., who diagnosed Petitioner with a head contusion and cervical strain. (PX 15) Petitioner returned again on July 28, 2016, and received injections for his neck pain and was referred to a neurologist for his headaches. *Id.* Petitioner continued to treat with Dr. Mahr and Dr. Alsamman, but due to consistent pain, Petitioner presented to Dr. Michael Rock, M.D., of Chicago Institute of Neuropathic Pain on February 13, 2017. (PX 17) Dr. Rock ordered Petitioner undergo cervical median branch blocks from C2-3 to C6-7, a neuropsychological evaluation, and return in one month. *Id.*

On February 21, 2017, and February 22, 2017, Dr. Robert Stahnke, M.D., performed a neuropsychological evaluation on Petitioner (PX 16) Dr. Stahnke diagnosed Petitioner with major neurocognitive disorder due to traumatic brain injury as a result of Petitioner's three brain injuries, major depressive disorder, posttraumatic stress disorder, and also recommended that Petitioner should not be driving a car due to these impairments. *Id.* Following the evaluation, Dr. Stahnke recommended Petitioner return to Dr. Rock for treatment. *Id.*

On May 22, 2017, Petitioner followed up with Dr. Rock. (PX 17) Dr. Rock diagnosed Petitioner with a myriad of symptoms including cervicalgia, lumbar spine stenosis, bilateral knee degenerative disc disease, right shoulder impingement syndrome, post-concussion syndrome, chronic pain syndrome, neuropathic pain. Petitioner continued to treat for a myriad of these symptoms with Dr. Rock through December 6, 2019. *Id.*

On June 19, 2017, Petitioner returned to Dr. Rock. *Id.* Dr. Rock opined that “with the new findings of severe coronary stenosis as well as aorta-iliac disease, [Petitioner] should be viewed as permanently and totally disabled” and he further “advised [Petitioner] to also begin the process of filing for SSDI. *Id.*

On June 23, 2017, Petitioner presented to Dr. Boris Gurevich, M.D., with lower back pain, headaches, and neck pain. (PX 18) Petitioner continued to treat with Dr. Gurevich through November 2019. *Id.* The records did not reflect that these were due to a work-related injury. *Id.*

On July 27, 2017, Petitioner underwent an independent neuropsychological evaluation with Dr. Robert Hanlon, M.D.. (RX 3) Dr. Hanlon noted that Petitioner’s diagnosis was that of malingering. *Id.* Dr. Hanlon noted that Petitioner did not require any psychiatric treatment. *Id.* Dr. Hanlon noted that Petitioner did not require any work restrictions. *Id.* Dr. Hanlon noted that Petitioner had attained a state of MMI. *Id.*

On January 26, 2018, Petitioner returned to Dr. Rock. (PX 17) The records indicated that Petitioner’s “bioccipital cervicalgia and headaches [had] been quite severe for the past few months” having been “aggravated by the colder weather” and that Petitioner was still experiencing “L5S1 radicular discomfort when he is more active and [which was] usually heralded by some low back pain—especially [on] the left side.” (PX 17 at 178-179) The notes indicated that Petitioner’s mood and affect remained improved.

Id. Dr. Rock updated Petitioner's work status with the limitations and restrictions, including but not limited to limited standing, driving, not lifting more than 20 pounds. *Id.*

On May 25, 2018, when Petitioner followed up with Dr. Rock, Petitioner had been back at work for approximately six months. (PX 17) The records noted that Petitioner "[was] working full time but his functionality [was] poor due to his continued pain. [His] medications allow[ed] him to be functional at work and at home with few side effects." (PX 17 at 189) Dr. Rock noted that the same issues described at the previous appointment had still not improved, in large part because workers' compensation had not authorized interventions for any single one of those ailments. *Id.*

On May 20, 2020, Petitioner returned to Dr. Rock's office. The records indicated that "there [had] been no significant change in the pattern, nature, and severity of [Petitioner's] pain." *Id.* Petitioner's "headaches, neck, low back, and ankle pain" had shown no improvement. (PX 17 at 220-21)

Petitioner returned to Dr. Rock on February 1, 2023, and continued to treat with him throughout the year.

From February 19, 2018, through June 6, 2018, Petitioner underwent physical therapy, Sports and Ortho, PC, for his low back pain. (PX 19) There was no description of a work incident in these reports. Petitioner testified that today, he still has constant headaches and has a lot of pain in his neck and cannot move it. (T. 75-78)

CONCLUSIONS OF LAW

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

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

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

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79

Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds the Petitioner credible and that he was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

It is the Petitioner's threshold burden to prove by a preponderance of the evidence that he or she sustained a compensable accident. 820 ILCS 305/1(d) For an injury to be a compensable under the Act, the petitioner must prove both that the accident arose out of and in the course of the petitioner's employment with the respondent. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989)

To meet this burden of proof, a petitioner must provide facts established by a preponderance of the evidence. *Arbuckle v. Industrial Comm'n.*, 32 Ill.2d 581, 207 N.E.2d 456 (1965) Mere imagination, speculation, or conjecture is not sufficient to prove an accident by a preponderance of the evidence. *Id.* A workers' compensation claimant has the burden of proving each element of his claim by a preponderance of the credible evidence. *Illinois Bell Tel. Co. v. Industrial Commission*, 265 Ill. App. 3d 681, 202 Ill.Dec. 661, 638 N.E.2d 307 (1994) The claimant must provide sufficient factual evidence to prove that his injury both arose out of and in the course of employment. *County of Cook v. Industrial Commission*, 68 Ill. 2d 24, 11 Ill.Dec. 546, 368 N.E.2d 1292 (1977) It is well established law, however, that a Respondent's payment of workers' compensation benefits is not an admission of liability. 820 ILCS 305/8(a) . Regardless of whether any benefits were paid in the claim, Respondent is afforded all available defenses, including accident and causation at the time a claim proceeds to trial.

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. *Id.*

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury."

Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. *Id.* The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Id.* at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.* at ¶ 46.

With respect to case numbers 10WC040045, 12WC005993, and 13WC001783, the parties stipulated that Petitioner sustained injuries that arose out of and in the course of his employment on October 10, 2010, February 5, 2012, and December 21, 2012, respectively. This is the law of the case and the Arbitrator adopts the parties' stipulation as it relates to 10WC040045, 12WC005993, and 13WC001783.

With respect to case number 16WC034125, the Arbitrator finds that Petitioner was injured, on July 8, 2016, while performing his assigned duties for Respondent. The Arbitrator notes that Petitioner testified that he credibly testified that he was working for Respondent as a public way inspector. (T. 61-62) The Arbitrator notes that Petitioner testified that he was instructed, by his supervisor, to go to 22nd Street in Chicago to review the cleanup of a parade. *Id.* The Arbitrator notes that Petitioner testified that as he was in his city vehicle writing tickets related to citations, that he was struck in the back of the head by a brick by a group of teenagers. (T. 63-65) The Arbitrator notes that Petitioner testified that he had pain in his neck and that there was blood on his neck and back of the head. (T. 71)

The Arbitrator notes that this activity was directly related to his employment and was within the scope of his assigned duties. The injury occurred during his shift while he was engaged in these activities, fulfilling the time and place requirements for an injury to be considered "in the course of employment." Based on the evidence presented, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent on July 8, 2016.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003) “A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee’s injury.” *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982)

The issue of causation for the left ankle, right knee, cervical spine, shoulder, and lumbar spine were already adjudicated by the Commission. The Commission states it is “persuaded by the combined opinions and conclusion of Dr. Scott Kale, Dr. Jay Levin, and of Dr. Bryan Neal [and] agrees that Petitioner has reached maximum medical improvement.” (PX 25) Petitioner was found to be at MMI as of May 10, 2011, for the right knee (PX 25 and 2015 trial RX 5) Petitioner was also found at MMI for the right knee and left ankle September 24, 2014. (PX 25 and 2015 trial RX 5) Petitioner was found at MMI per Dr. Levin on October 17, 2011. (PX 25 and 2015 trial RX 1) Petitioner was seen by Dr. Karen Levin for the cervical and lumbar spines on October 24, 2012, at which time she put Petitioner at MMI. (PX 25) and MMI per Dr. Neal on September 24, 2014 (PX 25 and 2015 trial RX 2)

With respect to case number 16WC034125, the Arbitrator finds that Petitioner’s conditions of ill-being, with respect to his head and neck, are causally related to the July 8, 2016, accident. The Arbitrator notes that Petitioner was diagnosed with a concussion and post-concussion vertigo. (PX 14) The Arbitrator also notes that Petitioner was diagnosed with a head contusion and cervical strain. (PX 15) The Arbitrator notes that from July 2016 through 2023, Petitioner treated with Dr. Rock and consulted with several other specialists regarding his headaches and cervical pain. The Arbitrator notes that the medical evidence presented was consistent with his consistent diagnoses and that the July 8, 2016, work accident played a role in aggravating Petitioner’s preexisting condition and contributed to his current condition of ill-being. Thus, the Arbitrator finds that Petitioner’s current condition of ill-being is casually related to the injury.

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

Section 8(a) of the Act states a Respondent is responsible "...for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury..." A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. *See Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990)

At the 2015 trial, Petitioner submitted medical bills from Resurrection Medical Center, ProHealth Medical, Northwest Orthopedic & Sports Medicine, and Dr. Omar Alsamman. The Arbitrator denied payment of these bills stating that Respondent is only responsible for those for which it voluntarily paid. This is the law of the case and any additional bills are denied.

Regarding Petitioner's 16WC034125 claim, as the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment.

As such, Respondent shall pay reasonable and necessary medical services of \$804.95 for the bills from US Healthworks; \$18,445.00 for the bills of Chicago Institute for Neuropathic Pain; \$22,030.00 for the bills of Dr. Boris Gurevich; and \$4,419.10 for the bills of Presence Saint Mary Medical Center, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

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

In its 2016 order the Commission ordered TTD benefits for the periods of October 10, 2010, through May 10, 2011; February 5, 2012, through July 14, 2012; and December 21, 2012, through September 24, 2014, representing \$119,867.15 (145 weeks at \$826.67 TTD rate) The Arbitrator is bound by these findings as it is the law of the case.

Regarding Petitioner's 16WC034125 claim, Respondent disputes liability for TTD based on causal connection. Having ruled in favor of Petitioner for causation and relying on Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treating physicians, the Arbitrator finds that Petitioner is entitled to TTD.

The Arbitrator finds Petitioner is entitled to TTD benefits from July 9, 2016, until May 12, 2017, the date Petitioner requested to return to work, representing 43 and 6/7 weeks.

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

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

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

- (i) the reported level of impairment pursuant to subsection (a);
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of the injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was not performed in this case. As such, the Arbitrator relies on the other four factors of permanent partial disability ("PPD")

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed as a public way inspector for Respondent for 24 years. The evidence is silent on Petitioner's specific work restrictions. There is no evidence of any strenuous physical activity as part of this job requirements. The Arbitrator awards little weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that the parties stipulated that at the time of the initial accident Petitioner was 56 years old. The Arbitrator notes that at the time of the 2024 hearing Petitioner was 69 years old. The Arbitrator notes that Petitioner has since retired. The Arbitrator notes Petitioner's age does not impact his ability to work. The Arbitrator gives less weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner retired from the City of Chicago. The Arbitrator notes that there is no evidence presented otherwise that Petitioner while Petitioner continues to suffer from various pains, there is no evidence that he was left with permanent work restrictions or that his injuries impacted his earning capacity. The Arbitrator gives less weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner presents with a myriad of complaints. The 2015 Commission decision placed petitioner at maximum medical improvement relative to the October 10, 2010, February

5, 2012, and December 21, 2012, claims. The Commission further denied the left ankle and right knee replacement. The arbitrator is bound by that decision.

- The Arbitrator notes that Petitioner was diagnosed with a right knee fragmented medial meniscus for which he underwent arthroscopic repair on December 15, 2010. Petitioner made a swift uncomplicated recovery and returned to work full duty. The right knee replacement was adjudicated as unrelated. The Arbitrator awards 15% loss of use of the right leg
- The Arbitrator notes that Petitioner was diagnosed with a right shoulder rotator cuff repair for which he underwent arthroscopic repair on February 23, 2011. Petitioner made a swift uncomplicated recovery and returned to work full duty. The Arbitrator awards 12% loss of uses of the man as a whole.
- The Arbitrator notes that Petitioner was diagnosed with right ankle Achilles tendinosis for which he underwent two injections in 2011. Petitioner made a swift and uncomplicated recovery and returned to work full duty. The Arbitrator awards 5% loss of use of the right foot
- The Arbitrator notes that Petitioner was diagnosed with cervical and lumbar pain, degenerative disc disease, and stenosis. Dr. Karen Levin placed petitioner at maximum medical improvement October 29, 2012, and affirmed by the Commission. Petitioner made a swift and uncomplicated recovery and returned to work full duty. Petitioner treated conservatively with physical therapy. The Arbitrator awards 5% loss of use of the man as a whole
- The Arbitrator notes that Petitioner was diagnosed with a concussion and post-concussion vertigo as a result of the July 8, 2016, accident. (PX 14) The Arbitrator also notes that Petitioner was diagnosed with a head contusion and cervical strain. (PX 15) The Arbitrator notes that from July 2016 through 2023, Petitioner treated with Dr. Rock and consulted with several other specialists regarding his headaches and cervical pain. The Arbitrator awards 5% loss of use of the person as a whole for the injuries sustained to Petitioner's head and the resulting headaches he continues to experience.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner, on case numbers 10WC040045, 12WC005993, and 13WC001783, PPD benefits of 120.005 weeks at the rate of \$669.64 statutory maximum as Petitioner's compensable injuries caused disability of 12% man as a whole for the right shoulder, 12.5% loss of use of the right leg, 5% loss of use of the right ankle, and 5% loss of use of man as a whole for the lumbar and cervical spine, as provided in Section 8(d)2 and Section 8(e) of the Act.

Additionally, based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of \$775.18/week for 25 weeks, because the injuries sustained caused a 5% loss of use of a person, as provided in Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), WHETHER RESPONDENT IS OWED CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties stipulated that Respondent paid \$157,981.71 for TTD benefits in 10WC040045, 12WC005993, and 13WC001783 and paid \$34,833.96 for TTD benefits in 16WC034125. Therefore, Respondent shall be entitled to a credit of \$157,981.71 for TTD benefits in 10WC040045, 12WC005993, and 13WC001783; and a credit of \$34,833.96 for TTD benefits in 16WC034125.

It is so ordered:

JenniferBae

Arbitrator Jennifer Bae

July 17, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC027320
Case Name	INSURANCE COMPLIANCE v. DOUBLE A ROOFING INC/DOUBLE A ROOFING AND SIDING INC & ANTHONY ADAMS (INDIV)
Consolidated Cases	
Proceeding Type	Notice of Non-Compliance
Decision Type	Commission Decision
Commission Decision Number	25IWCC0358
Number of Pages of Decision	9
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	Pro Se

DATE FILED: 8/26/2025

/s/Maria Portela, Commissioner
Signature

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS DEPARTMENT OF INSURANCE,
 INSURANCE COMPLIANCE DEPARTMENT,

Petitioner,

vs.

NO: 22WC027320
 18INC15

DOUBLE A ROOFING, INC., DOUBLE
 A ROOFING AND SIDING, INC., AND
 ANTHONY ADAMS, INDIVIDUALLY AND AS OFFICER,

Employers/Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging they violated Section 4(a) of the Illinois Workers' Compensation Act by failing to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 5,652 days. A hearing was held before Commissioner Maria Portela in Chicago, Illinois on May 22, 2025. Proper and timely notice was provided to Respondents. Px1. Petitioner was represented by the Office of the Attorney General. Respondents did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, \$500.00 per day for each of the 5,652 days, from May 30, 2008, through December 2, 2008; February 12, 2009, through April 13, 2009; August 15, 2009, through June 13, 2010; October 15, 2010, through August 19, 2019; November 19, 2019, through October 25, 2022; January 26, 2023, through March 14, 2023; and April 27, 2023, through May 21, 2025, when Respondents did business and failed to provide coverage for their employees, for a total of \$2,826,000.00. Petitioner also seeks reimbursement for payments made by the IWBf to an employee of the Respondent in case #13WC029206 in the amount of \$53,569.37. Petitioner seeks a total award of \$2,879,569.37.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondents knowingly and willfully violated Section 4(a) of the Act and Section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation

Commission (Rules) during the period in question. As a result, Respondents shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under Section 4 of the Act in the sum of \$2,826,000.00 and orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of \$53,569.37, for a total of \$2,879,569.37.

I. Findings of Fact

Investigator Ray A. Espinoza personally served Respondents Double A Roofing, Inc., Double A Roofing & Siding, Inc., and Anthony Adams with a Notice of Insurance Compliance Hearing on June 13, 2024. Px 2.

On May 8, 2025, Notices of Insurance Compliance Hearing were sent via certified mail to Double A Roofing, Inc., Double A Roofing & Siding, Inc., and Anthony Adams for the May 22, 2025, hearing date. Px 1.

George Sweeney, the Assistant Deputy Director of the Workers' Compensation Compliance Division for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Sweeney identified Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Anthony Adams individually and as president of Double A Roofing, Inc. The notice states that the Commission's records indicated that Double A Roofing, Inc. and Anthony Adams were not in compliance with the requirements of Section 4(a) for the period from May 30, 2008, to June 13, 2010; October 15, 2010, to January 16, 2018; and any other periods that the employer operated in violation of the Act. The notice includes an affidavit indicating service by mail on January 17, 2018. Px 3.

Sweeney identified Petitioner's Exhibit 4 as two Requests for Informal Conference mailed to Anthony Adams individually and as president of Double A Roofing, Inc. Page one states that the Commission's records indicated that Double A Roofing, Inc. and Anthony Adams were not in compliance with the requirements of Section 4 for the period from May 30, 2008, to June 13, 2010; and October 15, 2010, to January 16, 2018. The notice includes an affidavit indicating service by mail on January 7, 2018. Px 4. Page two states that the Commission's records indicated that Double A Roofing, Inc. and Anthony Adams were not in compliance with the requirements of Section 4 for the period from May 30, 2008, to June 13, 2010; and October 15, 2010, to January 16, 2018. The notice includes an affidavit indicating service by mail on June 16, 2022. *Id.*

Sweeney identified Petitioner's Exhibit 5 as a Business Entity Search for Respondents. The Report indicates that Double A Roofing & Siding, Inc. was formed on April 15, 2019, and is still active. The report also indicates that Anthony Adams was the president of Double A Roofing & Siding, Inc. and that the registered agent was John D. Lanpher. Px 5.

Sweeney identified Petitioner's Exhibit 6 as a Business Entity Search for Respondents. The Report indicates that Double A Roofing, Inc. was formed on January 14, 2008, and

dissolved June 12, 2015. The report also indicates that Anthony Adams was the president of Double A Roofing, Inc. and that the registered agent was Robert A. Calgaro. Px 6.

Sweeney testified that in the regular course of their investigation, his investigator also obtained documents related to Double A Roofing, Inc. and Double A Roofing & Siding, Inc. from the Illinois Secretary of State. The reports indicate that Double A Roofing, Inc. was incorporated on January 14, 2008, with Robert Calgaro as the registered agent. Px 7, p. 4. The company dissolved on June 12, 2015. *Id.* at 16. The reports further indicate that Double A Roofing & Siding, Inc. was incorporated on April 15, 2019, with Robert Calgaro as the registered agent. *Id.* at 23. The registered agent changed to John D. Lanpher on January 20, 2022. *Id.* at 28.

Sweeney testified that Double A Roofing falls under the Workers' Compensation Act's automatic coverage provisions pursuant to Section 3(1), for the erection, maintaining, removing, remodeling, altering or demolishing of any structure, and pursuant to Section 3(2) for construction, excavating or electrical work.

Sweeney testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compensation Insurance (NCCI) in Boca Raton, Florida. Px 8. The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Double A Roofing & Siding, Inc. did not file policy information showing proof of workers' compensation insurance at any time from January 26, 2023, through March 14, 2023; and April 27, 2023, through March 4, 2025. *Id.* at 2-3. Sweeney further testified that his investigator had been in contact with Anthony Adams and that he did not obtain insurance until the date of the hearing, May 22, 2025. The NCCI certified that Double A Roofing, Inc. did not file policy information showing proof of workers' compensation insurance at any time from May 30, 2008, to December 2, 2008; February 12, 2009, to April 13, 2009; August 15, 2009, to June 13, 2010; October 15, 2010, to August 19, 2019; and November 20, 2019, to October 27, 2022. *Id.* at 5-10.

Sweeney testified that Petitioner's Exhibit 9 was a certified finding from the Department of Self-Insurance that Respondents were not self-insured with the State of Illinois during the dates indicated and that it was the type of document requested in the ordinary course of Petitioner's investigations. The document indicates that no certificate of approval to self-insure was issued to Double A Roofing, Inc. for the period of May 29, 2008, through March 18, 2025. Px 9. It also indicates that no certificate of approval to self-insure was issued to Double A Roofing & Siding, Inc. from May 29, 2008, through March 18, 2025. *Id.*

Sweeney testified that Petitioner's Exhibit 10 was the Commission Decision and Opinion on review in case 13WC29206, Anthony Melton v. Double A Roofing and Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund. A hearing was held on May 18, 2022, and Respondent did not appear. Px 10 at 7. The arbitrator issued a decision on June 28, 2022, and the Commission affirmed and adopted the arbitrator's decision on July 25, 2023. *Id.* at 1, 2, 4, and 5. The Commission concluded that the parties were operating under the Act as employee and employer. *Id.* at 11. The Commission also concluded that the petitioner described work bringing the respondent within the automatic coverage of Section 3 of the Act.

Id. The Commission further concluded that the respondent was uninsured on the accident date. *Id.* at 18. The Arbitrator awarded the petitioner medical expenses, temporary total disability benefits, and permanent partial disability benefits. *Id.* at 6.

Sweeney testified that Petitioner's Exhibit 11 showed the IWBIF payment made to the petitioner, Anthony Melton, case 13WC29206, in the amount of \$53,569.37. Px 11.

Sweeney testified that in the regular course of his investigation, Petitioner requested information regarding the Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 12 comprised of certified records of Illinois Withholding Income Tax Returns from the Department of Revenue filed by Double A Roofing, Inc. for filing periods June 30, 2008, through March 31, 2013; and December 31, 2013, through March 31, 2014. Px 12 at 9-11, 19-30. It also contains Illinois Withholding Income Tax Returns filed by Double A Roofing & Siding, Inc. for filing period March 31, 2024. *Id.* at 50-53.

Sweeney testified that Petitioner's Exhibit 13 was certified records of Employer's Quarterly Wage Reports for Anthony Adams for the second quarter of 2012 through the third quarter of 2013 from the Department of Employment Security. Px 13 at 2-8. It also includes Employer's Quarterly Wage Reports for Double A Roofing, Inc. for the fourth quarter of 2013 through the third quarter of 2015. *Id.* at 9-17. It also includes Employer's Quarter Wage Reports for Double A Roofing & Siding, Inc. for the first quarter of 2024 through the third quarter of 2024. *Id.* at 18-23.

Sweeney testified that his investigator performed other investigations into the company, including reading Google reviews that mentioned the company having employees, that the company had an active roofing license at the time of trial, photos on the company's website showing people on roofs wearing company shirts, having a number of open permits in Rockford, and that the company did both residential and commercial buildings.

Sweeney testified that based upon his investigation, Petitioner determined that Respondent did not have workers' compensation insurance for the period for which it requests relief, from May 30, 2008, through December 2, 2008; February 12, 2009, through April 13, 2009; August 15, 2009, through June 13, 2010; October 15, 2010 through August 19, 2019; November 19, 2019, through October 25, 2022; January 26, 2023, through March 14, 2023; and April 27, 2023, through May 21, 2025. T.26-30, Px 8.

Sweeney testified that his investigator had multiple conversations with Anthony Adams. T.14, 41. The day prior to the hearing, Mr. Adams communicated to the investigator that he was not going to be present at the hearing. T.43. Mr. Adams admitted having employees at times, but Sweeney did not recall whether Adams denied needing workers' compensation insurance. T.44. Sweeney testified that, as of the morning of the hearing, he believes Mr. Adams was in the process of having a workers' compensation insurance policy issued. T.46.

II. 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 are engaged in the erection, maintaining, removing, remodeling, altering or demolishing of any structure and if they are engaged in construction, excavating or electrical work. 820 ILCS 305/3(1), (2) (West 2004).

The Commission finds that Respondents' business falls within Sections 3(1) and 3(2) of the Act. This finding is based on Sweeney's testimony that they are a roofing company, as well as the decision in the IWB case, 13WC29206. Accordingly, the Commission finds 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. See 820 ILCS 305/4(a) (West 2004). 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 in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Double A Roofing, Inc. or Double A Roofing & Siding, Inc. from May 29, 2008, through March 18, 2025.

Petitioner also submitted the NCCI certification that Double A Roofing & Siding, Inc. did not file policy information showing proof of workers' compensation insurance at any time from January 26, 2023 to March 14, 2023; and April 27, 2023, through March 4, 2025, and that Double A Roofing, Inc. did not file policy information showing proof of workers' compensation insurance at any time from May 30, 2008, to December 2, 2008; February 12, 2009, to April 13, 2009; August 15, 2009, to June 13, 2010; October 15, 2010, to August 19, 2019; and November 20, 2019, to October 27, 2022.

Sweeney testified that based upon his investigation, Petitioner determined that Respondents did not provide workers' compensation insurance for the period for which it requested relief, from May 30, 2008, through December 2, 2008; February 12, 2009, through April 13, 2009; August 15, 2009, through June 13, 2010; October 15, 2010, through August 19,

2019; November 19, 2019, through October 25, 2022; January 26, 2023, through March 14, 2023; and April 27, 2023, through May 21, 2025.

Double A Roofing was also a named respondent in 13WC29206, in which a Commission decision was entered on July 25, 2023. The Commission found that the parties were operating under the Act as employee and employer, that the petitioner described work bringing the respondent within the automatic coverage of Section 3 of the Act, and that the respondent was uninsured on the accident date. The Commission awarded the petitioner medical expenses, temporary total disability benefits, and permanent partial disability benefits. The IWBf made a payment to the petitioner in the amount of \$53,569.37.

Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner proved that Respondents failed to comply with the legal obligations imposed by Section 4(a) of the Act from May 30, 2008, through December 2, 2008; February 12, 2009, through April 13, 2009; August 15, 2009, through June 13, 2010; October 15, 2010, through August 19, 2019; November 19, 2019, through October 25, 2022; January 26, 2023, through March 14, 2023; and April 27, 2023, through May 21, 2025.

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

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 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after reasonable notice and a hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the

matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance mailed to Anthony Adams, individually and as officer of Double A Roofing, Inc. in the form prescribed by our Rules and including an affidavit of service. Petitioner also submitted the notices for the May 22, 2025, insurance compliance hearing, in the form prescribed by our Rules, as well as signed investigative reports indicating that Double A Roofing, Inc., Double A Roofing & Siding, Inc. and Anthony Adams were personally served via its registered agent, as well as by certified mail. The insurance compliance hearing allowed the Commission to introduce evidence and testimony and afforded Respondents the opportunity to do the same, had they chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice of hearing was provided to Respondents.

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, e.g., State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for 5,652 days, from May 30, 2008, through December 2, 2008; February 12, 2009, through April 13, 2009; August 15, 2009, through June 13, 2010; October 15, 2010, through August 19, 2019; November 19, 2019, through October 25, 2022; January 26, 2023, through March 14, 2023; and April 27, 2023, through May 21, 2025. There was a Commission decision entered against Double A Roofing, on July 25, 2023. Px 10. That decision found that employee Anthony Melton was injured while working for Double A Roofing on November 4, 2012, and that Anthony Adams was notified of the injury and came to the hospital after it happened. *Id.* at 7. Respondents still failed to obtain workers' compensation insurance. Petitioner notified Respondents of their noncompliance with the Act on January 17, 2018, but Respondents only obtained workers' compensation insurance sporadically for a total of approximately seven months since that date. As of the morning of the May 22, 2025 hearing, Respondents were finally in the process of obtaining workers' compensation insurance and only after being served with notice that DOI would be seeking a work stop order. T.46, Px 1. IDES records show that Respondents employed up to nine employees. Petitioner's investigation revealed recent Google reviews of Respondents noting multiple times that Respondents had a crew, that they have a roofing license that is active, that they have current permits for 10-12 projects in Rockford, including both residential and commercial, and that Respondent's website shows photos of employees on roofs wearing shirts with Respondent's logo. Respondents were notified of the May 22, 2025 hearing and told the DOI investigator they would not be in attendance. Moreover, having reviewed the record, the Commission finds no evidence regarding

Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of \$2,826,000.00 as well as reimbursement of the IWBF payout in the amount of \$53,569.37, for a total of \$2,879,569.37 against Respondents, Double A Roofing, Inc., Double A Roofing & Siding, Inc., and Anthony Adams, individually and as officer of Double A Roofing, Inc. and Double A Roofing & Siding, Inc.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Double A Roofing, Inc., Double A Roofing & Siding, Inc., and Anthony Adams, individually and as officer of Double A Roofing, Inc. and Double A Roofing & Siding, Inc. pay to the Illinois Workers' Compensation Commission the sum of \$2,879,569.37 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; 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 Workers' Compensation Commission
Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

This decision may be judicially reviewed only as described in Section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. 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.

AUGUST 26, 2025

/s/ Maria E. Portela

SE/

/s/ Marc Parker

O: 8/21/25

49

/s/ Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022016
Case Name	Jaime Perez v. MAC Construction Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0359
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Anselmo Duran
Respondent Attorney	Taylor Young

DATE FILED: 8/26/2025

/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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAIME PEREZ,

Petitioner,

vs.

NO: 23 WC 22016

MAC CONSTRUCTION SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 20, 2024 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$73,300.00. 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 the Circuit Court.

AUGUST 26, 2025

CAH/pm

O: 8/21/25

052

/s/ Christopher A. Harris

Christopher A. Harris

/s/ Maria E. Portela

Maria E. Portela

/s/ Marc Parker

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022016
Case Name	Jaime Perez v. MAC Construction Services
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Anselmo Duran
Respondent Attorney	Rachell Horbenko, Taylor Young

DATE FILED: 12/20/2024

/s/ Crystal Caison, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 17 2024 4.16%

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 3RD CORRECTED DECISION
19(b)

Jaime Perez
 Employee/Petitioner

Case # **23** WC **022016**

v.

Consolidated cases: _____

MAC Construction Services
 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 **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **July 9, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 11, 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 **\$110,448.00**; the average weekly wage was **\$2,018.25**.

On the date of accident, Petitioner was **56** years of age, *married* 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** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

ORDER

The Arbitrator finds that Petitioner did sustain an accident on August 11, 2023, that arose out of and in the course of his employment with the Respondent.

The Arbitrator finds that the Petitioner has met his burden of proving by preponderance of evidence that his current condition of ill-being is causally related to the work accident of August 11, 2023.

The Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth in Petitioner's Exhibits C, D, E and F for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act and more specifically as follows: \$655 to Duly Health, \$1,501.59 to M Spine Institute, \$2,437.00 to Prime Medical Imagery and \$5,007 to SOS Chiropractic.

Petitioner is entitled to prospective medical treatment, consisting of full laminectomy of L5, facetectomy decompression, and lumbar fusion as recommended by Dr. Mohan, under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same. Respondent shall authorize and pay reasonable and necessary medical services associated with said medical treatment.

Respondent shall pay Petitioner temporary total disability benefits of **\$1,345.50/week** for **47 & 2/7** weeks (**\$63,622.93**), commencing August 14, 2023 through July 9, 2024, as provided in Section 8(b) of the Act.

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

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

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

Crystal L. Caison

DECEMBER 20 2024

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

**ILLINOIS WORKERS’ COMPENSATION COMMISSION
ARBITRATION 3rd CORRECTED DECISION (19b)**

Jaime Perez	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC022016
MAC Construction Services.	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on July 9, 2024, before Arbitrator Crystal L. Caison. Issues in dispute include accident, causal connection, medical bills, prospective medical care, and TTD benefits. (AX 1).

Petitioner and Respondent filed timely 19(f) petitions requesting for the Arbitrator to issue a corrected decision to resolve the conflict between the finding in the Arbitrator’s Order and the finding under Issue “C” in the Arbitrator’s Decision. Also, Respondent is requesting for the Arbitrator to strike the third grammatical paragraph under Issue “L” that was erroneously included in the findings.

This Corrected Decision and corresponding Order resolves the conflict to reflect: “Petitioner has met his burden of proving by a preponderance of credible evidence that an accident occurred that arose out of and in the course of Petitioner’s employment by Respondent on August 11, 2023.” It also strikes the third grammatical paragraph under Issue “L”.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner’s Testimony

Petitioner testified that on August 11, 2023, he was working for MAC Construction Services as a drywall installer. (T. 13-14) Petitioner testified that he was working alone at Proviso West High School hanging drywall. *Id.* Petitioner testified that he was lifting a sheet of drywall and felt a sharp, sting-like pain in his lower back. *Id.* Petitioner testified that on a scale of one to ten, he was in pain at eight or nine. (T. 15)

Petitioner testified that on August 14, 2023, he told Respondent's head of security that he had gotten injured on August 11, 2023. (T. 17). Petitioner provided written notice of the August 11, 2023 injury to Respondent on August 15, 2023. (Pet. Ex. B, at 3-4).

Petitioner testified that he presented to Duly Health on August 14, 2024, to seek medical treatment. (T. 18).

Petitioner testified that he commenced physical therapy on November 17, 2023. (T. 19).

Petitioner testified that between August 11, 2023, and July 9, 2024, the Respondent had not paid any wages to the Petitioner. (T. 22).

Respondent Witness 1 (Charles E. Vasconez)

Mr. Vasconez testified that he works for MSM Solutions as a risk manager, (T. 28-29). MSM Solutions provides the administrative support for MAC Construction such as project management, estimating, payroll, purchasing, safety, and risk management. *Id.* at 29.

Mr. Vasconez testified that he received a four-minute phone call from Petitioner on August 7, 2023 (T. 30-31). Mr. Vasconez testified that Petitioner told him that, "he felt like he hadn't been working as much as he should be and wanted to let Vasconez know that Petitioner would be reporting an injury and that Petitioner was going to do it to get back at the company" *Id.* at 31.

Mr. Vasconez testified that he was not the Petitioner's direct supervisor. (T. 33). Mr. Vasconez testified that he was made aware of Petitioner's August 11, 2023, work injury on August 8, 2023. (T. 34). Vasconez testified that part of his services are accident investigations. *Id.* Vasconez testified that he did not investigate the Petitioner's accident.

Mr. Vasconez testified that carpenters like Petitioner do not work by themselves (T. 35). Mr. Vasconez testified that there are some tasks that a carpenter could do by themselves but lifting 150-pound sheets of drywall was not one of them (T. 36-37).

Mr. Vasconez testified that he would not be the one to dictate or direct how the Petitioner would complete his work (T. 38)

Respondent Witness 2 (Gustavo Lopez)

Mr. Lopez testified that he worked for MSM and is responsible for scheduling drywallers and carpenters. (T. 39). Mr. Lopez testified that no employee is guaranteed to work a 40-hour week (T. 40). Mr. Lopez testified that the drywall is too heavy for just one drywaller to move (T.41-42). When 4 x 12-foot drywall sheets are involved, two or three drywallers would be needed to move the sheets (T. 42). No drywaller would be required to lift full sheets of drywall bigger than 4 x 9 feet by himself (*Id.*). In his 35 years of experience, all large jobs have a team to help each other (T.43).

Mr. Lopez testified that the Petitioner did not speak to him about the accident. (T. 43). Mr. Lopez testified that on August 11, 2023, he was not the Petitioner's supervisor. (T. 43, 48). Mr. Lopez testified that he had no personal knowledge of what occurred on August 11, 2023. (T. 48-49).

Medical

8/14/23-Petitioner presented to Duly Health for an initial orthopedic evaluation for an injury that was noted to have occurred at work on August 11, 2023, when he felt a pull and pop in his lower back after installing drywall at work. (PX C, 31). X-rays of the lumbar spine showed an L4 compression deformity and disc disease at L5-S1. *Id.* at 35. Petitioner was diagnosed with lumbar radiculopathy and a L4 compression deformity and disc disease at L5-S1. *Id.* Medical treatment continued with injections in both areas. Petitioner was recommended physical therapy. Petitioner was taken off work for six (6) weeks. (PX C, 44)

8/23/23- Petitioner presented for a follow-up visit to Duly Health where the treater noted tenderness and pain in the Petitioner's lumbar spine due to the August 11, 2023, work injury installing drywall. (PX C, 18). Petitioner stated that the injections only helped for about 2 days. (PX C, 20). Duly Health referred the Petitioner to a spine surgeon for further recommendations and recommended that the Petitioner stay off work. (PX C, 20; 45).

9/19/23-Petitioner presented to Dr. Vivek Mohan at Orthopedic Spine Institute. Dr. Mohan ordered x-rays with flexion/extension views of Petitioner's lower back. Dr. Mohan noted that this was a new work injury that occurred on August 11, 2023, ordered four (4) weeks of physical therapy at three (3) times per week, and recommended that Petitioner remain off work for four (4) weeks after completion of x-rays and physical therapy. (PX D, 103).

9/26/24- Dr. Mohan reviewed the x-rays and diagnosed the Petitioner with severe L5-S1 disc collapse, and explained to Petitioner that he would require surgery in the form of an L5-S1 fusion. (Pet. D at 107).

1/9/24- Petitioner returned to Dr. Mohan where Petitioner informed Dr. Mohan that Petitioner had been attending physical therapy for the prior two months with minimal improvement. Dr. Mohan ordered an MRI of Petitioner's lower back and continued Petitioner off work.

1/10/24- Petitioner completed MRI.

1/16/24-Dr. Mohan reviewed the MRI results with Petitioner. Dr. Mohan opined that the Petitioner had a collapsed disc, a herniated disc, and that the Petitioner required back surgery. Dr. Mohan noted that the Petitioner had worsening centralized lower back pain aggravated by leaning or bending forward, with

pain radiating down the back of both legs when he sat or stood for extended periods of time, with numbness and tingling down the back of his legs down to his calves.

Dr. Mohan also noted and opined that due to Petitioner's severe right L5-S1 far lateral disc herniation, he would need a full laminectomy of L5 and facetectomy to decompress the nerve, which would necessitate a lumbar fusion due to the subsequent instability arising from the decompression. (PX D, 118) Dr. Mohan elaborated that Petitioner would require a L5-S1 combined posterior and interbody fusion with instrumentation, allograft, and local autograft to address the ongoing symptoms. (PX D, 126)

5/3/24- Petitioner presented to the Illinois Spine Institute for an Independent Medical Evaluation with Dr. Carl N. Graf. (PX G). Dr. Graf opined that there was a causal connection between the Petitioner's lumbar spine condition and the August 11, 2023, work accident. Dr. Graf opined that the Petitioner's treatment had been reasonable, necessary, and causally related; however, prolonged in nature. *Id.* Dr. Graf opined that Petitioner required further treatment and recommended a lumbar epidural steroid injection at L5-S1. *Id.* Dr. Graf also recommend a formal course of physical therapy by a licensed and certified physical therapist. *Id.* Dr. Graf opined that Petitioner is not currently a candidate for a lumbar decompression or fusion. Dr. Graf opined that if the Petitioner were unable to work full duty, any restrictions would be considered causally related to the claimed injury of August 11, 2023. *Id.* Dr. Graf further opined that the Petitioner was not at maximum medical improvement.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between

the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner's testimony at arbitration was consistent with the medical records regarding history of accident, history of complaints and physical findings. He did not appear to be exaggerating his complaints.

The Arbitrator observed Mr. Vasconez during the hearing and finds him to be a credible witness, but not persuasive.

The Arbitrator observed Mr. Lopez during the hearing and finds him to be a credible witness, but not persuasive.

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

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Pursuant to Illinois law an accident alleged for the purpose of claiming benefits under the Act, must be traceable to a definite time, place, and cause. Mithiessen & Hageler Zinc Co. v. Industrial Commission, 284 Ill. 378, 120 N.E. 249 (1918) This is a longstanding and necessary requirement that must be met by Petitioner to trigger the protection of the Act. Compensation will be denied if the injury alleged is not shown to be traceable to a definite time, place, and cause. Johnson v. Industrial Commission, 89 Ill.2d 438, 433 N.E.2d 649 (1982)

In this case, the Petitioner testified that he was working for Respondent on August 11, 2023. The Petitioner said that he was working alone at Proviso West High School on August 11, 2023. Petitioner testified that he was lifting a sheet of drywall and felt a sharp, sting-like pain in his lower back.

Petitioner testified that on August 14, 2023, he provided oral notice to the security guard. The medical records shows that Petitioner sought medical treatment on August 14, 2023. He testified that he provided written notice by completing an accident report.

Mr. Vasconez and Mr. Lopez provided testimony, including the allegation that Petitioner threatened to file a work injury claim against Respondent before August 11, 2023. Neither Mr. Vasconez nor Mr. Lopez was a witness to the August 11, 2023, injury or completed a Report of Injury.

Based upon the record as a whole, the Arbitrator finds that the Petitioner has met his burden of proving by a preponderance of credible evidence that an accident occurred that arose out of and in the course of Petitioner's employment by Respondent on August 11, 2023.

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).

Beginning August 14, 2023, Petitioner sought medical treatment for the August 11, 2023 injury. On September 19, 2023, Petitioner presented to the Orthopedic Spine Institute to see Dr. Vivek Mohan, an orthopedic surgeon, who noted that "this was a new work injury that occurred on August 11, 2023."

On September 26, 2023, Dr. Mohan reviewed x-rays of the lumbar spine and diagnosed the Petitioner with severe L5-S1 disc collapse.

On January 16, 2024, Dr. Mohan noted that he had reviewed the MRI, and opined that Petitioner had severe right L5-S1 far lateral disc herniation and that the Petitioner required back surgery. Dr. Mohan noted that the Petitioner had worsening centralized lower back pain aggravated by leaning or bending forward, with pain radiating down the back of both legs when he sat or stood for extended periods of time, with numbness and tingling down the back of his legs down to his calves.

Dr. Mohan also noted and opined that due to Petitioner's severe right L5-S1 far lateral disc herniation, he would need a full laminectomy of L5 and facetectomy to decompress the nerve, which would necessitate a lumbar fusion due to the subsequent instability arising from the decompression. Dr. Mohan elaborated that Petitioner would require an L5-S1 combined posterior and interbody fusion with instrumentation, allograft, and local autograft to address the ongoing symptoms.

On May 3, 2024, Dr. Graf opined that there was a causal connection between the Petitioner's lumbar spine condition and the August 11, 2023, work accident. It is un rebutted that prior to the August 11, 2023, work accident, Petitioner did not have any issues with his low back that impacted his ability to perform full duty work.

Based on the above, as well as the credible evidence, the Arbitrator finds the Petitioner's current condition of ill-being as it relates to his low back is causally related to the injuries sustained on August 11, 2023.

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

Section 8(a) of the Act states a Respondent is responsible ... "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury..." A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found the Petitioner's current condition of ill-being as it relates to his low back is causally related the injuries sustained on August 11, 2023, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth in Petitioner's Exhibits C, D, E and F for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act and more specifically as follows: \$655 to Duly Health, \$1,501.59 to M Spine Institute, \$2,437.00 to Prime Medical Imagery and \$5,007 to SOS Chiropractic.

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

Having found the Petitioner's current condition of ill-being as it relates to his low back is causally related to the injuries sustained on August 11, 2023, the Arbitrator finds that Petitioner is entitled to the medical treatment consisting of full laminectomy of L5, facetectomy decompression, and lumbar fusion as recommended by Dr. Mohan.

Respondent shall authorize and pay reasonable and necessary medical services associated with said medical treatment.

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

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Based on the above, the Arbitrator finds Respondent liable for 47 & 2/7 weeks of Petitioner's temporary total disability (TTD) benefits (August 14, 2023, through July 9, 2024) at a weekly rate of \$1,345.50, which corresponds to **\$63,622.93**.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

DECEMBER 20 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027511
Case Name	Kimyata Gray v. Cook County Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0360
Number of Pages of Decision	35
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Paul Pasche

DATE FILED: 8/26/2025

/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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KIMYATA GRAY,
 Petitioner,

vs.

NO: 20 WC 027511

COOK COUNTY DEPARTMENT OF
 CORRECTIONS,
 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 medical expenses, causal connection, temporary total disability, and nature and extent of disability, and being advised of the facts and law, affirms with a modification and corrections the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that Petitioner's treating physician, Dr. Wardell's status note reflects that he returned Petitioner to restricted work commencing February 23, 2021. The restriction prohibited stairs and kneeling until March 28, 2021. As of April 2, 2021, Dr. Wardell released Petitioner from physical therapy and continued her light duty restrictions of no stairs, kneeling, or crawling.

The Commission hereby modifies the Order section of the Arbitrator's Decision to conform to the documentary evidence and with the agreement of parties as reflected in their respective briefs on review, to award to Petitioner TTD benefits commencing August 7, 2020, through February 23, 2021, representing 28 5/7 weeks at the rate of \$906.67 per week.

On Arbitrator's Decision page 2 under the heading "Work Accident", line 8, strike "it" and replace it with "she". T 24.

On Arbitrator's Decision page 25, paragraph 1, line 7, strike "arthroplasty" and replace with "arthroscopy".

On Arbitrator's Decision page 25, under Issue J, paragraph 2. Line 8, strike "2022" and replace with "2020".

On Arbitrator Decision page 25, last paragraph, line 4, strike "subject to the medical fee schedule" and replace with "pursuant to Sections 8(a) and 8.2 of the Act".

In the Order, for Medical Bills, at the end of the first sentence, add "pursuant to Sections 8(a) and 8.2 of the Act."

The Decision is affirmed as to all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 17, 2024, is hereby affirmed with a modification to the award of TTD and corrections, as stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that having found that no medical bills remain outstanding however also finds that Respondent is responsible for and shall pay any reasonable and necessary medical services for Parkview Orthopedics and ATI Physical Therapy pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of \$29,368.27 for medical benefits that have been paid through its group medical plan, and Respondent shall hold Petitioner harmless from any claim 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 shall pay Petitioner total temporary disability benefits of \$906.67 per week commencing August 7, 2020, through February 23, 2021, representing 28 5/7 weeks, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that based upon the factors provided in Section 8.1b(b). and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of loss of use of 15% of her right leg. Respondent shall pay Petitioner \$816.00 per week for 32.25 weeks, pursuant to Section 8(e) 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.

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.

AUGUST 26, 2025

o-7/29/25

SM/msb

44

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC027511
Case Name	Kimyata Gra v. Cook County Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	31
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Paul Pasche

DATE FILED: 6/17/2024

/s/ Jacqueline Hickey, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Cook)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Kimyata Gray

Employee/Petitioner

v.

Cook County Department of Corrections

Employer/Respondent

Case # **20** WC **027511**

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 **February 27, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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, **6/20/2020** Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$70,720.00**; the average weekly wage was **\$1,360.00**.

On the date of accident, Petitioner was **50** 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 **\$19,018.58** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$19,018.58**.

Respondent is entitled to a credit of **\$29,368.27** under Section 8(j) of the Act.

ORDER**MEDICAL BILLS**

The Arbitrator finds that no medical bills remain outstanding however also finds that Respondent is responsible for and shall pay any reasonable and necessary medical services for Parkview Orthopedics and ATI Physical Therapy. Respondent shall be given a credit of \$29,368.27 for medical benefits that have been paid through its group medical plan, and Respondent shall hold petitioner harmless from any claim by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

TEMPORARY TOTAL DISABILITY

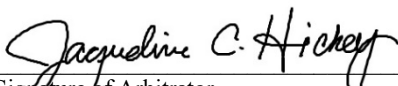
Respondent shall pay Petitioner temporary total disability benefits of \$906.67/week for 49 2/7 weeks, commencing 7/14/20 through 6/23/21, as provided in Section 8(b) of the Act.

PERMANENT PARTIAL DISABILITY

Based on the factors provided in section 8.1b(b), and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15 % loss of use of right leg. Respondent shall pay Petitioner \$816.00/week for 32.25 weeks, pursuant to Section 8(e) of the Act.

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

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



 Signature of Arbitrator

June 17, 2024

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

ILLINOIS WORKERS' COMPENSATION COMMISSION

<u>KIMYATA GRAY,</u>	)	
	)	
Employee/Petitioner,	)	
	)	Case Number: 20WC027511
	)	
v.	)	Arbitrator Hickey
	)	
<u>COOK COUNTY DEPARTMENT</u>	)	
<u>OF CORRECTIONS</u>	)	
Employer/Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on February 27, 2024, in Chicago, Illinois, before Arbitrator Jacqueline Hickey on the Parties' Request for Hearing. Issues in dispute are causation, medical bills, TTD and nature & extent. See Arbitrator's Exhibit 1 (Ax1).

FINDINGS OF FACT

Petitioner Testimony

Background

At hearing petitioner was 53 years old, was 5 feet 9 ½ inches tall and weighed 310 pounds. On the accident date she weighed the same. She had worked for respondent for 18 years before the accident date of June 20, 2020. Her job title was Correctional Officer.

Job Duties

Petitioner is responsible for the safety and security of detainees along with civilians and sworn staff. In that job she would go upstairs to the assigned tier, count every detainee, make sure they are there and in the proper cell. She then would go back down the stairs to the lower tier, count every detainee and make sure they are in their proper cell. She would check the day room and check under the tables. She would check the bathroom and check under the stalls to make sure everything is where it is supposed to be. She would go up to the closet to count brooms squeegees and make sure all equipment is there. She would check the phones, computers, and radios to make sure they are operating.

If a detainee was going to court or to the hospital clinic, she would have to go to the cell of that detainee, unlock the door, search the detainee, and allow them to come out before the rest of the detainees are allowed to come out to take their showers. She takes them to their showers and returns them to their cells to put their shower equipment back.

She notifies an officer that the detainees being taken to court or to Fantus clinic are ready. The officer comes in, the detainees are searched and handcuffed. The officer takes the detainees downstairs. After this the remaining detainees on the top tier come out of their cells. She searches the cell and brings out the trash from the cell. She does that for each of the cells for each of the detainees making sure to search under the beds. A nurse comes to administer medications. She repeats this process cell by cell. When social workers come in, she has to go to the cell of the detainee to bring the detainee out to the social worker.

Petitioner has to physically check, every 30 minutes, cells on both tiers. On an ordinary day she goes up and down the stairs at least 20 times. She works 8 hours a day, sometimes 16 hours a day. She is on her feet from the time she gets there at least until 1:30 PM. During the course of her 8-hour day she would sit at the desk a total of 2 hours. If an inmate acts up, it is her responsibility to control the situation. If the detainee gets physical with any civilian staff, she has to call over the radio for backup help and handcuff the detainee until proper backup arrives. If there is a need to respond to a detainee acting up, she would have to run and move as fast as she could to get there. That occurs 2 or 3 times a week.

Petitioner's prior medical condition

Prior to June 20, 2020, Petitioner was able to perform all these jobs without any problem to her right knee. She did have medical treatment for her right knee prior to June 20, 2020. She had an injection performed by Dr. Wardell on March 13, 2020, with a diagnosis of moderate to severe arthritis of the right and left knee. After she got the injection from Dr. Wardell on March 13, 2020, she was able to do all the duties which she described in her job prior to the incident on June 20, 2020.

Work Accident: June 20, 2020

On June 20, 2020, she was assigned to tier 1a. She did her security counts check. She did her searches of bathrooms, the day room and she got her court and hospital and clinic detainees out of their cells to be taken to court or to clinic. She then went to the computer, was sitting at the computer, and putting everything she had done into the computer. As she was doing that, a mouse ran across her foot and it scared her and she jumped. She got on the radio and called the Sergeant. She advised the Sergeant that a mouse just ran across her foot. She continued to do the computer work and felt something on her knee. She looked down and she saw a mouse and she pushed it and it fell back. She called the sergeant and was reassigned. Her knee was burning. She asked if she could go to the bathroom, and she was allowed to do that. In the bathroom she pulled her pants down and she saw that her knee was swollen, and she had a mark on her knee. She thought she had been bitten by the mouse. She told the Sergeant, and she went to the emergency room. She filled out a duty-injury report. She went to the University of Chicago. She drove her car to the University of Chicago.

Medical Treatment per Petitioner Testimony

At the University of Chicago, she gave description of what happened. She showed the personnel at the University of Chicago where she had been bitten. The area was on the right knee. It was swollen and red. When she woke up that morning before she went to work, she did not have any problem with the right knee, no swelling or redness.

She was instructed by the doctor in the emergency room to keep her leg elevated for the next 2 days. She followed the doctor's instructions. She tried to return to work but she was unable to do that because the pain in the knee never resolved. She did not return to work. She sought treatment from PCP Dr. Amin on July 16, 2020. Dr. Amin referred her to Dr. Wardell whom she had seen previously for both her right and left knees prior to June 20, 2020. Petitioner testified that Dr. Wardell recommended a knee surgery which was not authorized by respondent. T 37. The surgery was performed by Dr. Wardell on her right knee on December 28, 2020. After that surgery she followed with Dr. Wardell. Her symptoms improved and resolved so that she was able to return to work light duty as of February 23, 2021, with no kneeling, no stairs. T 40. She was off work from the day after the accident up until that one day when she returned to work at the direction of Dr. Wardell. T 41. Petitioner returned to work full duty without restrictions on August 27, 2021.

Petitioner's Current Condition

She has continued to perform her full job duties that she had at the time of the accident. T 42. She is able to perform the same tasks she was able to do prior to the date of the accident. She does things more carefully now, a little bit slower. She does not do any kneeling. She performs all her activities at home just doing those activities slower. T 43. She is not taking any prescription medication for her right knee. T 44. When she has had a call for all available personnel and had to respond quickly to run up the stairs, she twisted her right knee and for a couple of days and she took Tylenol and it was okay. T 45. She has not injured her right knee in any accident from the date of her work injury on June 20, 2020 to the time of hearing. She had pre-existing conditions of both right and left knees prior to June 20, 2020. She continued to have tightness in her left knee throughout the period she was treating with Dr. Wardell for the work injury to her right knee. The pain in the right knee was different from the pain in the left knee. Petitioner testified the right knee had pain and the left knee had just tightness. T 46.

Cross Examination of Petitioner

On cross-examination petitioner testified when she saw Dr. Wardell on March 4, 2020, she had pain in both the left and right knee. She had an injection at that point into her left knee. In October 2018 she also slipped and fell in the shower at the job. She hurt her right knee, right shoulder, back and right ankle. She recovered from her right knee injury and everything else. Those all resolved before June 20, 2020. Before the work accident of June 20, 2020, she received injections in both her right and left knee. She knew she had arthritis in both knees. On March 11, 2020, she had an injection in her left knee. On March 13, 2020, she had injection into her right knee.

Regarding the work incident, at first she thought she got bit by a mouse. T 52. At the time of the accident, she was in a bubble which is a small room. She was sitting at a desk. She saw a rodent that came across her shoe. She reacted and she tried to give it a quick kick or shoo it away. She called Sergeant Day. T 53. About 10 minutes or less later she was at the computer typing and she saw a rodent on her knee, reacted and went backwards. T 54.

Petitioner testified she felt something on her knee. She scooted back just a little, it was a mouse. She brushed it off with her right hand, kicked up her right knee and leg. The table jimmied up or tumbled, she went back, composed herself, and ran out and started calling Sgt. Day over the radio. She brushed the rodent off with her right hand.

Her knee went up on the desk, jumbling everything on the desk. She went back, she composed herself and she ran out of the room and called Sgt. Day. She had also called Sgt. Day when it was on her foot. T 55. When she had the reaction to the mouse on her right knee and her right knee hit the desk, she was still in the chair.

Petitioner then went to the University of Chicago at Ingalls to get it checked out. T 56. She had 2 days off work. Those were her regular days off work. She did elevate her leg and went back to work. She tried to work, doing the best that she could. She called Dr. Amin's office and they gave her the date that was available to come in. She took the first availability he had to see her. The University of Chicago told her not to work and elevate her legs for two days. T 58. She continued to work the best she could up until she got that first appointment with Dr. Amin. T 59-60. She was referred to Dr. Wardell by Dr. Amin. She tried to get the first appointment with Dr. Wardell and saw him on July 24, 2020. T 60. She did not work between the time she saw Dr. Amin and the time she saw Dr. Wardell. Dr. Amin took her off work on July 14, 2020. T 61.

Dr. Wardell told her she had a right knee sprain. He returned her to work full duty. After July 24, 2020, she tried to go back to work. She lasted one day. T 62. She called in a duty injury. She made an appointment with Dr. Wardell, and they gave her the next available date. He asked her what was wrong, and she said something was wrong with my right knee, she was having severe pain. She needed crutches to get around or cane. She followed with Dr. Wardell after that. Dr. Wardell took her off work the next visit to him, on August 7, 2020. No doctor took her off work between July 24 and August 7, 2020. T 64. On August 14, 2020, she had another injection into her right knee from Dr. Wardell. Up to that point she had no MRIs of the right knee by Dr. Wardell. T 65. When she was seen by Dr. Amin, he took a blood test and indicated everything was okay with her blood. Dr. Amin referred her to an orthopedic physician.

Initially petitioner thought she had been bitten by a rodent. She had swelling and redness on her knee so that is what she initially thought. T 66. At hearing she testified she did not know whether she had been bitten by a rodent. T 67. She was having a lot of trouble ambulating up to that point after August 7, 2020, and she was off work and needed crutches and had to hold onto the wall. T 67. On September 4, 2020, she was still using crutches to move around and she felt that there had been some improvement in her right knee, which she reported to Dr. Wardell. Petitioner testified she did not remember because it's been 4 years and she agreed with whatever the records reflect. T 68.

Petitioner testified she did not return to light duty before her surgery. She never worked with crutches. T 69. Petitioner at the IME examination told Dr. Shadid that she was fine before June 20, 2020, injury. She agreed that she did have prior problems with the right knee. T 70-71. Petitioner was not sure of the time frame that she was able to work after the injury. T 71-72. Petitioner followed Dr. Wardell's recommendation to lose weight and after the surgery and she lost 12 pounds. She started to feel better after the physical therapy. She lost additional weight almost 20 pounds on office visit of February 23, 2021. T 73.

Dr. Wardell returned her to work with restrictions of no stairs, no kneeling. When she returned to work on June 23, 2021 she went back to work light duty and she was paid. She continued to work light duty through August 27, 2021. At that point she received a full duty release to return to work. She was pleased that she was doing extremely well. T 74. She felt the surgery was a success. She was doing much, much better. On August 27, 2021, her pain level was 1/10. At that point she lost 30 pounds since her right knee arthroscopy eight months prior. She has not seen Dr. Wardell since August 27, 2021. She has been working full duty since August 27, 2021. T 76.

No other witnesses were called by Petitioner.
Respondent called no witnesses to testify at hearing.

Exhibits

Employee's Accident Report, Supervisor's Investigation Report, Cook County Sheriff's Office Incident Report dated 6/20/2024 admitted in evidence as Petitioner Exhibit 1. The Employee's Accident Report reflects description of accident: 0825 HR a mouse jumped on my right leg/knee, causing me to jump up injuring my right knee (possible bite). Document reflects Kimyata Gray was sitting at a desk at the time of the accident. PX 1, p1- 2. The Cook County Sheriff's Office Bureau of Information and Technology Incident Report reflects Statement Of Facts Narrative: on 20/6/2020 Sgt. Day was assigned to division 6-1st floor. At approximately 8:30 AM, officer number 73845 assigned to 1A stated via phone and in-person that there was a hole in the corner of the right hand side on the floor under her computer desk. Ofc. 738454 stated that a rodent came out of the hole and ran across her foot. Ofc. 738454 later stated that she believed the rodent (mice) bit her in her right knee. R/S Day inspected the interlock and the floor was dry; small hole was visible. R/S notified Lieut. Gonzales. Ofc. 738454 was given a duty injury packet. PX 1, p 1. That document reflects assessment: in summary R/O Gonzales was notified by Sgt. Day of the above incident on tier 1 a of division 6. No video available to review due to taking place in the officers interlock. R/L spoke with officer 738454 and stated a mouse ran across her foot and might have bitten her on her right leg. R/LS officer 738454 to go to be seen by medical staff and Cermak ER. Ofc. 738454 refused and said she wanted to go to Urgent Care. Ofc. 738454 completed an IOD packet and drove to Urgent Care at the University of Chicago to be seen by medical staff. Sanitation officer Mitchell notified pest control and a work order request was submitted for rodent traps. Superintendent Walsh notified by phone. PX 1, p 6.

The Arbitrator notes Petitioner Exhibit 7 is a list of bills of Parkview Orthopedic and ATI paid by Petitioner's group insurance, which was admitted into evidence.

Summary of Medical Records & Treatment

Medical records of University of Chicago Medicine Urgent Care for treatment date of 6/20/2020 were admitted in evidence as petitioner Exhibit 2. These documents reflect the following. HPI: patient states she felt something on her leg earlier today while she was at work, and she slapped away and then saw a mouse run across work; patient states she has a bite mark on her right knee. Patient presents with no open skin, no redness and or mark on knee. ROS: integumentary area on right knee to the right of patella that is red. PX 2, p 21.

Exam details the following: Skin Details Integrity erythema dime size area lateral side of patella and when gently palpating can feel a linear swollen area; no broken skin; pedal pulses and cap refill wnl .. ED course: stable, held off on tetanus shot since patient did not have broken skin; per up-to-date prophylactics antibiotic 3 to 5 days is recommended near any large joint; since this was next to her right knee and since there was no broken skin three days of Augmentin was prescribed; Worker's Comp. paperwork completed. PX 2, p 21-22. Diagnosis was: animal bite. PX 2, p 27.

Medical records of PCP, Dr. P Amin MD, were admitted in evidence as Petitioner Exhibit 3. These records document on 5/4/20, prior to the date of the work accident, petitioner was examined by Dr. Amin with no documentation of any complaint with regard to the right knee. PX 3, p 1-2. On 7/16/20 these records document examination by Dr. P Amin, noting: follow-up from ER; 6/20/20 patient was bit by a mouse at work right knee; went to ER at University of Chicago; RX Augmentin and tetanus shot; complaining of burning and tingling locally... No bleeding or open wound; area was red and puffy... PX 3, p3-4. On 7/21/20 Dr. P Amin notes document: follow-up; status post by rat/mouse... Still pain right knee at location of bite; sharp in character; radiates down to all toes... Uses ice pack at night and Tylenol; needs note to return to work off since 7/14/20; history of fall 10/2018 knee injury right was off work 10/2018 to 2/2019... Right knee pain secondary bite rat/mouse... PX 3, p5-6.

Medical records of Parkview Orthopedic/Steven R Wardell, MD, were admitted in evidence as Petitioner Exhibit 4. These records document the following. On 7/24/20, Parkview Orthopedic Group/Steven R Wardell MD, 50-year-old female referred by Dr. P. Amin, works as a correctional officer for the Cook County jail. Reportedly at her desk on 6/20/2020, mouse climbed up her leg and bit anterior medial aspect of her knee. She subsequently went to the ER at the University of Chicago hospital and was given both intramuscular and oral antibiotics. When her bite wound occurred, she jumped and injured her knee, which has continued to cause pain with range of motion, weight bearing and at rest. She states she continued to work up until 7/14/20, however, she has had difficulty with weight bearing, having to hold onto multiple walls and desks etc. for mobilization. She was evaluated by her primary care physician recently and is referred to our office for further evaluation. She states her right knee was doing very well prior to this rodent bite wound on 6/20/2020. She had no significant pain in her knee. She has been treated in the past for severe osteoarthritis and completed the right knee viscosupplementation injection on 3/13/2020. She has had no fever or chills. She states her wound is healed without sequela or infection with the University of Chicago treatment. Physical exam: height is 5'9" weight is 280 pounds. Right knee demonstrates evidence of severe tenderness over the interior medial aspect of the knee. She has tenderness over the pes anserine tendons, no evidence of wound, no evidence of a significant effusion. She has normal tracking of the patella and no evidence of instability. She has no pain with range of motion of her right hip. She demonstrates mild crepitation upon range of motion. Diagnostic tests: bilateral AP weight bearing, lateral view notch view and skyline views of the right knee demonstrate evidence of severe osteoarthritis with bone-on-bone medial aspect. There is associated varus positioning. Diagnosis: 1. Right knee strain. 2 status post rodent bite right anterior knee. 3. History of chronic severe osteoarthritis of the right knee. 4. Obesity. Recommendations. It is recommended the patient be placed on Voltaren. She has currently been on Motrin has not been helping her symptoms completely.

I feel her symptoms are most likely consistent with an aggravation of her pre-existing severe osteoarthritis of the right knee, be it permanent or temporary. Concerning work, I feel she may return back to work full duty. However, the rodent infestation would need to be corrected prior to releasing the employee back to environment where she may get bit, especially from an OSHA regulation standpoint, I believe. If her symptoms do not improve, viscosupplementation would need to be recommended to see if we can return her back to her preinjury status. PX 4, p 60-61.

On 8/7/2020 Parkview Orthopedic Group/Steven R Wardell, MD. Patient presents for follow-up. Patient is noted to have severe pain and tenderness of the right knee which has been slow to improve. She was last seen several weeks ago, and she states she is unable to go back to work. She requires the use of a cane. She presents with a case manager from Custom Case Management, Tammy Badger, RN. Patient feels like she needs a brace. She also stated emphatically that she had no significant symptoms prior to her work-related injury that occurred on 6/20/2020 when she was startled and jumped after being bit by rodent at her place of employment. She stated she had no fever or chills. She states she has had no wounds or infections. She states oral anti-inflammatories have helped her somewhat Voltaren po. Physical exam: right knee demonstrates minimal swelling, normal neurovascular exam, she demonstrates crepitation upon range of motion, there is no evidence of skin violation or wound or evidence of previous rodent bite. Diagnosis: right knee strain; severe osteoarthritis right knee, chronic; status post rodent bite right anterior knee; obesity. Recommendations: recommend patient undergo Gelsyn viscosupplementation injections since this has worked well for her in the past. She may continue with Voltaren. A hinged neoprene open patellar brace is also recommended for her right knee. Prescription was given. She will remain off work at this time. PX 4, p 58-59.

On 8/14/2020 Parkview Orthopedic Group/Steven R Wardell, MD. The injections have reportedly been approved. She has been utilizing oral anti-inflammatories, Voltaren, which she is running out of. She continues to require the use of crutches. Physical exam right knee unchanged. Diagnoses right knee strain, severe chronic osteoarthritis right knee, obesity, status post rodent bite anterior knee. Recommendations: recommend right knee Jolson 3 intra-articular injection prefilled syringe. This was performed aseptically. Patient tolerated procedure well. Return in one week for the second injection. PX 4, p 56-57.

On 8/21/2020 Parkview Orthopedic Group/Steven R Wardell, MD. Patient presents for follow-up. She is noted to have continued pain of the right knee which has required crutches. She states a brace that was given to her through work was mailed to her. Does not fit her. They based her sizing on BMI. Physical exam right knee unchanged. Diagnoses unchanged. Recommendations: recommend patient undergo right knee Jolson-3 intra-articular injection prefilled 3. This was performed aseptically. Recommend she be fitted appropriately for a supportive brace, a hinged neoprene patellar brace rather than an off-the-shelf model which does not fit her based upon her BMI. Given the large diameter of her thigh, appropriate measures and possibly even custom bracing may be needed. She's going to discuss this further with her case manager and it is hopeful next week she will be able to return back to work full duty. I do not feel any surgical intervention is warranted at this point. PX 4, p 54-55.

On 8/28/2020 Parkview Orthopedic Group/Steven R Wardell, MD. patient presents for follow-up. She states 5% improvement in her right knee since starting the injection of lubricant. She had no fever or chills. She has been ambulatory and continues to have to use crutches. Physical exam right knee unchanged. Diagnoses unchanged. Recommendations recommend the patient undergo right knee Jolson 3 intra-articular injection prefilled syringe injection number 3. Performed aseptically. Return to clinic in one week. Start patient PT 3 times a week for 3 weeks. RX off work. She is still awaiting appropriately sized fitted brace through worker's comp carrier. PX 4, p 52-53.

On 9/4/2020 Parkview Orthopedic Group/Steven R Wardell, MD. patient presents for follow-up. The patient still has not had her brace fitted as she is waiting on a brace company and also is due to start physical therapy neck 3. She states approximately 20% improvement thus far and continues to have to use crutches for ambulation. Physical exam unchanged. Diagnosis unchanged. Recommendations: recommend patient start physical therapy which was ordered 3 times a week for 3 weeks. Given that she has to use crutches, we will most likely keep her off at this point unless sedentary work is available. That would mean she would need to use crutches in one. She would primarily be at a desk with no prolonged standing, no walking more than 10 feet at any time and no kneeling squatting ladder climbing or lifting more than approximately 10 pounds. PX 4, p 50-51.

On 9/9/2020 through 9/28/20. Parkview Orthopedic Group/Physical Therapy. PT evaluation. Patient reports being at work on the computer when she felt something on her leg on June 20. She lifted her leg and it rammed her leg into the desk. She had increased pain and went to the ER. She was given meds after they determined that she was bitten by a mouse. Her knee continued to bother her and never had pain relief. She followed up the MD in July and was taken off work two weeks and given meds. She did not have any improvement. She then had gel injections (3) which had been helpful as well as recommended PT. She has been ambulating with bilateral crutches due to pain. She feels her meds have been helpful. She works as a corrections officer. She has a history of arthritis and had a steroid shot prior to the mouse biting her. Her goals are to be back to her previous functional status. She has 5 stairs to enter her home and has not been able to work since August 7. Physical therapy administered. PX 4, p 44-49 and PX 4, p 21-43.

On 9/10/20 Parkview Orthopedic Group/Physical Therapy. Patient states the pain is 8/10 on the pain scale. She patient states he continues to take anti-inflammatory. Patient states she uses crutches more for outside ambulation. PX 4, p 41-43. On 9/14/20 Parkview Orthopedic Group/Physical Therapy. Patient reports she had a really hard time with her stairs at home this weekend and needed help from her family to get back up after doing laundry. PX 4, p 38-40.

On 9/16/20 Parkview Orthopedic Group/Physical Therapy. Patients reports she was a little sore after her last visit, but she was able to go up the stairs leading with her left and going up and down sideways. PX 4, p 36-37. On 9/18/20 Parkview Orthopedic Group/Physical Therapy. Patient reports she is still having moderate pain at night limiting her ability to sleep without disruption. She was sore from attempting the steps last visit. PX 4, p 34-35. On 9/21/20 Parkview Orthopedic Group/Physical Therapy. Patient states she feels her progress continues to be slow and she wants to get back to activities like riding her bike. She feels she cannot ambulate with the use of the crunch. PX 4, p 31-33. On 9/23/20 Parkview Orthopedic Group/Physical Therapy.

Patient states the pain is the same. Patient states she always ices after therapy due to pain. PX 4, p 28-30. On 9/25/2020 Parkview Orthopedic Group/Physical Therapy. Patient reports PT has been helpful in the sense that her pain is decreased. She utilizes the ice and ex which seems to help. She feels her career is over as she feels she cannot function. She requires the crutch for ambulation and cannot tolerate stairs. She states her job is physical and requires a lot of stairs and walking. PX 4, p 24-27. On 9/28/2020 Parkview Orthopedic Group/Physical Therapy. Patient states she fell on stairs and hit her head and wants to use both crutches because she feels more stable. PX 4, p 21-23.

On 10/2/2020 Parkview Orthopedic Group /Steven R Wardell, MD. Follow-up and evaluation of her right knee. She is noted to have continued significant difficulties within her right knee. She states her knee feels the same. She needs a single crutch continued to walk. She's only had 20% improvement which is similar to her previous visit. Her pain is noted to be 8/10 in nature. She states her pain is not improved since her injury on 6/20/2020 for which she was startled and bit by rodent and subsequently overturned desk injuring her right knee. She has not been released back to work light duty. She has been in physical therapy for which she's had limited improvement. Patient also wishes to receive a handicap sticker for parking. Physical exam right knee patient demonstrates evidence of minimal effusion, severe tenderness over anteromedial joint line. She demonstrates positive McMurray sign. Normal neurovascular exam. There is noted to be pseudo-laxity of the MCL. She has tenderness over the medial joint line with the palpation. X-rays previous he demonstrates severe osteoarthritis of the right knee over the medial compartment. Diagnoses: right knee pain, probable medial meniscus tear right knee, severe osteoarthritis right knee. Recommendations: given the patient's failure to improve with conservative treatment thus far in addition to time we would include 3 months of conservative care. It is recommended she undergo MRI of the right knee. We will see and outpatient physical therapy currently. Voltaren refill given. Handicap placement card filled. Recommend should remain off work at this time. PX 4, p 19-20.

On 10/23/20 Parkview Orthopedic Group/Steven R Wardell MD, she states her knee is unchanged with previous treatments. She has continued to require crutches as a gait assistive aid in addition to suspending physical therapy. She underwent an MRI recently at an outside facility. Reports demonstrate findings as below. Continues to have significant pain within her right knee and states that she had no symptoms concerning her right knee prior to her injury on 6/20/2020. Her pain has been persistent and excruciating, causing significant emotional and physical distress since her injury on this date, and has been assistant despite physical therapy, multiple injections, attempted weight loss, attempted brace usage, and use of gait assistive aids. Physical exam unchanged. Diagnostic test: MRI of the right knee demonstrates evidence of medial and lateral meniscus tear. Patient demonstrates significant advanced grade IV chondromalacia to the medial compartment with a small effusion and Baker cyst. Diagnosis: 1. right knee medial and lateral meniscus tear; 2. right knee grade IV chondromalacia, medial. 3. Morbid obesity. Recommend patient undergo right knee arthroscopy compartment. To be scheduled near future Great Lakes surgical suites. She has not obtained a custom brace from an orthotist that has been arranged through her employer. She may continue to pursue this. However surgical intervention will be recommended at this point as stated above.

As a separate visit patient's case manager Tammy better medical case manager from Custom Case Management was brought in separately with the patient present to review patient's MRI findings and treatment plan, and multiple questions were answered concerning perioperative course. Work status forms were provided. PX 4, p 17-18.

Section 12 Examiner- Dr. Shadid, M.D.

Admitted in evidence as Respondent Exhibit 1 was the report of Hythem P Shadid, MD, Respondent's Section 12 examining physician. On 11/25/20 IME examination report of Hythem P Shadid, MD states the following: examination of Kimyata Gray was made on 11/25/20. History of present illness was documented: Kimyata Gray is a 50-year-old female 18-year veteran safety and security correctional officer for Cook County jail with a reported work injury to her right knee on June 20, 2020. She was sitting at her desk and felt the rodent across her foot and believed that she may have been bitten somewhere over the top of her right knee. She instinctively raised her right leg to get rid of the rodent and hit the top of her distal right thigh (where she pointed) under the desktop. She reported the incident and was sent to a nearby University Chicago hospital urgent care facility where she was given intramuscular and oral antibiotics for a possible rodent bite. She returned to her regular duties until July 14, 2020, when she followed up with her primary care physician, Dr. Amin who took her off work and referred to ortho. On July 24, 2020, she followed up with her previously treated orthopedic surgeon, Dr. Steven Wardell at Parkview Orthopedic, who diagnosed her with a right knee strain while noting her known history of severe right knee osteoarthritis and obesity. Following the work injury, Dr. Wardell provided a series of viscosupplementation injections into the right knee. He also recommended a continuation of physical therapy. Her subjective complaints did not improve, and an MRI was ordered, performed on October 17, 2020, showing medial and lateral meniscus tears and extrusion and grade IV cartilage loss in the medial compartment. Dr. Wardell last recommended a right knee arthroscopy. Relevant past medical history: she has a history of previous injury to her right shoulder and right knee in October 2018 when she slipped in a shower. She completed 6-8 weeks of physical therapy and returned to work light duty. Dr. Wardell also noted that she was treated prior to the work injury on June 20, 2020, for bilateral osteoarthritis and underwent a series of gel injections into her left knee, and 3 cortisone injections into her right knee. Current symptoms: she is currently off work due to pain over the medial aspect of her knee. Today, she rates her pain to be 8/10 and less than 30% of normal function and is taking diclofenac. Medical records were reviewed. Physical examination was performed. Diagnostic testing imaging was reviewed. Meniscus linear T2 hyperintensive signal contacts the medial meniscus posterior horn and body articular surface consistent with a horizontal tear. The body is extruded. Linear T2 hyperintensive signal contacts the lateral meniscus interior horn/body junction. Articular surface consistent with a horizontal tear. Dr. Shadid opined the following: current diagnosis is advanced right knee osteoarthritis. She is now fully recovered from her right lower extremity rodent bite at an unknown location and strain or contusion of her right thigh and or strain to her right knee. Her current complaint is right medial knee pain. The patient's diagnostic studies including MRI from October 17, 2020, and x-rays from today confirmed severe medial compartment right knee osteoarthritis. The objective findings partly support the patient's subjective complaints. There is also some significant evidence of symptom magnification, documented in the report. The patient's current complaints are not related to the alleged work incident of June 20, 2020. The patient's current complaints are related to her pre-existing right knee osteoarthritis. The patient has a known history of prior treatment for her

pre-existing bilateral knee osteoarthritis. There are no objective findings to support an exacerbation of pre-existing condition. She reached baseline status within two weeks of the injury. The patient's treatment to date has not been reasonable or medically necessary for the work-related injury. The patient received a series of Gelsyn viscosupplementation for her pre-existing osteoarthritis, not for the work-related injury. The recommended surgery is not indicated or related to the work injury. The mechanism is inconsistent with medial sided pain. She raised her leg off the ground and was therefore nonweightbearing on the leg when her thigh impacted the underside of the desk. Furthermore, debridement of bone-on-bone arthritis for pain is contraindicated in grade IV cartilage loss. A total knee replacement is the only surgical treatment that could ameliorate her pre-existing osteoarthritis pain, the complication rate is exponentially higher in patients with a BMI over 40. Weight loss is her best option at this time as every pound of weight loss reduces the stress on her knee by four pounds. The patient does not require any further treatment for the work-related injury. The patient can return to unrestricted work at this time for the work-related injury. The patient has reached maximum medical improvement for the work injury. RX 1.*

On 12/2/2020. Parkview Orthopedic Group/Steven RR Wardell MD. She is approximately 5 months status post work-related injury on 6/20/2020. She finally received a custom brace and states she had improved range of motion, but she states it's impossible to walk without the cane. Her pain continues diffusely within her right knee for which she feels unstable with associated instability and giving way. Physical exam right knee: evidence of significant obesity, her brace appears to be fitting well and she demonstrates normal neurovascular exam otherwise grossly. She has severe pain with ambulation and with range of motion. Diagnosis: same. Recommendation: patient undergo right knee arthroscopy. Certainly, right total knee TKA may be needed in the future if symptoms do not improve, but given that she had significant pre-existing severe osteoarthritis of her right knee for which she was reportedly asymptomatic and able to work full duty prior to her injury, I would recommend pursuing right knee arthroscopy to address the medial and lateral meniscus pathology noted on MRI. Certainly, this may not correct her entire problem within her right knee with severe osteoarthritis, and risk send complications were reviewed. Knee arthroscopy is a more minor operation with a fast recovery and return to work. PX 4, p 15-16.

On 12/11/2020 Parkview Orthopedic Group/Steven Wardell MD said she was last seen recently and now presents of her IME which was requested by her insurance. She has had continued pain within her right knee which has been unrelenting. Her injury at work occurred 6 months ago. She's not improved despite conservative treatment. Physical exam: right knee. Exam is otherwise unchanged with evidence of intact brace. Her gait is noted to be moderately antalgic. Diagnoses same. IME was reviewed from an outside facility which was not requested by my service. I would agree that ultimately right knee total knee arthroplasty is the only way to surgically correct this problem which is an extensive operation for patient who is morbidly obese and has been well documented on previous visits. Recommendations: right knee arthroscopy will be recommended at this time. Since she was asymptomatic prior to her injury at work reportedly despite having radiographic evidence of severe osteoarthritis. As reviewed with the patient we would treat the patient not the images. Despite significant radiographic evidence of severe osteoarthritis involving her right knee, right knee arthroscopy would be recommended at this point given her to new symptoms and failure conservative treatment. PX 4, p 13-14.

On 12/28/20 Parkview Orthopedics Group, Great Lakes surgical suites. SURGERY: right knee arthroscopy procedures performed: 1. Highly complex right knee arthroscopy with partial medial and partial lateral meniscectomy; 2. Abrasion of chondroplasty patellofemoral compartment; 3. Subtotal synovectomy of right knee, arthroscopically. 4. Chondroplasty of medial femoral condyle and medial tibial plateau; 5. Intro condyle art notch plasty and lateral inter condyle are notch right knee; 6. Right knee medial and lateral partial meniscectomy with debridement. Postoperative diagnosis: 1 right knee posterior horn medial meniscus tear; 2 grade 4 chondromalacia of medial compartment; 3. Severe super morbid obesity; 4. Intra-articular notch impingement secondary to mild intercondylar notch, ACL impingement secondary to lateral notch osteophyte; 5. Lateral meniscus tear right knee; 6 grade 3 to 4 chondromalacia of patellofemoral compartments. PX 4, p 162-164.

The Arbitrator notes that the following office visit note appears to be wrong in the description of the knee (left knee) and wrong in the description of the surgery (total left knee arthroplasty). This was made by the PA: "12/30/20 Parkview Orthopedic Group Steven R Wardell MD/Allison Coenen, PA. Status post left total knee arthroplasty. Patient presents today to days postop after her first postoperative appointment following a left total knee arthroplasty done by Dr. Wardell and myself on 12/28/20. PX 4, p 11-12." See subsequent note by Dr. Wardell describes a right knee arthroscopy. In his deposition, Dr. Wardell testified that the description in the note of 12/30/20 is in error in describing the surgery that was performed as being a left total knee arthroplasty.

On 1/5/21 ATI Physical Therapy: initial evaluation 50-year-old female presents to physical therapy consistent with arthroscopic debridement lateral meniscus arthroscopic debridement medial meniscus.

On 1/8/21 Parkview Orthopedic Group Allison Coenen, PA. She's doing very well. Happy with her progress reporting 75% improvement in her pain and symptoms in comparison to preoperative symptoms. Ambulating much better utilizing a cane as the gait-assistive aid and is hoping she can get off the cane next week with physical therapy. Assessment doing well. Plan: continue current protocols outpatient physical therapy range of motion gait instability. Refill Norco for continued pain management. Reducing the dose and reducing the frequency. PX 4, p 10.

On 1/22/21 ATI Physical Therapy documents: has made objective improvements with range of motion strength balance as well as shown improvements in gait.

On 1/29/21 Parkview Orthopedic Group/Steven R Wardell MD patient is approximately 4 weeks postop status post right knee arthroscopy. She is doing very well and is very happy with her progress. She has had 19 pounds of weight loss since her operation. Her work-related injury stems back from June 2020. She wishes to have a refill of rent and inflammatory. Physical examination wounds are well healed. Diagnosis status post right knee arthroscopy. Recommendations operative findings and been reviewed with the patient which will shoot for return-to-work date on 2/15/2020. PX 4, p 9.

On 2/19/21 Parkview Orthopedic Group/Steven R Wardell MD. Status post right knee arthroscopy. She is approximately 7 weeks postop. She's doing extremely well. She is very happy with her progress. She has no pain. She is ambulatory without any gait-assistive aids. Physical examination demonstrates wounds are well healed. She has had approximately 12 pounds of further weight loss reportedly. She has been active and wishes to return back to work at this point. Physical examination stars well-healed demonstrates pain with range of motion with normal gait. Diagnosis: status post right knee arthroscopy. Morbid obesity. Recommendations: patient is congratulated on her weight loss. She will continue with physical therapy 3 times a week for another 2 to 3 weeks. She may return back to work full duty as of 2/23/21 with restrictions of no kneeling and no stairs by her request. It was recommended she return to my clinic in approximately 6 weeks. PX 4, p 8.

On 4/2/2021. Parkview Orthopedic Group/Steven R Wardell MD. She is approximately 13 weeks postop. She's doing very well. She has been able to return back to work. She has no pain today. She is ambulatory without any gait-assistive aids. She has finished off and completed physical therapy at a facility near her home. Unfortunately, we have received no notes from ATI in South Holland despite several phone calls in the past, but it appears that she is doing very well for care and treatment. Patient is able to sleep. She has continued to be on diclofenac 1 to 2 times a day. Physical exam right knee gait is normal. Recommendations: patient formally discontinue formal physical therapy. A refill of diclofenac was given. May continue with work light duty with no kneeling, no stairs and no crawling. Her job description was reviewed, which was provided to us in the office today. Patient will return to clinic in approximately 4 weeks. PX 4, p 7.

On 6/11/21 Parkview Orthopedic Group/ Steven R Wardell MD. 5 ½ months postop. She has been able to continue with light duty work without much difficulty with restrictions of no kneeling, no stairs no crawling. She has been doing a home exercise program. Formal physical therapy has been discontinued. No therapy notes have been sent to our office from ATI in the past, unfortunately. She is continuing to use diclofenac occasionally. She states her pain within the right knee is well controlled and fairly minimal at this point. She was congratulated on her 23-pound weight loss. Physical exam right knee no pain minimal crepitation with range of motion. Diagnosis status post right knee arthroscopy. Recommendations: continue with exercise program; continue most likely with a permanent restriction of no kneeling, no stairs no crawling Worker's Comp. reportedly has declined their participation in her care, prescription for diclofenac was given. She will follow-up in my office on an otherwise as-needed basis. PX 4, p 5.

On 8/27/21 Parkview Orthopedic Group/Steven R Wardell MD. Approximately 8 months postop status right knee arthroscopy. She's doing extremely well. She states her pain is barely 1/10 occasionally. She wishes to return back to work full duty without restrictions at this point. She has been utilizing Voltaren twice a day. She has been happy with her result. She has been able to do more stairs. She has had a 29-pound weight loss since prior to her surgery. Physical exam: 5'9" weighs 298 pounds. Patient body mass index 44.01 kg/m². Patient's right knee demonstrates healed arthroscopy scar. No effusion. She has no pain. She is able to squat. Gait is normal. Neurovascular exam is normal. No significant peripheral edema. Patient's range of motion is 0° to 120° of flexion. Diagnoses: status post right knee arthroscopy, history of osteoarthritis right knee, morbid obesity. Recommendation: she was congratulated on weight loss.

She is amazingly doing very well 8 months after knee arthroscopy. She wishes to return back to work full duty and was released without restriction. She will follow-up in my office on an otherwise as-needed basis. Weight loss was continued to be recommended with increase in activity. Patient has been extremely happy with her result status post arthroscopy after work-related injury with surgery being performed on 12/28/20. PX 4, p 4.

Testimony of Dr. Wardell- Treating Surgeon

On 12/9/2022 evidence deposition of Steven R Wardell, MD. was taken. The transcript of the evidence deposition was admitted in evidence as Petitioner Exhibit 6. Dr. Wardell is a physician licensed to practice medicine in Illinois. He practices orthopedic surgery with the Parkview Orthopedic Group. He is board-certified by the American Academy of Orthopedic Surgeons. He specializes in adult hip and knee reconstruction. Dr. Wardell testified that petitioner had been a patient at Parkview Orthopedics getting injections into both the right and left knee before March 4 of 2020. Dr. Wardell first saw the patient on March 4, 2020, at which time he had administered an injection into her left knee. The condition that was being treated by a series of right and left knee injections was moderate to severe osteoarthritis of both her knees. She had an injection on the right knee on March 6, 2020, by Dr. Wardell physician's assistant. An injection into the left knee was administered on March 11, 2020, and another left knee injection was administered on March 13, 2020. Her next visit to Parkview Orthopedic was on July 24, 2020. Her chief complaint on July 24, 2020, was right knee pain that she experienced after sustaining an injury at work. Dr. Wardell testified petitioner gave history of the incident as documented in his medical note of July 14, 2020. Physical examination was performed and x-rays were performed of both right and left knee. The x-ray imaging would not be diagnostic of a tear of the medial or lateral meniscus. Dr. Wardell diagnosis was right knee strain, status post rodent bite right anterior knee, history of chronic severe osteoarthritis of the right knee, obesity. Treatment with anti-inflammatory medication was ordered and she was ordered to return back to work full duty. If the conservative management did not resolve her ongoing complaints Dr. Wardell considered viscosupplementation injections as a possible treatment because they had helped in the past.

At the time of his examination Dr. Wardell was not entertaining any thought that she had a torn meniscus because he did not have any imaging studies performed up to this date which would demonstrate meniscus tears. Dr. Wardell testified at this point in her treatment he thought she might have either a temporary or permanent aggravation of her pre-existing osteoarthritis. On her next visit on August 7, 2020, was noted she continued to have right knee pain severe pain and tenderness within the knee which was slow to improve despite recommendations. She stated she was unable to go back to work and required the use of a cane. She told him that she needed a brace and stated that she had no symptoms with her right knee prior to her work-related injury and prior to being startled and jumping after being bitten by a rodent at her place of employment. No diagnostic imaging had been performed. Dr. Wardell's diagnosis remained the same. Dr. Wardell testified he ordered injections for the right knee but had to await approval by the Worker's Comp. case manager who accompanied her to the appointment. The first injection of the series was performed on August 14, 2020. Dr. Wardell's thought process was that this was an aggravation of the pre-existing osteoarthritis and he had not entertained that there was a medial meniscus tear. Up to this point there had been no diagnostic imaging test which could demonstrate whether or not there was a meniscus tear. A brace was subsequently provided to petitioner for the right knee.

She continued to complain of right knee pain on 8/28/20. Injections had been administered into the right knee. On September 4, 2020, after the 3rd right knee injection she continued to have right knee pain. She said she had only 20% improvement and had to use crutches for ambulation. Recommendation was made for physical therapy to start and work restrictions were ordered no walking more than 8 to 10 feet at any one time, no kneeling, no squatting, no ladder climbing, and no lifting greater than 10 pounds.

Dr. Wardell testified that on October 2, 2020, his thoughts were that if this is an aggravation, be it permanent or hopefully temporary, that the viscosupplementation injections would be able to return her back to her preinjury status by themselves, hopefully. Because they did not and they were minimally beneficial, he tried to seek out other reasons for continued pain. Not only for meniscal pathology but also for bone contusions, stress fractures, or other occult injuries that we could not pick up on just plain radiographs; that's why ultimately the recommendation is in this visit was to proceed with an MRI of her right knee to make sure were not missing anything that's responsible for her continued pain just by maximizing conservative treatment. PX 6, p 30-31. He continued off duty work order. He saw her on October 23, 2020, she continued to have the right knee pain. She stated her symptoms were consistent and excruciating and causing significant emotional and physical distress since the injury and despite physical therapy and injections, it has not improved. The MRI performed at an Advocate facility demonstrated evidence of a horizontal tear with extrusion of the medial meniscus body and posterior horn. It demonstrated evidence of a horizontal tear of the lateral meniscus within the interior horn and body. It demonstrated moderate to advanced osteoarthritis of the lateral compartment with grade IV chondromalacia, changes along with subchondral reactive change, and it demonstrated evidence of mild osteoarthritis of the lateral and patellofemoral compartments. Dr. Wardell testified looking at the report he opined that the report is probably wrong because it is the medial compartment where it is damaged not the lateral compartment. PX 6, p 33. With that information his diagnosis on October 23, 2020, was right knee medial and lateral meniscus tears, right knee grade IV chondromalacia of the medial compartment, morbid obesity. His recommendation was right knee arthroscopy. The arthroscopy was to address the medial and lateral meniscus tears, specifically the medial meniscus tear that had been causing mechanical symptoms, certainly substantially adding to her symptoms complex and also preventing conservative treatment options that were rendered to her from working. PX 6, p 34-35. The arthroscopy was recommended as a bridge and that ultimately, total knee replacement would potentially be required if nothing else was helping her, which at age 50 it is not unheard of, but generally, there's no turning back once a procedure such as that is done and, with her other comorbidities, would be met with a much higher risk profile, and I felt that doing less with more would be appropriate to see how she would do and respond to an arthroscopy, especially since she responded for quite a while after receiving the viscosupplementation prior to her injury, despite having radiographs showing severe osteoarthritis. PX 6, p 35.

In examination made on December 2, 2022, continued to have right knee pain, she was 5 months status post her injury at work that occurred in June, she did receive a custom brace but she states it's impossible to walk without her pain. Her pain was diffuse within the right knee, she felt unstable and with associated instability felt like her knee would give way.

Dr. Wardell noted that he did not think the right knee arthroscopy would completely correct the entire problem or issues within her right knee, given her known history of severe osteoarthritis, that knee arthroscopy is a much more minor outpatient procedure with a fast recovery and return to work, that the patient would notify our office once she receives insurance clearance. PX 6, p 37-38. Dr. Wardell noted that he continued to recommend right knee arthroscopy after reviewing the IME. She was asymptomatic prior to her injury despite having radiographic evidence of severe osteoarthritis, so just because you have severe destructive arthritis of the joint, it doesn't necessarily mean you are automatically symptomatic. She was reportedly able to work full duty without symptoms with previous treatment prior to this injury, and given her other comorbidities with associated morbid obesity at a younger age, that total knee arthroscopy could be an option in the future even with a knee arthroscopy, but he was trying to address the mechanical symptoms and findings that the MRI and physical exam supported so with her failure of conservative treatment over the past 6 months he was recommending she undergo right knee arthroscopy. PX 6, p 41.

Dr. Wardell performed surgery arthroscopically on petitioner on 12/20/20 which included complex right knee arthroscopy with partial medial and partial lateral meniscectomy; abrasion chondroplasty patellofemoral compartment; subtotal synovectomy of the right knee arthroscopically; chondroplasty of the medial femoral condyle and medial tibial plateau; intracondylar notchplasty and lateral intracondylar notch right knee; right knee medial and lateral partial meniscectomy and debridement. Dr. Wardell opined after performing that surgery and with all the other information he had at that time it was his opinion, within a reasonable degree of orthopedic and medical certainty, that the cause of the right knee medial meniscus tear and the right knee lateral meniscus tear that he diagnosed and treated through this surgery was that the mechanical medial and lateral meniscus tears, removed arthroscopically, would address her symptoms and most likely could have been caused by her injury that occurred in June 2020. PX 6, p 43-44. The basis of that opinion was that she was experiencing mechanical symptoms of giving way and instability within her right knee since the date of her injury, essentially, and he was trying to address that arthroscopically to see if he could remove that impingement that mechanical impingement of tissue that could be responsible for her symptoms. The fact that she did not have severe symptoms prior to June 20, 2020, accident that played a role in his thought process as to whether or not the incident gave rise to and was the cause of or contributing cause to her symptomology that he observed, diagnosed, treated, and addressed in the surgery. PX 6, p 44-45. The principal reason that Dr. Wardell performed the surgery of December 28, 2020, was to treat the right lateral meniscus but also to diagnostically assess the interior of the knee, whether or not there's other issues that could be responsible for her symptoms. An MRI is not a perfect study, neither is an x-ray. The MRI is a tool to help guide. Because of the failure of conservative treatment and for the other reasons stated, he was recommending knee arthroscopy to be able to address a medial meniscus tear or a lateral meniscus tear by itself. He knew there were other issues inside the knee, both radiographically and on MRI, and those other issues may certainly cause continued pain despite an arthroscopy. He was trying to sort the situation out, given that all the other treatment options weren't of benefit to her. Dr. Wardell noted that the next note on December 30, 2020, in his records prepared by his physician's assistant indicates a status post left knee arthroscopy is a mistake in documentation. PX 6, p 46-47.

On January 8, 2021, Dr. Wardell's office notes document that she was doing very well and happy with her progress and was 75% improved with her pain compared to her preoperative symptoms. Physical therapy was ordered. Dr. Wardell order on 2/19/2021 was: may return to work 2/23/21 no stairs, no kneeling until 3/28/21. On April 2, 2021, she was noted to be doing very well and had been able to return back to work. She had no pain as of this visit. She is ambulatory without any gait assistive aids. She has finished and completed physical therapy at a facility near her home. She was able to sleep. She was continued on diclofenac. PX 6, p 54.

On August 27, 2021, Dr. Wardell noted that she is 8 months after surgery doing extremely well, pain is barely one over 10 occasionally and she wishes to return to work without any restrictions. She was happy with the results. She was able to do stairs. Her diagnosis was status post right knee arthroscopy, history of osteoarthritis right knee, morbid obesity. She was released to return to work full duty without restrictions and follow-up with Dr. Wardell as needed. PX 6, p 58.

Dr. Wardell opined that based upon the treatment that he provided to her and all the medical records and information he had as of the date of his deposition, it was his opinion that the symptoms he was treating her for and for which he did that surgery were caused by the work accident of June 20, 2020. PX 6, p 59. Dr. Wardell testified that it was his opinion that the reaction to the mouse bite and her movement in that reaction is what caused the injury. PX 6, p 60. Dr. Wardell on cross-examination testified that extra weight can aggravate and accelerate degenerative process and could cause a meniscus tear but mostly, the degenerative process can be accelerated when there is extra weight. PX 6p 62. A degenerative meniscus tear can occur without trauma and can possibly be present even without symptoms. PX 6, p 63. In response to what degree of certainty can be attributed that the meniscus tear was caused by the June 20, 2020, workplace accident, Dr. Wardell testified that he has a patient who had no symptoms prior to getting bit by rodent at work that had a reaction to that bite that caused her to be startled and jump and move her knee around in an uncontrolled way that caused persistent repetitive symptoms for almost 6 months that did not resolve or improve with multiple conservative treatment options that were provided to her.

Dr. Wardell explained that she was reportedly asymptomatic prior to her injury. He did not know her previous injuries. He did know that she was without symptoms and able to work full duty prior to her June 20, 2020, injury. PX 6, p 64. Dr. Wardell was not recommending at the time of his deposition that petitioner have total knee arthroplasty. PX 6, p 66. She reached maximum medical improvement as of 8/27/2021. PX 6, p 66. Dr. Wardell testified that she was bitten at work by rodent that should not have existed in the first place. In a sitting position he did not think her osteoarthritis and coexisting comorbidities such as obesity had anything to do with it. She could have possibly had some meniscal fraying that could have been aggravated by her response to being bitten by rodent at work, which is highly unusual. Whatever occurred, reaction to that injury created a situation that caused her symptoms to persist. Dr. Wardell opined that he did not appreciate petitioner having secondary gain to make up her symptoms, that she was trying to get better within the 6 months of treatment and delays treatment that might not have been necessary and that she markedly improved despite having severe osteoarthritis and evidence of morbid obesity with comorbidities that existed. He did not think her comorbidities contributed to her ultimate symptoms. PX 6, p 67-69. Dr. Wardell opined that he did not think that her movement at the time of the accident exacerbated her osteoarthritis. PX 6, p 69.

Dr. Wardell opined developing a meniscal tear after being bitten by a rodent depends on how you are positioned and where your bit and your reaction. Did she slam her knee into the table, did she jump and fall back off the chair. There are a lot of different ways to react to an unexpected injury from a rodent that can give you a significant disease. PX 6, p 69-70. Dr. Wardell testified he saw records which indicated that she had been bitten by a rodent. PX 6, p 70. Dr. Wardell testified that petitioner reported that she thought she may have hit her knee on the desk or twisted it, but it was definitely a response that she had that created her situation. PX 6, p 70-71.

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. 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 her to be a credible witness. Petitioner appeared to be a hard-working individual who had worked 18 years for respondent before the work incident. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and generally consistent with the records as a whole. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. She does not appear to be a sophisticated individual and any inconsistencies in her testimony/histories given are not attributed to an attempt to deceive the finder of fact.

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).

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 Commission*, 99 Ill. 2nd 174, 182, 457 N.E. 2nd 1222, 1226, 75 Ill. Dec. 663 (1983). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v Industrial Commission*, 309 Ill. 91 (1923). 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 Commission*, 93 Ill.2nd 59, 63, 442 N.E. 2nd 908, 911, 66 Ill. Dec. 347 (1982).

A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her pre-existing condition. *Mason & Dixon Lines, Inc. v. Industrial Commission*, 99 Ill. 2nd 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Commission*, 84 Ill. 2nd 262, 266 (1981). A claimant may rely on a “chain of events” in his or her case to demonstrate the aggravation or acceleration of a pre-existing condition. *Schroeder v. Illinois Worker’s Compensation Commission*, 2017 Ill. App. 4th 160192 WC. PP 25-29. The chain of events principal does not apply solely when a claimant is in a condition of absolute good health. *Schroeder v. Illinois Worker’s Compensation Commission*, 2017 Ill. App. 4th 160192 WC. Rather, a claimant need only establish that an accident was a cause of her condition. The salient factor is not the precise previous condition but rather the resulting deterioration from whatever that previous condition had been. *Schroeder v. Illinois Worker’s Compensation Commission*, 2017 Ill. App. 4th 160192 WC.

The Arbitrator finds based upon the weight of credible evidence that petitioner had pre-existing conditions of severe arthritis of both right and left knees for which she had received medical treatment including an injection in her left knee on March 11, 2020, and an injection in her right knee on March 13, 2020. After those injections she was able to work full duty with no restrictions up until the date of the accident on June 20, 2020. She had worked for respondent in for 18 years prior to the accident date. In her job as a Correctional Officer with respondent, she was charged with the safety and security of the detainees, civilians, and sworn staff at the County Jail. That job required her to traverse stairs between 2 tears of detainees, up and down at least 20 times a day. Her job required her to inspect the cell of each detainee checking under the bed, under tables, count the detainees and make sure they are in their assigned cells. She was required check storage facilities to make sure all equipment is accounted for and documented.

She was required to go to the cell of all detainees who were being transferred to court or to medical facilities to prepare them for the transfer. She worked 8 hours a day, sometimes 16 hours a day and was on her feet 6 hours a day and sitting at a desk 2 hours a day documenting on the computer. She also was required to control detainees who were acting up. If a detainee gets physical with physical staff, she would have to control the situation until backup arrives. If there was a call for her to respond to a detainee acting up, she would have to run and move as fast as she could to get to that situation. That occurred two to three times a week. Prior to June 20, 2020, she was able to perform all these job duties without any problems with her right knee, despite her condition of pre-existing moderate to severe arthritis of her right knee.

The Arbitrator finds that the weight of credible evidence demonstrates that on June 20, 2020, a rodent ran across her foot as she was sitting at a desk after she had performed the inspection of the detainee cells and storage facilities. She called to superior to advise of the incident. Within 10 minutes she felt something on her knee. She “scooted” back a little and saw a mouse on her right knee. She brushed it off with her right hand, and kicked up her right leg, causing her right knee to strike the desk. She was still in her chair at the desk. She again called the supervisor to report the incident and made an incident report admitted as PX 1. The report of incident is described in Petitioner Exhibit 1, Employee’s Accident Report dated June 20, 2020, as follows: “0825 HR a mouse jumped on my right leg/knee causing me to jump up injuring my right knee (possible bite).” PX 1, p1- 2. The report of the description of the accident to all subsequent medical providers is generally consistent with petitioner’s testimony at hearing and with the description of the incident in PX 1. At hearing, Petitioner testified she does not know if the rodent actually bit her but regardless the Arbitrator finds the injury or aggravation to the right knee occurred as Petitioner reacted to the rodent on her and she hit her knee into the desk. The injury to the knee claimed by the petitioner is not from the alleged rodent bite.

The Arbitrator finds that petitioner had an immediate onset of pain in the area of the right knee after the work incident involving a rodent. She sought treatment on the day of accident at the University of Chicago Urgent Care which documents: erythema dime-size area lateral side of patella and when gently palpating can feel of linear swollen area. Petitioner thought she may have been bitten by the rodent. PX 2, p 27. Her PCP Dr. Amin on 7/16/20 that she was complaining of burning and tingling at the site where she thought she had been bitten by the mouse on the right knee. No open wound was identified. The area was described as red and puffy. PX 3, p3-4. Dr. Amin on 7/21/20 notes that she continued to have pain at the location of the bite which was described as sharp in character and radiates down to all toes. She was using Tylenol and ice packs at night. PX 3, p5-6.

Petitioner was referred to Dr. Steven Wardell who had previously provided the right and left knee injections in March 2020. She gave history to Dr. Wardell on 7/24/20 that she was doing very well prior to June 20, 2020 and had no significant pain in her knee. She was sitting at her desk on June 20, 2020, when a mouse climbed up her leg and bit the anterior aspect of her knee; she jumped and injured her knee, which has continued to cause pain with range of motion, weight bearing and rest. PX 4, p 60-61.

Dr. Wardell diagnosed the condition as a right knee strain and status post rodent bite right anterior knee with a history of chronic severe osteoarthritis of the right knee and obesity. He thought she had a aggravation of her pre-existing severe arthritis of the right knee. He recommended Volatren. Dr. Wardell records document ongoing conservative treatment of the right knee pain including medication, work restrictions, and a course of 3 viscosupplementation injections provided in August 2020. The Arbitrator notes that these 3 viscosupplementation injections were the same treatment that petitioner had received in March 2020, which had resolved her complaints of pain and dysfunction associated with her pre-existing osteoarthritis of the right knee allowing her to continue to work up to the day of the accident. The conservative treatment failed to resolve petitioner's ongoing complaints of severe pain and dysfunction in right knee. Dr. Wardell ordered physical therapy for the right knee. PX 4, p 44-49. The physical therapy was performed from 9/9/2020 through 9/28/2020 at Parkview Orthopedic Group. The physical therapy did not resolve petitioner's complaints of pain in the right knee and inability to sleep at night because of the pain, use of crutches for ambulation and inability to tolerate stairs. PX 4, p 24-27. Dr. Wardell noted on 10/2/20 that she had only 20% improvement in the condition of pain in her right knee since her injury on 6/20/20.

Dr. Wardell ordered an right knee MRI. PX 4, p 19-20. The MRI of the right knee was performed on 10/23/20, which was interpreted by Dr. Wardell and the radiologist to demonstrate right knee medial and lateral meniscus tear. Dr. Wardell recommended a right knee arthroscopy. That surgery was denied by respondent based upon the IME opinion stated by respondent Section 12 examining physician, Dr. Shadid, as evidenced in his IME report dated 11/25/20 and admitted in evidence as Respondent Exhibit 1. Dr. Wardell performed the surgery on 12/28/20 described as: 1. Highly complex right knee arthroscopy with partial medial and partial lateral meniscectomy; 2. Abrasion of chondroplasty patellofemoral compartment; 3. Subtotal synovectomy of right knee, arthroscopically. 4. Chondroplasty of medial femoral condyle and medial tibial plateau; 5. Intro condyle art notch plasty and lateral inter condyle are notch right knee; 6. Right knee medial and lateral partial meniscectomy with debridement. Postoperative diagnosis: 1 right knee posterior horn medial meniscus tear; 2 grade 4 chondromalacia of medial compartment; 3. Severe super morbid obesity; 4. Intra-articular notch impingement secondary to mild intercondylat notch, ACL impingement secondary to lateral notch osteophyte; 5. Lateral meniscus tear right knee; 6 grade 3 to 4 chondromalacia of patellofemoral compartments. PX 4, p 162-164. Post surgery follow-up with Dr. Wardell documents that on 1/8/21 she was very happy with her progress reporting 75% improvement in her pain and symptoms in comparison to preoperative symptoms. PX 4, p 10. On 2/19/21 Dr. Wardell records document she was very happy with her progress. She has no pain. She is ambulating without any gait-assistive aids. She has been active and wishes to return back to work at this point. PX 4, p 8. On 8/27/21 Dr. Wardell notes she is approximately 8 months postop status right knee arthroscopy. She's doing extremely well. She states her pain is barely 1/10 occasionally. She wishes to return back to work full duty without restrictions at this point. She will follow-up on an otherwise as-needed basis. Patient has been extremely happy with her result status post arthroscopy after work related injury with surgery being performed on 12/28/20. PX 4, p 4.

Dr. Wardell testified by evidence deposition, which was admitted in evidence as Petitioner Exhibit 6. He is a physician licensed to practice medicine in Illinois board-certified by the American Academy of Orthopedic Surgeons. He specializes in adult hip and knee reconstruction. He had treated petitioner for her pre-existing moderate to severe osteoarthritis in both knees by injections into the right knee and left knee in March 2020. He next saw her on July 24, 2020, with complaints of right knee experienced after suffering the injury at work on June 20, 2020. His initial impression right knee strain, status post rodent bite right anterior knee with a history of chronic severe osteoarthritis of the right knee and obesity. He continued treatment of petitioner-based on that diagnosis providing conservative treatment consisting of medication, viscosupplementation injections, and physical therapy, the combination of which did not resolve the complaints of right knee pain. Dr. Wardell testified that on October 2, 2020, his thoughts were that if this is an aggravation, be it permanent or hopefully temporary, that the viscosupplementation injections would be able to return her back to her preinjury status by themselves, hopefully.

Because they did not and they were minimally beneficial, he tried to seek out other reasons for continued pain, not only for meniscal pathology but also for bone contusions, stress fractures, or other occult injuries that we could not pick up on just plain radiographs, so that's why ultimately the recommendation in this visit was to proceed with an MRI of her right knee to make sure were not missing anything that's responsible for her continued pain just by maximizing conservative treatment. PX 6, p 30-31. The MRI performed at an Advocate facility demonstrated evidence of a horizontal tear with extrusion of the medial meniscus body and posterior horn. With that information his diagnosis on October 23, 2020, was right knee medial and lateral meniscus tears, right knee grade IV chondromalacia of the medial compartment, morbid obesity. His recommendation was right knee arthroscopy. The arthroscopy was to address the medial and lateral meniscus tears, specifically the medial meniscus tear that had been causing mechanical symptoms, certainly substantially adding to her symptoms complex and also preventing conservative treatment options that were rendered to her from working. PX 6, p 34-35. The arthroscopy was recommended as a bridge and that ultimately, total knee replacement would potentially be required if nothing else was helping her, which at age 50 it is not unheard of, but generally, there's no turning back once a procedure such as that is done and, with her other comorbidities, would be met with a much higher risk profile, and I felt that doing less with more would be appropriate to see how she would do and respond to an arthroscopy, especially since she responded for quite a while after receiving the viscosupplementation prior to her injury, despite having radiographs showing severe osteoarthritis. PX 6, p 35.

Dr. Wardell performed surgery arthroscopically on petitioner on 12/20/20 which included complex right knee arthroscopy with partial medial and partial lateral meniscectomy; abrasion chondroplasty patellofemoral compartment; subtotal synovectomy of the right knee arthroscopically; chondroplasty of the medial femoral condyle and medial tibial plateau; intracondylar notchplasty and lateral intracondylar notch right knee; right knee medial and lateral partial meniscectomy and debridement. Dr. Wardell opined after performing that surgery and with all the other information he had at that time it was his opinion, within a reasonable degree of orthopedic and medical certainty, that the cause of the right knee medial meniscus tear and the

right knee lateral meniscus tear that he diagnosed and treated through this surgery was that the mechanical medial and lateral meniscus tears, removed arthroscopically, would address her symptoms and most likely could have been caused by her injury that occurred in June 2020. PX 6, p 43-44. The basis of that opinion was that she was experiencing mechanical symptoms of giving way and instability within her right knee since the date of her injury, essentially, and he was trying to address that arthroscopically to see if he could remove that impingement that mechanical impingement of tissue that could be responsible for her symptoms.

The fact that she did not have severe symptoms prior to June 20, 2020, accident that played a role in his thought process as to whether or not the incident gave rise to and was the cause of or contributing cause to her symptomology that he observed, diagnosed, treated, and addressed in the surgery. PX 6, p 44-45. The principal reason that Dr. Wardell performed the surgery of December 28, 2020, was to treat the right lateral meniscus but also to diagnostically assess the interior of the knee, whether or not there's other issues that could be responsible for her symptoms. An MRI is not a perfect study, neither is an x-ray. The MRI is a tool to help guide. Because of the failure of conservative treatment and for the other reasons stated, he was recommending knee arthroscopy to be able to address a medial meniscus tear or a lateral meniscus tear by itself. He knew there were other issues inside the knee, both radiographically and on MRI, and those other issues may certainly cause continued pain despite an arthroscopy. He was trying to sort the situation out, given that all the other treatment options weren't of benefit to her. PX 6, p 45-46. On August 27, 2021, Dr. Wardell noted that she is 8 months after surgery doing extremely well, pain is barely one over 10 occasionally and she wishes to return to work without any restrictions. She was happy with the results. She was able to do stairs. Her diagnosis was status post right knee arthroscopy, history of osteoarthritis right knee, morbid obesity. She was released to return to work full duty without restrictions and follow-up with Dr. Wardell as needed. PX 6, p 58. Dr. Wardell opined that based upon the treatment that he provided to her and all the medical records and information he had as of the date of his deposition, it was his opinion that the symptoms he was treating her for and for which he did that surgery were caused by the work accident of June 20, 2022. PX 6, p 59. Dr. Wardell testified that it was his opinion that the reaction to the mouse bite and her movement in that reaction is what caused the injury. PX 6, p 60. In response to what degree of certainty can be attributed that the meniscus tear was caused by the June 20, 2020, workplace accident, Dr. Wardell testified that he has a patient who had no symptoms prior to getting bit by rodent at work that had a reaction to that bite that caused her to be startled and jump and move her knee around in an uncontrolled way that caused persistent repetitive symptoms for almost 6 months that did not resolve or improve with multiple conservative treatment options that were provided to her. Dr. Wardell explained that she was reportedly asymptomatic prior to her injury. He did not know her previous injuries. He did know that she was without symptoms and able to work full duty prior to her June 20, 2020, injury. PX 6, p 64. Dr. Wardell testified that petitioner reported that she thought she may have hit her knee on the desk or twisted it, but it was definitely a response that she had that created her situation. PX 6, p 70-71.

Respondent IME, Dr. Shadid is of the opinion that 1) the work accident as described by petitioner on June 20, 2020 was not the cause of her lateral and medial meniscus tear 2) that her current diagnosis is advanced right knee osteoarthritis based upon his statement that she exhibited stable gait and no difficulty with independent movement during the examination performed on 11/25/20, 3) that she lacks a mechanism of injury for any ongoing disabling condition on the medial aspect of the right knee 4) that imaging showed no evidence of acute injury, but rather findings consistent with bilateral pre-existing chronic degenerative changes, 5) that the contusion and wound bite were in a different area of contact from the medial sided knee pain and 6) that she reports that prior to June 20, 2020 injury she denies any issues with the right knee which is a contradiction to the records of her treating orthopedic surgeon notes a significant history for the right knee pain treated with multiple injections within the last year. The arbitrator finds that the opinions stated by Dr. Shadid are less credible and persuasive than the opinions given by Dr. Wardell. Dr. Shadid does not provide an possible alternative explanation for the onset of the significant right knee symptoms documented on the day of the accident, necessitating urgent care.

The Arbitrator notes that while the medical records and testimony clearly do not provide a strong case that petitioner was actually bitten by a mouse/rodent, they do make a compelling case that petitioner had moved her right leg suddenly in response to a rodent and hit her knee on the desk; that she immediately had an area of pain at the right knee; that her right knee demonstrated an area of erythema of the patella and when gently palpating demonstrated a linear swollen area as documented in the day of accident records of University of Chicago urgent care; that the pain of the right knee continued from the date of accident up to and including the date of the surgery performed by Dr. Wardell; that conservative management including viscosupplementation injections, which had previously addressed any problem she had with both the right and left knee, were ineffective; that conservative management was ineffective in resolving her complaints of pain in the right knee; and most importantly that the surgery addressing the torn meniscus performed by Dr. Wardell had a timely and significant reduction in the pain and dysfunction of her right knee which allowed her to return to work full duty performing all the tasks she was able to do in her physically demanding job prior to June 20, 2020. Petitioner testified she did have problems with both her right and left knee prior to the date of the accident but that she was able to perform all of her job duties prior to the date of the accident. She testified the pain in the right knee that started on June 20, 2020 was different from the pain she had had prior to June 20, 2020 and different from the continuing tightness which she continued to experience in her left knee after June 20, 2020 as result of her pre-existing osteoarthritis. The Arbitrator notes that Dr. Wardell was aware of and had treated her prior osteoarthritis, and based upon the knowledge of that treatment and the knowledge of her condition, concluded that the conservative management that was provided after June 20, 2020, which included viscosupplementation injections to the right knee, had not resolved her complaints of a new and different type pain in the right knee. This then reasonably led him to order MRI, which was the basis of his diagnosis of a torn medial and lateral meniscus of the right knee. These were addressed and treated by the surgery he performed resulting in her ability to return to work full duty and perform all her job functions as she had prior to June 20, 2020 work accident.

The Arbitrator finds the opinions of Dr. Wardell address all the facts and circumstances of petitioner's injury, explains her preexisting conditions and morbidities, and that his opinions are supported by evidence in the record. Dr. Wardell's opinions are based upon a more thorough understanding of petitioner's prior and present condition of ill-being and of her mechanism of injury, than are the opinions expressed by Dr. Shadid. Dr. Wardell was not quick to operate, or even order an MRI. The doctor attempted all conservative treatment before recommending an arthroplasty (among other related procedures that were performed) and in fact was successful in relieving petitioner's pain and getting her back to baseline and back to work for Respondent.

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 her right knee to be causally related to the work accident of June 20, 2020

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 and further relies on the opinions of IME Dr. Shadid. However, the Arbitrator has found *supra* that Petitioner's condition of ill-being concerning her right knee is causally related to the accident. A claimant is entitled to recover reasonable medical expenses that are determined to be required to diagnose, relieve, or cure the effects of claimants condition of ill being. *F&B Manufacturing co v Industrial Comm'n*, 325 Ill App. 3d 527, 534 (2001).

On August 27, 2021, Dr. Wardell noted that she is 8 months after surgery doing extremely well, and she wishes to return to work without any restrictions. Her diagnosis was status post right knee arthroscopy, history of osteoarthritis right knee, morbid obesity. She was released to return to work full duty without restrictions and follow-up with Dr. Wardell as needed. PX 6, p 58. Dr. Wardell opined that based upon the treatment that he provided to her and all the medical records and information he had as of the date of his deposition, it was his opinion that the symptoms he was treating her for and for which he did that surgery were caused by the work accident of June 20, 2022. PX 6, p 59. Dr. Wardell testified that it was his opinion that the reaction to the mouse bite and her movement in that reaction is what caused the injury. PX 6, p 60. Therefore the Arbitrator relies on the medical opinion of treating surgeon, Dr. Wardell, and finds treatment through the MMI date of 8/27/21 is reasonable, necessary and related to Petitioner's recovery from her work related injuries.

Based upon those findings and conclusions above, the medical treatment rendered to petitioner as evidenced in the records, was reasonable, necessary and causally related to the work accident of June 20, 2020. Respondent is ordered to pay any unpaid bills for that treatment (See Petitioner Exhibit 7), subject to the fee schedule. The Arbitrator notes that the parties have stipulated that respondent has paid these bills through its group insurance plan and therefore is entitled to a credit of \$29,368.27 against payment of these bills pursuant to Section 8(j) of the Act. Respondent having received that 8(j) credit, shall hold petitioner harmless from any claim made by any of the medical providers of the services for which respondent is receiving this credit.

Regarding Issue K, 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).

Petitioner claims TTD from 7/14/2020 through 6/23/21 representing 49 2/7 weeks. Respondent disputes that and claims that petitioner is entitled to TTD from 7/14/20 through 11/25/20, representing 19 4/7 weeks. The parties agree that respondent has paid \$19,019.58 in TTD. The Arbitrator notes that it is unclear when petitioner was anset from work prior to July 14, 2020. Petitioner testified she was not sure of her absence during that timeframe. Respondent agrees that petitioner was absent from work beginning 7/14/20 and TTD was paid in the amount of \$19,018.5, through 11/25/20. Respondent claims that TTD should be terminated as of 11/25/20. That is the date of Dr. Shadid's IME report in which he opines that petitioner's condition of ill being is advanced right knee osteoarthritis and that she has fully recovered from a rodent bite and strain/contusion of her right thigh and or strain of her right knee. He opines additionally that she can return to work full duty as of that date. The arbitrator adopts and incorporates all the foregoing findings of fact with regard to causal connection to her finding and conclusion relating to TTD. The arbitrator has found Dr. Shadid's opinions are less credible and persuasive than the opinions given by Dr. Wardell. The arbitrator finds that the evidence of record demonstrates that following the right knee surgery, Dr. Wardell returned petitioner to work with restrictions of no stairs, no kneeling. When she returned to work on June 23, 2021, she went back to work light duty and she was paid by respondent. She continued to work light duty through August 27, 2021. At that point she received a full duty release to return to work, her pain level was 1/10 and she has not seen Dr. Wardell since August 27/2021. T 74-T 76.

Based on the above, the Arbitrator finds the Petitioner was taken off of work by her treating physicians for the work injury from 7/14/20 through 6/23/21, representing 49 2/7 weeks, and is entitled to receipt of TTD benefits for the same, at a rate of \$906.67 per week.

The parties have stipulated that Respondent is entitled to a credit of \$19,018.58 for TTD benefits paid prior to the date of hearing, for the period of 7/14/20 through 11/25/20. The Arbitrator awards the same.

Regarding Issue L, what is the nature and extent of the injury?

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49.

Petitioner was performing the regular duties of her employment with Respondent when she injured her right knee, following the incident with the rodent. She was diagnosed with a medial and lateral meniscus tear and upon completion of surgery, injections and physical therapy, she was released to unrestricted work and continues to work for Respondent. The date for this injury is subject to Section 8.1(b) of the Illinois Workers' Compensation Act. The Arbitrator notes the following:

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 Corrections Officer at the Cook County Jail at the time of the accident and that she was able to return to work in her prior capacity. This is a physically demanding job requiring petitioner: to be on her feet 6 hours a day out of an 8 hour workday, that she must traverse stairwell between two tiers of detainee cells that she is responsible for at least 20 times a day and that on occasion she is required to move with speed to get to scenes where detainees are acting up and coworkers are calling for assistance. She does perform all her same job duties, albeit more slowly now. The Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 50 years old at the time of the accident. However, the Arbitrator notes that Petitioner is an older individual who was working in a physically demanding occupation. Petitioner's age makes her disability greater. Accordingly, the Arbitrator finds that Petitioner's age increases his disability. See *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability). The Arbitrator accords some weight to the fact that Petitioner's age increases her disability. Because petitioner will have to deal with the work restrictions for another approximately 15 years of work life, the Arbitrator therefore gives some weight to this factor.

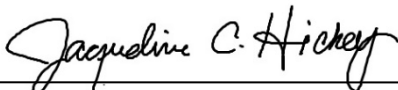
With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no evidence that Petitioner's future earning capacity was or is adversely affected by her work injuries. The Arbitrator therefore gives less weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes as a result of the work injury petitioner underwent right knee surgery to repair a torn lateral and medial meniscus. That work injury and surgery was to her right knee which had a pre-existing moderate to severe osteoarthritis. Prior to June 20, 2020, Petitioner was able to perform her job duties without any problem to her right knee. She did have medical treatment for her right knee prior to June 20, 2020. She had an injection performed by Dr. Wardell on March 13, 2020, with a diagnosis of moderate to severe arthritis of the right and left knee. After she got the injection from Dr. Wardell on March 13, 2020, she was able to do all the duties which she described in her job prior to the incident on June 20, 2020. Petitioner was released to return to work full duty no restrictions following the successful surgical right knee repair. She now can perform her job duties and her activities around the house but more slowly and more carefully than she did before the work accident. She does not do any kneeling. She does not regularly take any medication on a regular basis for her work injury. On occasion when she had to run up stairs to respond quickly at work, she twisted her right knee and for a couple of days took Tylenol after which it was okay. Despite having significant osteoarthritis in the knees before the work incident, it is clear from the medical evidence and testimony that this work injury did affect Petitioner to the extent of having great disability in the right knee post work accident. The Arbitrator therefore gives greater weight to this factor.

Based on the factors, and the record taken as a whole, this Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of the right leg (or 32.25 weeks), pursuant to Section 8(e) of the Act, at a PPD rate of \$816.00/week.

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

June 14, 2024
Date

June 17, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC037570
Case Name	Jeremiah W. Jacobs v. Carle Foundation Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0361
Number of Pages of Decision	32
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Glen Featherstun
Respondent Attorney	John Sturmanis

DATE FILED: 8/26/2025

/s/Frank Soto, Commissioner

Signature

DISSENT

/s/Frank Soto, Commissioner

Signature

19 WC 37570

Page 1

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: Up	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEREMIAH JACOBS,
Petitioner,

vs.

NO: 19 WC 37570

CARLE FOUNDATION HOSPITAL,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both the Petitioner and Respondent herein and notice given to all parties the Commission, after considering the issues of causation, medical expenses, temporary total disability benefits ("TTD"), permanent partial disability benefits ("PPD"), and the denial of the imposition of penalties and attorney fees, 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 a part hereof.

Based on the record in its entirety, the Majority modifies the Decision of the Arbitrator and finds Petitioner's Radial Tunnel Syndrome causally related to the accident. Accordingly, the Majority also modifies the award of medical expenses and permanent partial disability of the Petitioner's right arm. The Majority affirms and adopts all else.

On the issue of causation, the Arbitrator found that Petitioner proved he had CRPS and CUTS which were causally related to the instant accident, but the radial tunnel syndrome and various shoulder diagnoses were not. In the body of his decision, the Arbitrator also noted that the cervical condition was not causally related to the accident. The Commission sees the evidence differently and modifies the Arbitrator's Decision to find causal connection for Petitioner's right radial tunnel condition and affirms the Arbitrator's Decision in all other respects.

In finding causal connection for the radial tunnel syndrome, the Commission notes that Dr. Neumeister in fact repaired the radial nerve during surgery. Furthermore, the Commission finds that, in this matter, once it had been determined that Petitioner's right elbow condition of ill-being was casually related to his work accident, the record does not present a rationale for finding one elbow condition related and the other contemporaneous elbow condition unrelated.

19 WC 37570

Page 2

Based on the Commission's finding of causal connection for the right radial tunnel syndrome, the Commission further modifies the Decision of the Arbitrator to find that Petitioner is entitled to the reasonable and necessary medical expenses associated with treatment of Petitioner's radial tunnel syndrome including the specified \$5,307.00 for the added expense for the radial tunnel surgery as well any other expenses specifically associated with treatment of that condition, pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for all amounts paid.

Based on the Commission's finding of causal connection for the right radial tunnel syndrome, the Commission further modifies the Decision of the Arbitrator to find that Petitioner is entitled to an increase in permanency for the right arm and specifically finds that Petitioner is entitled to a total of 17.5% of the arm for the conditions of CUTS and radial tunnel syndrome pursuant to Section 8(e) of the Act. This increase is further based on the surgical intervention to treat Petitioner's diagnosed right radial tunnel syndrome as considered under §8.1b(b) of the Act with additional weight assigned under factors iii and v of §8.1b(b) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated February 5, 2024 is hereby modified as specified above and otherwise affirmed and adopted, which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner \$435.60 per week for a total of 44.275 weeks because the injury resulted in total permanent partial disability of 17.5% of the use of the right arm as a result of Cubital Tunnel Syndrome and Radial Tunnel Syndrome and associated surgeries, pursuant to §8(e). Respondent shall pay \$435.60 per week for a total of 37.5 weeks because Petitioner sustained 7.5% loss of use of the person-as-a-whole for the condition CRPS, pursuant to §8(d)(2) 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 Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$50,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

AUGUST 26, 2025

FJS/dw

O-7/23/25

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

Concurrence in Part and Dissent in Part

I concur with the Decision of the Majority on all issues other than whether Petitioner sustained his burden of proving he has CRPS which is causally related to his work accident.

Regarding the diagnosis of CRPS, I find the opinions of Drs. Michaels and Jung more persuasive than the opinions of Dr. Fletcher because the basis of their opinions is consistent with the exam findings, diagnostic testing and that Petitioner experienced a complete resolution of all CRPS related features after undergoing the cubital and radial tunnel surgery.

Dr. Fletcher diagnosed Petitioner's ulnar neuropathy but he failed to articulate a similar clear or definite diagnosis of CRPS. Rather, Dr. Fletcher stated Petitioner had some features of CRPS and/or had diffused symptomology of CRPS. It appears Dr. Fletcher was merely articulating a differential diagnosis as a possible explanation for some of Petitioner's subjective complaints. At the time, the existence of the radial tunnel syndrome was not known. It is reasonable to infer the symptoms Dr. Fletcher described as features of CRPS and/or diffused symptomatology of CRPS involved the previously undiagnosed radial head tunnel syndrome which was subsequently identified by Dr. Neumeister, who performed the cubital and radial tunnel surgery.

The record indicates a complete resolution of the symptoms after the cubital and radial tunnel surgery which undermines Dr. Fletcher's opinions. Dr. Fletcher, who examined Petitioner after the surgery, noted that Petitioner had no swelling, full range of motion and no features of CRPS. Additionally, the surgical report does not reflect nor did Dr. Fletcher testify to any specific surgical procedure that was performed to address CRPS. Since the surgery resolved Petitioner's symptoms and no part of the surgery targeted CRPS infers that the symptoms Dr. Fletcher described as features of CRPS or diffused symptomatology of CRPS were symptoms associated with the pathology in Petitioner's elbow successfully addressed by the cubital and radial tunnel surgery.

It is also important to note that Dr. Fletcher based his differential diagnosis of CRPS not on his own findings but upon notations contained in Petitioner's prior medical records and several of those notations used as the basis of Dr. Fletcher's opinions were not actual findings and/or observations from a medical provider but were actually Petitioner's subjective complaints not observed or confirmed by the medical providers. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d. 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts.

19 WC 37570

Page 4

Besides Dr. Fletcher, only one other medical provider expressed an opinion that Petitioner met the criteria for the diagnosis of CRPS. Dr. Oakley categorized his diagnosis of CRPS as borderline because he thought Petitioner met two of the criteria for diagnosing CRPS but Dr. Oakley subsequently released Petitioner from care after he could not find any etiology for Petitioner's symptoms.

Drs. Jung and Michaels both opined that Petitioner did not meet the criteria for a diagnosis of CRPS. The opinions of Drs. Jung and Michaels were consistent with the diagnostic testing, radiographic testing, and exam findings. An EMG taken on April 19, 2021 showed ulnar neuropathy in the right elbow but failed to identify any nerve damage or dysfunction associated with CRPS. Dr. Fletcher, who reviewed the EMG, determined that it was significant for CUTS but he did not identify any findings supporting a CRPS diagnosis. Petitioner also underwent diagnostic stellate ganglion injections to confirm a CRPS diagnosis. The diagnostic stellate ganglion injections did not support a CRPS diagnosis. The doctor who performed the diagnostic stellate ganglion block injections indicated that the block did not rule out CRPS but the block did not support a diagnosis of CRPS.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision and find that Petitioner failed to prove Petitioner has CRPS which is causally related to his employment.

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	19WC037570
Case Name	Jeremiah W Jacobs v. Carle Foundation Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Glen Featherstun
Respondent Attorney	John Sturmanis

DATE FILED: 2/5/2024

/s/ Dennis OBrien, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 30, 2024 4.985%

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

JEREMIAH JACOBS

Employee/Petitioner

v.

CARLE FOUNDATION HOSPITAL

Employer/Respondent

Case # **19** WC **037570**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Champaign**, on **November 9, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **September 9, 2019**, Respondent *was* operating under and subject to the provisions of the Act.

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

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.

In the year preceding the injury, Petitioner earned **\$37,752.00**; the average weekly wage was **\$726.00**.

On the date of accident, Petitioner was **38** years of age, *married* with **2** dependent children.

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

Respondent shall be given a credit of **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$5,707.08** for other benefits, for a total credit of **\$5,707.08**.

ORDER

Petitioner's Complex Regional Pain Syndrome condition is causally related to the accident of September 9, 2019.

Petitioner's post-operative right cubital tunnel syndrome is causally related to the accident of September 9, 2019.

Petitioner's post-operative right radial tunnel syndrome is not causally related to the accident of September 9, 2019.

Petitioner's various diagnoses involving the right shoulder, right shoulder bicipital tendinitis, right shoulder impingement syndrome, right scapular winging, low grade partial thickness tearing of the right supraspinatus tendon, mild tendinosis of the right infraspinatus and subscapularis tendons, tendinosis of the long head of the right biceps tendon, mild right glenohumeral and acromioclavicular osteoarthritis and thickening of the right inferior glenohumeral ligament, are not causally related to the accident of September 9, 2019.

Petitioner was temporarily totally disabled as a result of the accident from September 13, 2019 to March 15, 2020, and from July 8, 2020 to August 5, 2021, a period of 82 3/7 weeks. After reduction by the 25 week period paid by temporary partial disability and wages, Petitioner is awarded a net 57 3/7 weeks of temporary total disability, to be paid at \$484.00 per week.

Respondent is entitled to credit of \$5,707.08 in non-occupational disability benefits.

The following bills introduced into evidence in Petitioner Exhibit 16 are related to the injuries incurred in Petitioner's September 9, 2019 injury, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident:

- **Charges included on Petitioner Exhibit 16 pages 8 (except \$116.00 shoulder x-ray), 9, 10, 14 (limited to July 16, 2021 charges), 17 through 32, 52 through 69, 76 through 78, 79 (except October 26, 2020, November 16, 2020, and November 24, 2020 charges), 80, 85 through 87 (except August**

3, 2021 \$5,307.00 charge for radial tunnel surgery), 88 through 90 (except November 30, 2021 charges), 91 through 106, 108, 109, 112, 117, 118 (except January 29, 2020, February 5, 2020 and February 17, 2020 charges), 120 (except February 27, 2020 and March 5, 2020 charges), 121 (except March 22, 2021 charges), and 122.

All other medical bills are denied as not being causally related to this accident or, in the case of pages 110 and 111, being duplicative of bills contained in pages 108 and 109.

Respondent is entitled to credit towards any of the bills awarded which were paid by Health Alliance pursuant to §8(j) of the Act.

Petitioner is not entitled to penalties under Section 19(k), 19(l) or Section 16, as Respondent's conduct in the defense of this claim was neither unreasonable, vexatious, nor the result of bad faith or an improper purpose.

Petitioner sustained permanent partial disability to the extent of 15% loss of use of the right arm as a result of the cubital tunnel syndrome with surgery pursuant to §8(e) of the Act, and 7 1/2% loss of use of the person as a whole as a result of Complex Regional Pain Disorder pursuant to §8(d)(2) of the Act, resulting in a permanent partial disability award of 75.45 weeks, payable at \$435.60 per week.

Petitioner reached maximum medical improvement on July 1, 2022.

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

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



Signature of Arbitrator

February 5, 2024

FINDINGS OF FACT:**TESTIMONY AT ARBITRATION****Petitioner**

Petitioner testified that on September 9, 2019, while working as a landscaper for Respondent, he picked up a piece of the inner fender of a car. He described it as being plastic about 3' long and 18-24" wide, weighing five to ten pounds. He said he placed it in a golf cart, and took it, and other trash he had picked up, to a roll off dumpster with sides about 5' tall, slightly above his shoulder height. He said he lifted the piece above his head with two hands and extended it out to get it into the dumpster. He testified that while doing this he experienced his right elbow catching and a "pop," as well as pain in his right elbow and a lesser amount in his right shoulder.

Petitioner said he reported this incident to his supervisor, Joshua Swain, who sent him to Carle Occupation Medicine, where he saw Dr. DeSalvio. X-rays were taken, and he said his arm was bruised in the area of his bicep and he had pain from his elbow to his shoulder. Dr. DeSalvio sent him back to work, and Petitioner said Bruce Roth, the manager of his department, and Executive Director Tom Johnson, did not agree that Jacobs should have been sent back to work, and he was sent home.

Petitioner testified that he noticed pain going further down his arm and swelling and tingling in his hand that evening. He said he went to the nearest emergency room, which was at Kirby Hospital in Monticello, was examined, and was told to follow up with Dr. DeSalvio. He said he saw Dr. DeSalvio on September 16, 2019, and reported pain and tingling in his hand. He said Dr. DeSalvio sent him to Dr. Sobeski, who he saw on October 7, 2019. Dr. Sobeski examined him, recommended physical therapy and restricted his work to 5 or 10 pounds. Petitioner testified that he told Dr. DeSalvio, Dr. Sobeski and Cathy Borst, his physical therapist, that a "pop" occurred at the time of the accident. Petitioner said that on November 18, 2019, he again saw Dr. Sobeski and was told to stop physical therapy and "give it a rest." Petitioner said that at that time he was working light duty, and he continued to do so. He said he saw Dr. Ye at Gibson City Hospital for a second opinion, and while Dr. Ye examined him, he did not treat him.

Petitioner testified that on December 4, 2019, he went to Dr. Oakey at McLean County Orthopedics in Bloomington, and that at that point the color of his right hand was purplish. Dr. Oakey referred Petitioner to Dr. Rink for an EMG, but Petitioner said he was instructed to see Dr. Victoria Johnson at Carle for the EMG, which was performed on January 20, 2020. He said he saw Dr. Oakey on January 27, 2020, due to pain, swelling, loss of strength, and tingling in the right hand. Dr. Oakey sent him to Dr. Michaels, another doctor at McLean County Orthopedics, and Petitioner said he saw Dr. Michaels that day and again on January 31, 2020, and Dr. Michaels restricted his work. Petitioner said he received physical therapy at McLean County Orthopedics, Petitioner testified the workers' compensation administrator for Carle sent him for an examination with Dr. Levin in the Chicago area, and that exam took place on March 4, 2020. He said he received a letter on March 5 or 6, 2020, which is Page 1 of Petitioner's Group Exhibit 17, the letter stating that his medical and TTD were being terminated. He said page 2 of Exhibit 17 is a carbon copy he received of a

letter sent to McLean County Orthopedics advising them no additional medical treatment was authorized or would be paid for by the insurance company. Petitioner testified that he had been receiving physical therapy at McLean County Orthopedics and had work restrictions from Dr. Michaels. He said that on March 5 or 6, Petitioner went back to his regular job and performed his work duties to the best of his ability. He said that prior to March 5, he had been on light duty and had been paid for work by wages, temporary partial disability, or temporary total disability. He said he saw Dr. Michaels on April 28, 2020, and Dr. Michaels discussed Petitioner's going to Shirley Ryan Ability Lab at that time, but no arrangements were made for Petitioner to be seen at that facility.

Petitioner said that while working from March 6 or 7 through May 5, 2020, he noticed he had decreased range of motion and pain, and that by the end of the workday on May 5, 2020, his right hand had swollen as much as he had ever seen it do. He said he went to the nearest emergency room, Kirby Hospital, that evening, and the doctor there said he should follow up with Carle. He said that he went to the Carle emergency room that same evening and was seen by Dr. Chi. She examined him, had x-rays taken and gave him pain medication, and restricted his work activities to 5 pounds. He testified that Dr. Chi told him that he had CRPS/RSD, and told him to go see Dr. Michaels. He said he did so the next day, and Dr. Michaels again mentioned he should go to the Shirley Ryan Ability Lab, but again, no arrangements were made to do so. Dr. Michaels suggested Petitioner see his primary doctor, Dr. Liss, for a general medical exam, a medical workup. He said he saw Dr. Liss, who referred him to Carle neurology. Petitioner said that on June 15, 2020, he saw a Nurse Practitioner, Sarah Henry at Carle Neurology Department, and she examined him and instructed him to see Carle Interventional Pain. He said that on July 8, 2020, he saw Dr. Jung, who examined him, recommended epidural injections, and provided him with a letter with work restrictions, Petitioner's Exhibit 2, Page 63. Jacobs received an e-mail from a person whose name he did not remember, a person he knew to be the person who had done the light duty scheduling for Respondent. He noted that the e-mail advised him the workers' compensation case has been closed, they had no light duty for him, he was off work until he was medically cleared to return to work without restrictions, and if not cleared in six months, he would be terminated.

Petitioner testified that he saw a neurologist, Dr. Arnold, at Carle, on or about October 19, 2020, as well as Dr. Tipirneni of Carle, on November 24, 2020, but neither provided him with any plan of treatment, and neither gave him any recommendation in regard to work restrictions. He said he saw Dr. Michaels again on or about March 20, 2021, and that Dr. Michaels gave him a written referral to see Dr. Fletcher.

Petitioner said he saw Dr. Fletcher for the first time on April 2, 2021. He identified the photographs in Petitioner's Exhibit 5 as having been taken of him at that time, saying his right arm and hand had appeared as they are seen in the photos intermittently since September 9, 2019, and had never appeared that way prior to September 9, 2019, that he had not had any injury to the right hand, arm or shoulder before September 9, 2019. Petitioner said he had injured his left arm in October, 1994, having suffered a compound fracture. Petitioner said Dr. Fletcher restricted his work activities and sent him for diagnostic testing with Dr. Trudeau, and had him start physical therapy at Fyzical, which is also known as Savoy Therapy.

Petitioner testified that on June 29, 2021, his employment at Carle was terminated, and his group insurance ended.

Petitioner said Dr. Fletcher sent him to Dr. Neumeister, who did surgery on his right elbow on or about August 3, 2021. He said Dr. Fletcher also sent him to Dr. Keller and to Dr. Goldberg at the University of Illinois in Chicago. He said he last saw Dr. Goldberg on May 12, or 13, 2022, and he started working for Piatt Tran in Monticello the next Monday, May 16, 2022, driving a van for 10 – 12 passengers for \$13.00 per hour. He said he then he got a job at Norfolk & Southern Railroad as a conductor, a job that involves a lot of walking and occasionally he goes up a couple rungs of a ladder on the side of a railcar. In that job he turns a large brake wheel to take the brake off of the railcar. The physical effort to turn the wheel is light.

Petitioner testified that in the two months prior to the arbitration hearing he has had swelling, pain, and changes of color with his right hand and arm, symptoms which occur once or twice a month and last for 15 minutes to a day. He said he has also had pain in his right shoulder every day. He testified that he has not had any pain or difficulties with his right elbow in the last two months. He noted he is right hand dominant.

Petitioner said he has medical bills for services occurring after March 4, 2020, that have not been paid. He is not aware that any of these bills have been paid by worker's compensation, and that any payment of those bills by BlueCross/BlueShield would have been through Medicaid. He said he has not received any temporary total disability payments from worker's compensation since March 5, 2020.

Petitioner said he had retired from the military as of October of 2021.

Petitioner said his earnings in his present job pay him more than he was paid in his job with Respondent.

On cross examination Petitioner said the bumper he threw in the trash weighed five to ten pounds, and he did not hit his arm on anything when putting that bumper in the trash. He said that when he threw the bumper in the trash he felt a pop in his right elbow, and the first medical provider he told of feeling a pop was Dr. DeSalvio.

Petitioner said Dr. Fletcher released him at maximum medical improvement with no restrictions, and told him to return if he had any problems. He said he had not seen Dr. Fletcher between July 1, 2022 and the date of arbitration.

Petitioner agreed that while Respondent had advised him in writing of the termination of workers' compensation medical benefits, he still had group insurance. He did not believe he had received any medical treatment through that group insurance, although it was possible he had done so, and it is possible health Alliance had paid for such treatment.

Petitioner testified that the only surgery he had undergone was cubital tunnel surgery, and no other surgery was currently recommended.

Petitioner said that on the day of the accident he complained of right elbow, bicep and shoulder pain, and he did not recall telling the occupational medicine people that he had not injured his right shoulder. He could not recall if he had complained of neck pain, but said he was not making a claim for a cervical injury or for a hand injury. He said he was originally released to work without restrictions, but that was later changed to a ten pound restriction. He agreed he went to the Kirby Hospital emergency room that night, but denied it was because his family was concerned he was going to be dispatched to military duty. He said he

did request a work slip for the Army as he could not “use it,” and his usual Army Reserve duty would be in the first two weeks of each month.

Petitioner said he did not recall telling Dr. DeSalvio that he did not think he had injured his shoulder, but he did tell him his elbow popped. It was his understanding that his diagnosis was torn brachialis, not right bicep and elbow strain. He said he did have a bicep MRI, and that it was his understanding that MRI was negative. He said he did not know if that MRI went up to his shoulder. He agreed he was seen at Gibson Area hospital, but he could not recall if he told his medical providers of that visit. He said he told Dr. Ye that he was there for a second opinion, and he told Dr. Ye of the elbow pop. He said he went to McLean County Orthopedics. He said after getting his EMG his next medical treatment was at the Carle emergency room, where he might have been referred back to Dr. Sobeski, he could not recall.

Petitioner said he first saw Dr. Jung, a pain doctor, on July 8, 2020, and Dr. Jung did not tell him he did not have CRPS. He last saw that physician on September 3, 2020, and he did not give him any restrictions on that date.

Petitioner said he then saw Dr. Arnold, but Dr. Arnold did not have any treatment to offer him. He said Dr. Arnold did not give him any restrictions.

Petitioner testified that he saw Dr. Tipirneni on November 24, 2020, and he told her he did not know what made his arm and neck pain better or worse. He said she told him there was nothing more to do from a spinal standpoint.

Petitioner said that from the date of the accident through his retirement from the Army in October of 2021, he had remained in the Army Reserves and continued training one weekend per month.

Petitioner said his attorney had suggested he be seen by Dr. Fletcher, which is how he knew to ask Dr. Michaels for the referral.

He said Dr. Goldberg was in the Chicago area, and he had not recommended any shoulder surgery, but did recommend an internal stimulant pain pump in May of 2022. He said that was for his shoulder, but he did not get that. He said when he last saw Dr. Fletcher on July 1, 2022, no pain pump surgery was recommended.

Petitioner testified that as of the date of arbitration he was not taking any prescription medication, and he was working full duty, full time.

On re-direct examination Petitioner said Dr. Jung had given him the July 8, 2021 letter, and nobody at Carle at any time thereafter had cleared him for going back to work full duty, they gave him no work recommendations at all. He said Dr. Liss, his primary care physician, while seen, had never rendered treatment to him for this injury.

Dr. David Fletcher

Dr. Fletcher was called as a witness by Petitioner, and testified that he is a licensed physician board certified in occupational medicine. He testified that he saw Petitioner on the referral of Dr. Michaels. When Petitioner was first seen by him he was given a history of a workplace injury that occurred in September 2019, an acute injury where Petitioner was lifting overhead with a plastic fender with a wrenching type movement of

the arm, and had a pop in his right elbow. Dr. Fletcher said has had extensive experience treating this type of injury, and has probably seen 150-200 cases of CRPS in his career.

Dr. Fletcher said that prior to seeing Petitioner, he reviewed medical records that were available to him concerning the injury of September 9, 2019, including a January 20, 2020 EMG by Dr. Johnson. He said that test indicated there was a conduction defect over the ulnar nerve at the elbow, that Petitioner had a cubital tunnel syndrome as a result of the injury. Dr. Fletcher's recommendation was surgery to correct it. He repeated the electrodiagnostic studies with Dr. Trudeau and ended up referring Petitioner to Dr. Neumeister, who is a hand surgeon at SIU Medicine.

At his first examination of Petitioner on April 2, 2021, Dr. Fletcher performed a physical examination. He took photographs which showed swelling of the hand, glistening of sweat, and discoloration/duskiness of his skin. He said he did not find evidence of a brachial plexopathy or cervical radiculopathy. He said he did find CRPS findings that satisfied the Budapest criteria and objective findings of cubital tunnel syndrome and ulnar neuropathy at the elbow. He planned on addressing the peripheral nerve problem as well as the CRPS symptomatology. In addition to sending Petitioner to Dr. Trudeau for repeat electrical studies, he ordered physical therapy at Savoy Therapy, and recommended a TENS unit to help with pain control. He prescribed Lyrica for Petitioner's neuropathic pain. He recommended a diagnostic stellate block by Dr. Michaels, but that could not initially be done due to lack of authorization but was eventually performed by Dr. Soto.

Dr. Fletcher referred Petitioner to Dr. Neumeister who agreed with the cubital tunnel syndrome diagnosis, but he felt Petitioner had evidence of radial tunnel, which explained Petitioner's limited supination and pronation of his right forearm on examination. On August 3, 2021, Dr. Neumeister performed surgery on August 3, 2021, and Petitioner thereafter had significant improvement. Petitioner had very intensive physical therapy with for RSD/CRPS, and his symptoms and clinical signs of RSD/CRPS basically went away after his nerve surgery. Dr. Fletcher said he then dealt with Petitioner's right shoulder condition, giving him a steroid injection. He had Petitioner see Dr. Keller, an orthopedic surgeon, and that physician ordered an MRI which found a moderate tear in the supraspinatus tendon. Dr. Fletcher said this was not a complete thickness rotor cuff tear, the MRI report referred to it as a 25% tear. He said both he and Dr. Keller recommended an arthroscopy of the right shoulder to help repair the torn rotator cuff. That surgery was not performed due to lack of authorization. Dr. Fletcher said he tried being creative with the Medicaid system, referring him to Dr. Goldberg and the University of Illinois Chicago, which took Medicaid, but the shoulder was never operated on. Petitioner was last seen at the University of Chicago on May 13, 2022.

Dr. Fletcher testified that when he first saw Petitioner, April 2, 2021, he felt he was temporarily disabled, though he never thought he was totally disabled, he could do some restricted duty, he could work if the employer could have accommodated restrictions. He noted that on October 22, 2021, Petitioner was trying to look for employment, and he needed something for a prospective employer to know what physical labor Jacobs could do, he needed some guidance about what he could or could not do to be gainfully employed. Dr. Fletcher said he gave him specific restrictions: No overhead activity, and no lifting more than 20 pounds. He said that when seen on July 1, 2022, he released Petitioner to work for Norfolk Western as a conductor. He said he had extensive knowledge on the jobs at the Norfolk Western, and what this job required, as he had done work for that railroad since 1986.

Dr. Fletcher said his final diagnosis of Petitioner was status post right radial tunnel, cubital tunnel surgery, his CRPS had improved and essentially resolved by July 2022, but he still had evidence of right shoulder labral pathology, which was present on physical examination. He testified that all of those diagnoses of ill-being were related to the injury of September 9, 2019. Dr. Fletcher testified that the care and treatment that he provided and referred him to was medically necessary and reasonable to treat the injuries of September 9, 2019, that, "the proof is in the pudding. He got better and went back to work." Dr. Fletcher testified that he reviewed the bills in Petitioner Exhibit 16. He referred Jacobs to all the providers other than Dr. Ye and Carle, and the treatment referenced in those billings was reasonable and necessary.

Dr. Fletcher said there is always the potential for complex regional pain syndrome to come back, but he had performed a brief examination of Petitioner on the date of arbitration and did not find any evidence of CRPS on exam. Dr. Fletcher said Petitioner's prognosis with his right shoulder was that he was going to have some residual pain discomfort in the shoulder. He said that during his examination of Petitioner that day Petitioner still had labral signs, but Petitioner had opted to live with it. In regard to the prognosis concerning the right ulnar and radial nerve condition, Dr. Fletcher's testified Petitioner still has some residuals with it, which was not unexpected.

On cross examination Dr. Fletcher said that he had probably testified in cases for Petitioner's attorney ten to fifteen times over the course of 35 years. He said he had not seen Petitioner prior to April 2, 2021, so he did not have physical examination knowledge of him for prior to that date. He said he spoke with Petitioner's attorney about a client he had with a diagnosis of CRPS who the attorney was going to have Dr. Michaels refer to Dr. Fletcher. The attorney then sent him the medical records and set up the exam after Dr. Michaels gave the referral.

Dr. Fletcher said he was aware that Petitioner was in the Army Reserve during the time he treated him. He said Petitioner was right hand dominant and the dominant arm is normally slightly larger than the non-dominant arm, up to 10 percent larger. He said in Petitioner's case there was obvious swelling, not just a difference in muscle mass. He said in his brief examination of Petitioner on the date of arbitration he did not observe any difference in size, nor did he see any swelling. He said the photographs show Petitioner's right arm skin being dusky, having a more bluish color, as opposed to pinkish, a hallmark of CRPS, and having allodynia, the glistening of sweat, as well as a difference in temperature. He said he did not take the skin's temperature, however.

Dr. Fletcher testified that based on his physical examination of Petitioner on the date of arbitration, Petitioner did not currently suffer from CRPS. He said that Dr. Soto, who performed one ganglion block on Petitioner, did not feel Petitioner had a good result from that block, but did make a diagnosis of CRPS based upon his clinical examination.

Dr. Fletcher agreed that after his first examination of Petitioner he emailed Petitioner's attorney and suggested a functional capacity evaluation be performed to indicate whether he had the objective capacity to perform landscaping work. He said that test would have provided documentation to prove the assertion that Petitioner could perform the work was wrong. He said no FCE was performed.

Dr. Fletcher said he disagreed with Dr. Levin's opinion on Petitioner's work ability, based on his own physical examination of Petitioner, which included grip strength testing that showed diminished strength in

Petitioner's dominant hand, which he said was objective documentation of diminished capacity and supported Petitioner's subjective complaints.

Dr. Fletcher said he took Petitioner off work on the first date he saw him as the employer could not accommodate restrictions, they had terminated him and Petitioner did not have a job to go back to, as well as due to Petitioner having gotten restrictions from Carle physicians in the past which he had not been allowed to return to work with.

Dr. Fletcher said he did not have any diagnoses of ill-being in regard to the cervical spine or the right hand.

Dr. Fletcher said that Dr. Jung considered CRPS as a diagnosis, but never made a definitive diagnosis of that disorder. He said Dr. Jung had noted he believed it was unlikely that Petitioner's pain was coming from CRPS, that he did not meet the diagnostic criteria for CRPS.

Dr. Fletcher testified that he felt Petitioner's surgery was very successful as Petitioner got better following it and got back to work. He felt Petitioner was at maximum medical improvement on July 1, 2022.

Dr. Fletcher said that on his last examination of Petitioner prior to the arbitration date, July 1, 2022, he found Petitioner's shoulder strength to be 5 out of 5, Petitioner had no tenderness over the right anterior shoulder, no instability, and he only had some minor loss of interior rotation.

On re-direct examination Dr. Fletcher said that when he recommended a functional capacity examination, Petitioner did not have any insurance or other third party source to pay for that examination.

MEDICAL EVIDENCE

On the date of accident, September 9, 2019, Petitioner was seen by Dr. DeSalvio at Carle Occupational Medicine. Petitioner gave a history consistent with his testimony, injuring right arm while putting automobile part into a dumpster, with right elbow and arm complaints. He noted the pain radiated into his right shoulder, but did not feel he had injured the shoulder per se. It was felt he had an injury to the distal bicep tendon, the elbow end of the biceps. While Petitioner felt he could return to work, and was given a release to do so, his manager asked the medical facility for restrictions, and a 10 pound lifting restriction was given. (PX 2 p.2-4)

Petitioner was also seen at Kirby Medical Center on September 9, 2019, giving a similar accident history to that facility. His previously issued 10 pound restriction was noted, and it was also noted that he was to go on military duty in the next several days and Petitioner felt they would not put him on restricted duty without a doctor's note. The emergency room staff felt his physical examination was consistent with a significant bicep strain. (PX 4 p.1,3)

Petitioner was again seen by Dr. DeSalvio on September 16, 2019, and his complaints continued to be from the right forearm to the right shoulder. It was noted that after the work restrictions were changed at the request of Respondent to 10 pounds lifting, Respondent had not been able to accommodate those restrictions, and Petitioner was therefore off work. It was noted that range of motion testing of the right shoulder indicated he was tight when reaching above the head. Dr. DeSalvio's impression was right distal biceps injury and right elbow strain, and the 10 pound work restriction continued. (PX 2 p.10,11)

Dr. Sobeski saw Petitioner on September 16, 2019 on the referral of Dr. DeSalvio. He felt Petitioner's tendons appeared to be intact, and this was probably a muscle tear. An MRI was ordered to confirm this. That MRI was performed on October 2, 2019, and while no biceps tendon was seen, there did appear to be an injury to the brachialis insertion, consistent with tendinosis at the common extensor tendon origin. Dr. Sobeski saw Petitioner again on October 7, 2019, found Petitioner to still have a good deal of tenderness in the muscular tendinous junction, started physical therapy and kept his lifting restriction at 10 pounds. His complaints and findings were limited to the right elbow. (PX 2 p.15,17,18)

Petitioner received physical therapy at Carle Therapy Services from October 18, 2019 through November 14, 2019 (PX 2 p.22-33)

Dr. Sobeski saw Petitioner on November 18, 2019, and Petitioner reported to him that the physical therapy left him unchanged. Dr. Sobeski thought Petitioner should be allowed to rest for a bit and gave him a one pound weight limit. (PX 2 p.14,35)

Petitioner saw Dr. Ye for a second opinion the next day, November 19, 2019, complaining of right elbow pain only. All physical findings were in regard to the right elbow. Dr. Ye advised Petitioner that his MRI did not show a biceps tear, and while he may have some tendinosis, there was no surgery that would make this better. An injection was offered, but Petitioner refused the injection. (PX 10 p.1)

Dr. Oakley saw Petitioner on December 4, 2019, for a second opinion. He took a fairly consistent history from Petitioner, and following a physical examination he did not have a definitive diagnosis, but he ordered an EMG, continued Petitioner's lifting restriction, and then noted that he believed the elbow and upper extremity pain that he was treating was causally connected to the injury Petitioner described throwing something in a dumpster. (PX 3 p.36,38)

NP Sawyer saw Petitioner on January 2, 2020, and he noted that Petitioner's MRI and EMG had been normal, so he thought he should have his cervical spine evaluated, as he could find no cause for Petitioner's arm symptoms. He was therefore referred to Dr. Michaels. (PX 3 p.34)

Dr. Johnson performed an EMG/NCV on January 20, 2020, finding Petitioner to have right ulnar motor neuropathy. (PX 2 p.42)

On January 27, 2020 Dr. Michaels saw Petitioner with complaints similar to those he had previously made. A cervical MRI was recommended. (PX 3 p.30-32)

A January 29, 2020 MRI of the cervical spine only revealed multilevel mild, early spondylitic changes and several small shallow central disc protrusions and annular bulges, but no herniations or spinal stenosis. (PX 3 p.64,65)

Dr. Michaels saw Petitioner on January 31, 2020, with physical examination showing tenderness throughout the right arm, and diffuse weakness on multiple muscle groups in the right shoulder, forearm, wrist and fingers, diffuse weakness in the right arm, and "at times giving out before resistance applied." The doctor noted, "at this point, the patient's arm pain and weakness is of unclear etiology." Physical therapy was suggested to Petitioner. (PX 3 p.27,29)

Petitioner received physical therapy at McLean County Orthopedics from February 5, 2020 through March 5, 2020. On that last date the therapist noted Petitioner had not met any of his goals, had inconsistencies in his examination, and was voluntarily guarding during assessment of the right shoulder. The therapist said that as a result of his presentation and examination he was unclear as to Petitioner's specific dysfunction or the nature of his injury, weakness and pain. (PX 3 p.40-59)

On March 4, 2020, Petitioner was examined at Respondent's request by Dr. Levin. Dr. Levin received a history of the accident and treatment he had received. At the time of the examination Petitioner said he was still receiving physical therapy and seeing Dr. Michaels. Petitioner reported having improved approximately 15 to 20 percent since the time of the accident, but continued to have pain from behind his right ear down into the fingers of his right hand. A detailed physical examination was performed on that date, and Dr. Levin reviewed MRI images previously taken of the right elbow and cervical spine, as well as x-rays of the right elbow. He summarized the medical records he reviewed. He then rendered several opinions. His diagnosis was right distal brachialis muscle strain, which he felt should have resolved in four to six weeks after the accident. He did not believe Petitioner's complaints at the time of his examination were consistent with the diagnosis he had given., and he did not believe Petitioner had suffered any cervical injury as a result of this accident. Dr. Levin felt only some of the medical treatment which had been provided was reasonable, the right elbow MRI and a short amount, 9 visits, of physical therapy. He did not feel any of the testing or treatment of the cervical spine was related to this accident. He did not believe any additional treatment was necessary. He was of the opinion that Petitioner could work without restrictions. He felt Petitioner had reached maximum medical improvement in regard to the right elbow. (RX 1 p.1-9)

Petitioner saw NP Sawyer on March 9, 2020, he noted that hand surgery would not benefit Petitioner, and Petitioner would be seen thereafter on an as-needed basis, as it was not believed they had anything else to do for him. It was noted that from their standpoint Petitioner could return to work without restrictions. (PX 3 p.22,23)

Petitioner was seen by Dr. Michaels on April 28, 2020, with muscle aches, tenderness and trigger point bands in the region of the right shoulder, and, with encouragement, he had full range of motion in the shoulder, forearm, and wrist. Dr. Michaels gave Petitioner information in regard to pain psychology and the Shirley Ryan Ability Lab, an intense rehabilitation program that might in the future provide him benefit. The diagnosis on this date was chronic pain. (PX 3 p.14,16,17)

Petitioner went to the emergency room at Kirby Medical Center on May 5, 2020, complaining of right wrist pain. He noted it was thought he had CRPS. The pain had been chronic, but it became worse that day. (PX 4 p.21,

Petitioner was also seen in the emergency room of Carle Foundation Hospital on May 5, 2020, complaining of worsening right hand/wrist pain, and swelling. It was noted he was being treated for CRPS and said he had similar episodes of pain and swelling in the past, but they had not been this bad. He had been seen in Kirby and an x-ray of the wrist there had been negative. An x-ray of the right wrist was again taken, and again found to be normal. The impression at that time was pain and swelling of the right hand. Petitioner was given pain medication and a work note for the next few days. (PX 2 p.44,47)

Petitioner saw Dr. Michaels on May 6, 2020, with continuing complaints. Examination revealed he had edema over his right wrist and hand, with bruising on the back of the right hand. He had mild tenderness from the right shoulder to the right hand. Dr. Michaels said Petitioner did not meet the Budapest criteria for CRPS on this date, but he felt it was a central component to Petitioner's pain. He noted he continued to feel Petitioner should be seen by a pain psychologist and the Shirley Ryan Ability Lab in Chicago. His diagnoses were chronic pain and swelling of the right upper limb. (PX 3 p.12-14)

On May 28, 2020 an ultrasound deep venous study was performed on Petitioner's right arm due to swelling of the arm, and no evidence of deep or superficial venous thrombosis was found. (PX 3 p.61-63)

On June 15, 2020 Petitioner was seen by NP Henry in the neurology department of Carle Physician Group. After examining Petitioner, NP Henry noted that Petitioner's ongoing pain was less than clear on exam, recommending Petitioner be seen in a pain clinic for possible injection treatments as oral medications had not helped. (PX 2 p.55,56)

Petitioner was seen by Dr. Jung in Carle's Interventional Pain Center on July 8, 2020. After examining Petitioner, Dr. Jung stated that Petitioner did not meet the criteria for a CRPS diagnosis. He felt Petitioner's problems could be coming from a possible cervical radiculitis, noting the cervical MRI had been done lying down, it was not a dynamic MRI. He recommended another cervical MRI and possibly a right-sided C7-T1 level epidural steroid injection, which would have diagnostic value. He did not believe Petitioner could lift, push, or pull a heavy object, or stand for a long time with a 10 pound object due to his pain complaints. On August 6, 2020 Dr. Jung performed an epidural steroid injection at C7/T1. (PX 2 p.58-65)

Petitioner saw Dr. Jung on September 3, 2020 and advised him that he had not responded to the injection. Dr. Jung recommended Petitioner see a neurosurgeon, and if it was found that there was nothing surgical to be done, the only option he would be able to offer him would be medication pain management. (PX 2 p.67,68)

Petitioner saw NP Liss on September 22, 2020, complaining of right-sided neck pain which radiated down his right arm in a C6 dermatomal distribution. He said he felt weak in the right arm. Physical examination revealed diffusely diminished strength in his right arm. A cervical MRI was recommended. Physical examination showed some reduction in right shoulder range of motion and right grip strength. (PX 3 p.2,5)

Petitioner was seen by Dr. Arnold on October 19, 2020, and he felt a new cervical MRI was necessary. The MRI was performed on October 26, 2020, and the only abnormality noted was mild central spinal canal stenosis at C3/4 due to a tiny central disc protrusion and disc bulge, superimposed on a congenitally narrow spinal canal. Dr. Arnold saw Petitioner again on November 16, 2020, and, after reviewing the MRI, stated he did not believe surgery would help Petitioner. (PX 2 p.70,75,78)

Dr. Tipirneni of the Carle Spine Institute saw Petitioner on November 24, 2020, noted Petitioner's right shoulder range of motion was limited, he had positive impingement tests, as well as weakness along the biceps as well as wrist flexion and extension. She noted that the MRI findings did not correlate to Petitioner's symptoms, and her impression was neuropathic pain, brachial plexus or plexopathy, cervical degenerative disc disease and spondylosis, as well as rotator cuff tendinitis versus a tear. She did not believe Petitioner's problems

were coming from the neck. She recommended he see a neurologist to look at possible brachioplexopathy or neuritis, and said the right shoulder might be looked at by orthopedics. (PX 2 p.80,81)

Dr. Michaels saw Petitioner on March 22, 2021, with Petitioner principally complaining of right shoulder pain, with additional complaints of neck pain, muscle aches, and weakness. He had limited range of motion of the right elbow, wrist, and shoulder. Dr. Michaels said CRPS had remained a differential diagnosis throughout his treatment of Petitioner, listing the symptoms Petitioner had which were consistent with that disorder. He believed Petitioner met the diagnostic criteria for that diagnosis. He noted the different treatment which had been tried, and said he felt a potential stellate ganglion nerve block could be considered, but Petitioner desired a second opinion on that. (PX 3 p.6-8)

Petitioner was initially seen by Dr. Fletcher on April 2, 2021. At that time Dr. Fletcher believed Petitioner to have obvious objective findings, classic for CRPS. He prescribed medication, ordered a TENS unit, recommended a diagnostic stellate block and referred Petitioner to Staci Poe for psychological support. His diagnoses were lesion of the right ulnar nerve, CRPS, and adjustment disorder with anxiety. He noted Petitioner was temporarily disabled from April 2, 2021 to April 22, 2021. (PX 6 p.1-9,14)

Petitioner underwent EMG/NCV testing by Dr. Trudeau on April 19, 2021. Dr. Trudeau's physical examination revealed diffuse weakness in the right arm when compared to the left, in particular weakness of the ulnar innervated muscles in the right arm, compared to the left. He also found reduction of multiple right reflexes compared to the left, but no atrophy on either side. He also had diffuse numbness in all distributions in the right arm, but more so in the ulnar distribution of the right hand, compared to the median and radial distributions. His electrodiagnostic tests were interpreted as showing ulnar neuropathy at the right elbow, cubital tunnel. He specifically noted that he found no evidence of radial nerve compromise. (PX 9 p.1-5,7)

Dr. Fletcher saw Petitioner again on April 22, 2021, and Petitioner said he was unchanged from his last visit. His diagnoses did not change. He was to remain off of work to May 13, 2021. (PX 6 p.20,22,30)

Petitioner received physical therapy starting April 30, 2021 for his right elbow and CRPS. (PX 6 p.40-42)

Petitioner returned to Dr. Fletcher on May 14, 2021, and his diagnoses remained the same, with the addition of adjustment disorder with depressed mood. He was noted to be temporarily disabled from May 14, 2021 to June 4, 2021. (PX 6 p.43,45,50,52)

Petitioner was seen by Dr. Soto of Millennium Pain Center on June 3, 2021, with complaints of pain from the neck to the right fingertips. His impression was CRPS, and his plan of treatment was a stellate ganglion injection on the right. (PX 14 p.1-3)

On June 4, 2021 Petitioner advised Dr. Fletcher that his pain was a 6, but was manageable, as it had been on the prior visit. His diagnoses remained the same, and his work restrictions were to continue until June 22, 2021. (PX 6 p.56,58,63,64)

Petitioner returned to Dr. Soto on June 10, 2021 for his stellate ganglion injection (PX 14 p.4,5)

When seen by Dr. Fletcher on June 22, 2021, Petitioner said he was unchanged, with a pain level of 7. His diagnoses had not changed. He was deemed temporarily disabled from June 22, 2021 to July 16, 2021. (PX 6 p.66,68,75)

Petitioner returned to see Dr. Soto on June 23, 2021, and reported he got no relief from his injection. Dr. Soto noted he advised Petitioner that lack of relief from the injection did not necessarily rule out CRPS. (PX 14 p.8,9)

Petitioner was first seen by Dr. Neumeister at SIU Medicine on July 7, 2021, complaining of numbness and tingling in the right hand and pain in the right hand and arm. The one page record of that visit notes that Petitioner was seen for evaluation of pain in the right hand and arm, but no physical examination findings, impression/diagnosis, or treatment plan is noted in this record. (PX 7 p.7)

Dr. Fletcher saw Petitioner on July 16, 2021. Petitioner was complaining of shooting pain into his right arm. It was noted that he was scheduled for surgery with Dr. Neumeister on August 3, 2021. It was noted that complaints of tenderness over the right anterior shoulder were made, and in addition to the four prior diagnoses, a new diagnoses, right shoulder labral tear, was made. His temporary disability status was extended to August 5, 2021. (PX 6 p.77,78,79,84,86)

Dr. Neumeister saw Petitioner in follow up on July 23, 2021. Once again there are no physical examination findings other than height and weight, Dr. Neumeister's assessment was "hand pain," and no treatment plan is noted. (PX 7 p.1,2)

A history and physical examination was performed by Dr. Lee on the date of Petitioner's surgery, August 3, 2021. No actual history was taken other than of having a long history of right handed pain., but it was noted multiple EMG/NCV tests had determined Petitioner had cubital and radial tunnel syndromes. The physical examination at that time showed decreased sensation in the thumb, index, dorsal hand and ulnar digits, with sensation being 4/10 when compared to the left hand. Dr. Neumeister performed right radial and cubital tunnel surgeries on Petitioner on August 3, 2021. In the operative report he noted that fascia was compressing the ulnar nerve and causing the cubital tunnel problem. He also released the radial nerve, but there is no description of compression of the radial nerve. No record of Dr. Neumeister introduced into evidence addressed any work restrictions being put on Petitioner. (PX 7 p.3-5; PX 8 p.1-3)

Petitioner saw Dr. Fletcher on August 5, 2021, with post-operative soreness. It was Dr. Fletcher's intent at that time to get an MRI of the right shoulder to investigate the possible labral tear. Petitioner was continued to be restricted from work from August 5, 2021 to August 19, 2021. On August 19, 2021 Petitioner was reporting pain level of 7, and he was deemed disabled by Dr. Fletcher from August 19, 2021 to September 8, 2021. (PX 6 p.90,92,93,97,101,103,110,113)

Dr. Fletcher saw Petitioner on September 8, 2021 with the same level of pain complaint, 7, and his work status remained restricted from that date until September 29, 2021. (PX 6 p.116,121)

Petitioner was seen by Physician Assistant (PA) Shore at Central Illinois Orthopedic Surgery on September 14, 2021. His voiced pain on that date in relation to his right shoulder, right thumb, index finger and middle finger, and right elbow. After examining Petitioner, PA Shore diagnosed right shoulder bicipital

tendinitis, right shoulder impingement syndrome, right scapular winging, and pain of the right shoulder, with concern for labral tear. (PX 11 p.1-4)

When seen on September 29, 2021, Petitioner's pain level was the same, the right shoulder MRI had still not been performed, and his restrictions were continued from that date to October 20, 2021. (PX 6 p. 125,127,132,134)

Petitioner was seen by Dr. Fletcher on October 20, 2021, with a pain level of 6, reporting that physical therapy was not helpful, and Petitioner felt he had plateaued. As was seen on prior exams, Petitioner had reduced right shoulder range of motion in some planes, but improved range of motion in others. Dr. Fletcher continued Petitioner's restrictions to November 17, 2021. (PX 6 p.137-139)

On October 26, 2021 Petitioner saw PA Shore with complaints similar to those made on September 14, 2021. The diagnoses remained the same, and PA Shore ordered an MRI of the right shoulder. The MRI was performed on November 9, 2021, and it revealed low grade partial thickness tearing of the supraspinatus tendon, mild tendinosis of the infraspinatus and subscapularis tendons, tendinosis of the long head of the biceps tendon, mild glenohumeral and acromioclavicular osteoarthritis and thickening of the inferior glenohumeral ligament. PA Shore saw Petitioner again on November 16, 2021, and diagnosed a partial right rotator cuff tear per the MRI, as well as degenerative changes in the AC joint. He recommended surgical intervention, but there was no facility locally where Dr. Keller could perform this surgery, so they were going to refer him to Dr. Keller. (PX 11 p.6-8,10,11,14; PX 12 p.1,2)

Petitioner received physical therapy with FYZICAL Therapy from September 14, 2021 through October 19, 2021. The diagnoses they noted they were treating him for were CRPS and lesion of the right ulnar nerve, but shoulder complaints were documented throughout the time they treated him. (PX 13 p.1-24)

On November 17, 2021 Petitioner saw Dr. Fletcher and voiced a pain level of 7, with no changes in symptoms. Petitioner's restrictions were changed to modified duty, with no overhead activity and no lifting over 20 pounds. (PX 6 p.142-144,148)

On November 29, 2021, Respondent had Petitioner examined pursuant to Section 12 of the Act by Dr. Li. Dr. Li listed the treating medical records and Dr. Levin's IME report, all of which he reviewed as part of his examination, and he summarized the history he received from Petitioner. He noted that Petitioner's current complaints were in the right shoulder, radiating to the chest and clavicle, with pain worsening with reaching and elevation. He noted that during his physical examination Petitioner had full passive range of motion, no muscular atrophy, and pain with certain motions. Dr. Li believed Petitioner's strength testing was unreliable as Petitioner's strength in supraspinatus and external rotation were much less than he would have expected for a person with his right shoulder MRI findings, as there was nothing wrong with Petitioner's subscapularis tendon in the MRI. He noted Petitioner had no tenderness in the right elbow during the examination, and his right cubital tunnel scar was well healed. Dr. Li's diagnosis was right shoulder rotator cuff tendinopathy with a very minor partial thickness tear. He felt the MRI findings were mainly age related with no evidence of an acute traumatic or chronic repetitive traumatic injury, he had findings which did not require shoulder surgery. He felt the right elbow treatment had been reasonable and necessary, he noted the January 2020 EMG showed no abnormalities showed not abnormalities, but a repeat EMG a year later demonstrated right cubital tunnel syndrome. He was of the opinion that cubital tunnel syndrome would not be caused by throwing a piece of

plastic weighting five to ten pounds, so he therefore felt the surgery to the right elbow was reasonable, but not related to the September 9, 2019 injury. He did not believe the September 9, 2019 accident had aggravated an injury to Petitioner's right shoulder. He felt a corticosteroid injection to the right shoulder would be reasonable, followed by up to six weeks of physical therapy, but no surgery was necessary. In regards to work restrictions, Dr. Li stated restrictions from repetitive lifting, pushing and pulling of over five pounds were reasonable for eight weeks following his recent right elbow surgery. He did not perform an AMA rating evaluation as Petitioner had recently had right elbow surgery and was not yet at maximum medical improvement. (RX 2 p.1-5)

Dr. Keller saw Petitioner on November 30, 2021. His diagnosis was the same as PA Shore's, and he was going to refer him to Dr. Novotny. (PX 11 p.17,18)

Petitioner returned to Dr. Ye on November 30, 2021, this time complaining of right shoulder pain. He now said the pain went up into his neck somewhat. There were very few objective abnormalities on physical examination. He noted the MRI of the right shoulder of November 9, 2021 was consistent with mild to moderate osteoarthritis at the glenohumeral joint, with thickening in the inferior glenohumeral ligament, a partial thickness rotator cuff tear, moderate tendinosis versus partial tear in the proximal biceps tendon, and AC joint osteoarthritis. His diagnosis was the findings on the MRI, and he referred Petitioner to Dr. Novotny as he felt him would benefit from arthroscopic surgery to repair the findings in the MRI. (PX 10 p.5,6)

Petitioner was next seen by Dr. Fletcher three months later, on January 14, 2022. Petitioner's restricted duty status was to continue to February 11, 2022. This is the last work restriction issued by Dr. Fletcher. (PX 6 p.150,154,156)

Petitioner was seen by Dr. Redondo at UI Hospital in Chicago on March 11, 2022, for right arm pain with radicular symptoms from neck to fingertips. Physical examination of the right shoulder revealed winging of the right scapula, full passive range of motion of the right shoulder, with pain and greatly limited active range of motion in flexion and abduction secondary to pain. The assessment was CRPS of neck, shoulder, and arm pain. He was advised to get a new EMG and a new cervical MRI. He did not feel Petitioner's shoulder pain, being diffuse, was from the shoulder joint itself. (PX 15 p.4-6)

Dr. DeSalvio saw Petitioner in occupational medicine again on April 28, 2022 for a Department of Transportation physical, and only found evidence of his right elbow surgery, found him to be a healthy male and approved him to be an interstate driver. (PX 2 p.82,83)

On May 13, 2022 Petitioner was seen by Dr. Mayo and Dr. Goldberg at UI Hospital in follow up of Dr. Redondo. Petitioner brought a new EMG, new cervical MRI, and the shoulder MRI from the previous fall with him to this appointment. Physical examination was similar to his last visit, and it was noted the new EMG resulted in no significant findings, and the cervical MRI was also without significant pathology. The MRI report indicated mild tendinitis of the rotator cuff and biceps tendon. Based on those test results the doctors did not feel any surgical intervention would help Petitioner. They did tell Petitioner that his shoulder pain probably did not come from the shoulder joint. (PX 15 p.14,15)

Petitioner did not see Dr. Fletcher from January 14, 2022 until July 1, 2022, a period of nearly six months. Petitioner reported his right shoulder as being better, that he was improving. Physical examination on

that date showed 5/5 strength, no tenderness over the right shoulder, nearly normal range of motion of the right shoulder in all planes, with minor loss in internal rotation. His right elbow range of motion was also improved, with no tenderness in the right forearm. While multiple doctors had previously recommended right shoulder surgery, Petitioner, because he had improved, opted not to pursue any additional treatment for the right shoulder and had begun to look for work. Petitioner said he had applied with Norfolk Western Railroad, and needed a statement from a treating provider as to his fitness for duty, and Dr. Fletcher wrote that he was supplying that report. Dr. Fletcher wrote, "On July 1, 2022, he was released to regular work with no restrictions. He was also released from my care. He was prescribed no medications. He has obtained MMI for his September 2019 work injury." He said Petitioner could be a conductor for the railroad. (PX 6 p.157-160)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner was cooperative in answering all questions posed to him by both attorneys. Most of his testimony was corroborated by the contemporaneous medical records, though it is noted that multiple medical providers found Petitioner at times to have inconsistent physical findings. It is noted that while Petitioner had lengthy subjective right shoulder complaints, with minimal MRI objective abnormalities, his complaints reduced dramatically when he obtained employment first as a van driver and then, completely, when he obtained employment with Norfolk Western Railroad, he no longer sought right shoulder surgery at that time, while seeking it just a couple of months prior, and he asked Dr. Fletcher for a full release without any restrictions. Petitioner at arbitration was still working as a conductor for the railroad, and did not appear to be exaggerating his present physical problems. The Arbitrator finds Petitioner to be a somewhat credible witness, but notes the medical evidence and actions which prevent him from being fully credible.

Dr. Fletcher also was entirely cooperative in answering all questions posed to him by both attorneys. Dr. Fletcher acknowledged that other physicians agreed and disagreed with his opinions in regard to a CRPS diagnosis for Petitioner, and he also noted that the CRPS symptoms and right shoulder complaints had fully resolved by the time of arbitration, and, apparently, when Petitioner saw him on July 1, 2022 when he wanted a full release without restrictions, at which time Dr. Fletcher also released Petitioner from his care and found him to be at maximum medical improvement. The Arbitrator finds Dr. Fletcher to be a credible witness.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, hand complaints, neck complaints, post-operative right cubital tunnel, post-operative radial tunnel, right shoulder bicipital tendinitis, right shoulder impingement syndrome, right scapular winging, low grade partial thickness tearing of the right supraspinatus tendon, mild tendinosis of the right infraspinatus and subscapularis tendons, tendinosis of the long head of the right biceps tendon, mild right glenohumeral and acromioclavicular osteoarthritis and thickening of the right inferior glenohumeral ligament, and Complex Regional Pain Syndrome, are causally related to the accident of September 9, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

Petitioner, over the course of time, made many different complaints to the upper right side of his body, from the neck, down the entire right arm, to the tips of his right hand fingers. He stipulated at arbitration that he was not claiming any injuries to his right hand or neck were caused by this accident. They are included in this finding only due to their complaints, which were numerous, being included in the medical summary, above, and bills for treatment of those maladies being included in the exhibits introduced into evidence.

Petitioner had right elbow complaints from the date of this accident until the date of his right elbow surgery by Dr. Neumeister. Multiple physicians diagnosed right ulnar nerve entrapment and slowing, cubital tunnel syndrome. The EMG testing of both Dr. Johnson and Dr. Trudeau found ulnar nerve dysfunction. With the exception of Dr. Neumeister, no other physician diagnosed radial nerve entrapment, radial tunnel syndrome. Both Dr. Johnson and Dr. Trudeau noted their finding no abnormalities in the radial nerve. Dr. Levin's opinions following the IME examination he performed included a diagnosis of right distal brachialis muscle strain, not cubital or radial tunnel. Dr. Fletcher saw Petitioner beginning in April of 2021, and he diagnosed a lesion of the ulnar nerve, but made no diagnosis in regard to the radial nerve. Dr. Neumeister's office notes, the records of SIU Medicine, are minimal, devoid of any detailed complaints or history, do not include physical examination findings in regard to the right arm, and do not give a specific diagnosis as a result of office visits, merely an assessment of "hand pain." In the surgery of August 3, 2021, Dr. Neumeister does describe contracture of the ulnar nerve, but he does not do so in reference to the radial nerve. Petitioner did improve markedly after the right elbow surgery was performed, he basically ceased making those complaints and just continued to make complaints in regard to his neck and other portions of his right arm. Respondent's second IME physician, Dr. Li, felt Petitioner had cubital tunnel syndrome, but did not believe it was caused by throwing a piece of plastic weight five to ten pounds. He did think surgery to correct that condition was reasonable.

Petitioner made numerous complaints in regard to the right shoulder for which no definitive diagnosis was ever agreed upon by his treating physicians. Complaints of actual right shoulder pain were not voiced until several months following the accident. While abnormalities were noted on MRI images of the right shoulder, they were not deemed to be very significant. Dr. Redondo, Dr. Mayo, and Dr. Goldberg of UI Hospital noted their opinions that Petitioner's complaints/symptoms were "diffuse," and not coming from the shoulder joint itself. Dr. Ye stated that there was nothing which needed surgical repair in the right shoulder, and NP Sawyer stated there was no cause for his shoulder complaints. Physical therapists at McLean County Orthopedics treated Petitioner from February 5, 2020 until March 5, 2020, and they noted inconsistencies in his physical examination and said it was unclear what Petitioner's specific dysfunction was, the nature of his injury, weakness, and pain. Respondent's examining physician, Dr. Li, felt the right shoulder MRI films were mainly age related with no evidence of an acute traumatic or a chronic repetitive injury. He did not believe the September 9, 2019 incident aggravated Petitioner's shoulder. PA Shore and Dr. Keller were of the opinion that Petitioner needed right shoulder arthroscopic surgery to address the findings seen on the MRI. That surgery never occurred, but less than six months later Dr. DeSalvio examined Petitioner and approved him to be an interstate driver. It was less than a month later Petitioner saw Drs. Redondo, Mayo and Goldberg, complaining of the right shoulder, and a month and a half after seeing those doctors he saw Dr. Fletcher (for the first time in

six months) and told him he was improving, and Dr. Fletcher found him to have full strength in the right shoulder, no tenderness in the right shoulder, and nearly normal range of motion in the right shoulder. Petitioner told him at that time that he did not want to pursue right shoulder surgery, so Dr. Fletcher at the request of Petitioner gave him a fitness for duty report with no work restrictions whatsoever. Dr. Fletcher also released him from his care on that date, July 1, 2022.

The diagnosis of Complex Regional Pain Syndrome (CRPS), sometimes referred to in the medical records as RSD (Reflex Sympathetic Dystrophy), was discussed by several of the physicians who treated Petitioner. It was first mentioned in a history given to Kirby Hospital by Petitioner on May 5, 2020, when Petitioner was complaining of right wrist pain. Dr. Jung, a pain specialist, on July 8, 2020 noted he did not believe Petitioner met the criteria for a CRPS diagnosis. On March 22, 2021, Dr. Michaels noted that he had a differential diagnosis (a condition which includes some of the symptoms a patient is exhibiting and might need to be ruled out) of CRPS throughout the time he had seen Petitioner, but on May 6, 2020 he said CRPS was not a diagnosis. Dr. Fletcher diagnosed Petitioner as having CRPS when he initially saw Petitioner on April 2, 2021, citing several objective findings of CRPS which Petitioner was exhibiting. Dr. Redondo noted the possibility of CRPS on March 11, 2022. Dr. Soto said his impression was that Petitioner had CRPS when he saw him on June 3, 2032. Petitioner had right elbow nerve surgery on August 3, 2032, and Dr. Fletcher testified that the CRPS went away, resolved, after that right elbow surgery. CRPS was not mentioned as a diagnosis or a differential diagnosis by any physician after that surgery.

The Arbitrator finds that Petitioner's cervical and right hand complaints are not causally related to the accident of September 9, 2019.

The Arbitrator further finds that Petitioner's Complex Regional Pain Syndrome condition is causally related to the accident of September 9, 2019.

The Arbitrator further finds Petitioner's post-operative right cubital tunnel syndrome is causally related to the accident of September 9, 2019.

The Arbitrator further finds that Petitioner's post-operative right radial tunnel syndrome is not causally related to the accident of September 9, 2019.

The Arbitrator further finds that Petitioner's various diagnoses involving the right shoulder, right shoulder bicipital tendinitis, right shoulder impingement syndrome, right scapular winging, low grade partial thickness tearing of the right supraspinatus tendon, mild tendinosis of the right infraspinatus and subscapularis tendons, tendinosis of the long head of the right biceps tendon, mild right glenohumeral and acromioclavicular osteoarthritis and thickening of the right inferior glenohumeral ligament, are not causally related to the accident of September 9, 2019. These findings are based upon the medical records contained in the medical summary, above, and the testimony of Petitioner and Dr. Fletcher.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of September 9, 2019, 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 causal connection, above, are incorporated herein.

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

Petitioner was restricted from work with a ten pound lifting restriction on the date of accident, September 9, 2019. Respondent was not accommodating that restriction.

Drs. DeSalvio and Dr. Sobeski continued that restriction when they saw him on September 16, 2019 and November 18, 2019. Petitioner was seen by Dr. Oakley on December 4, 2019 and by Dr. Michaels on January 27, 2020, with neither physician mentioning work restrictions.

Dr. Michael gave Petitioner restrictions on January 31, 2020 despite Petitioner having diffuse symptoms, including giveaway weakness without resistance being applied. From February 5 to March 5, 2020 Petitioner received physical therapy, and the therapists noted he had inconsistencies in his examinations and that it was unclear what his dysfunction was.

Dr. Levin opined in his IME report of March 4, 2020 that Petitioner was capable of working without restrictions.

On March 9, 2020, NP Sawyer of McLean County Orthopedics noted that Petitioner could return to work without restrictions.

The April 28, 2020 medical records of Dr. Michaels make no mention of work restrictions.

Petitioner was seen in the emergency room of Carle Foundation Hospital on May 5, 2020, for right wrist pain, and he was restricted due to that complaint for the "next few days."

Petitioner's treatment in September, October, and November of 2020 was all for cervical complaints and testing, which, as noted above, is not causally related to this accident.

Dr. Neumeister never addressed work restrictions in his incredibly insufficient medical records, though he performed surgery on Petitioner's cubital tunnel and radial tunnel syndromes on August 3, 2021.

Petitioner was next seen by Dr. Fletcher, on August 5, 2021, for right shoulder complaints. It should be noted that Dr. Fletcher gave Petitioner restrictions from the first day he examined him, April 2, 2021, but on that date, his records show "Work Status: Temporarily disabled. Must keep neck in a position of comfort. From 4/2/2021. To: 4/22/2021." Petitioner's neck condition is not causally related to this accident. Dr. Fletcher continued to find him disabled at each visit thereafter. The restrictions of April 22, 2021, May 14, 2021, and June 4, 2021 also make mention of the neck as the reason for the restrictions. Dr. Fletcher's June 22, 2021 restrictions do not mention the neck. All of these records, however, have ulnar nerve lesion as the primary diagnosis. Dr. was treating the ulnar nerve lesion from April 2, 2021 until August 5, 2021, when it is noted Petitioner's ulnar symptoms have markedly improved following his surgery. Subsequent office visits with Dr. Fletcher all deal with neck and right shoulder complaints, which have been found to be not causally related to this accident. Dr. Fletcher also testified that he never thought Petitioner was totally disabled, that Petitioner could do work with restrictions. Petitioner was terminated by Respondent on June 29, 2021. Dr. Fletcher

testified that he lessened Petitioner's restrictions on October 22, 2021, with the only restrictions being no overhead work, and no lifting of more than 20 pounds. Petitioner never testified to looking for work from October 21, 2021 until the time he was hired as a van driver, May 16, 2022. He worked that job until he was released by Dr. Fletcher, at Petitioner's request, with no restrictions, on July 1, 2022, so he could take a job with Norfolk & Southern Railroad.

Dr. Li felt Petitioner could work without restrictions when they examined Petitioner on November 29, 2021.

Parties are bound by their stipulations at arbitration. Walker vs. IIC, 345 Ill.App.3d, 804 N.E.2d 135, 281 Ill.Dec. 509 (2004) Petitioner on Arbitrator Exhibit 1, the Request for Hearing form, claimed to have been disabled from September 13, 2019 to March 15, 2020, and from July 8, 2020 to May 16, 2022.

The parties stipulated on Arbitrator Exhibit 1 that the period of September 13, 2019 to March 15, 2020, 25 weeks, was paid to Petitioner in a combination of temporary total disability and wages.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from September 13, 2019 to March 15, 2020, and from July 8, 2020 to August 5, 2021, a period of 82 3/7 weeks. After reduction by the 25 week period paid by temporary partial disability and wages, Petitioner is awarded a net 57 3/7 weeks of temporary total disability, to be paid at \$484.00 per week. This finding is based upon the testimony of Petitioner and Dr. Fletcher, the medical records of the treating physicians during that period of time, as set out in the medical summary above and the summary of restrictions, above. The termination date is based upon the ulnar nerve surgery relieving Petitioner of his cubital tunnel complaints and all subsequent testing, treatment, and complaints being in regard to non-causally related medical problems.

Respondent is entitled to credit of \$5,707.08 in non-occupational disability benefits.

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 September 9, 2019, 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 causal connection and temporary total disability, above, are incorporated herein.

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

Petitioner acknowledged that he had group health insurance through Health Alliance while working for Respondent. He did not think that group insurance had paid for any of his medical treatment, but he was not sure. Several of the bills introduced in Petitioner Exhibit 16 reflect payments made by Health Alliance.

As noted above, multiple medical issues (right cubital tunnel syndrome and Complex Regional Pain Syndrome) were found causally connected to this accident, and multiple medical issues (right hand injuries and

cervical injuries, right radial tunnel syndrome, and various diagnoses involving the right shoulder, including right shoulder bicipital tendinitis, right shoulder impingement syndrome, right scapular winging, low grade partial thickness tearing of the right supraspinatus tendon, mild tendinosis of the right infraspinatus and subscapularis tendons, tendinosis of the long head of the right biceps tendon, mild right glenohumeral and acromioclavicular osteoarthritis and thickening of the right inferior glenohumeral ligament) were found not to be causally connected to this accident. The medical bills introduced into evidence have been reviewed to identify the malady being tested or treated by the medical provider on each given date, or prescribed by the doctor on each given date and provided pursuant to said prescriptions.

The medical bills awarded below are deemed to be for testing or treatment related to Petitioner's conditions found to be causally related, and those denied below are deemed to be for testing or treatment related to the conditions found to be non-causally related to this accident.

The Arbitrator finds that the following bills introduced into evidence in Petitioner Exhibit 16 are related to the injuries incurred in Petitioner's September 9, 2019 injury, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident:

- **Charges included on Petitioner Exhibit 16 pages 8 (except \$116.00 shoulder x-ray), 9, 10, 14 (limited to July 16, 2021 charges), 17 through 32, 52 through 69, 76 through 78, 79 (except October 26, 2020, November 16, 2020, and November 24, 2020 charges), 80, 85 through 87 (except August 3, 2021 \$5,307.00 charge for radial tunnel surgery), 88 through 90 (except November 30, 2021 charges), 91 through 106, 108, 109, 112, 117, 118 (except January 29, 2020, February 5, 2020 and February 17, 2020 charges), 120 (except February 27, 2020 and March 5, 2020 charges), 121 (except March 22, 2021 charges), and 122.**

All other medical bills are denied as not being causally related to this accident or, in the case of pages 110 and 111, being duplicative of bills contained in pages 108 and 109. These findings are based upon the medical records introduced into evidence, the testimony of Petitioner and Dr. Fletcher, and the findings of causation, above.

Respondent is entitled to credit towards any of the bills awarded which were paid by Health Alliance pursuant to §8(j) of the Act.

In support of the Arbitrator's decision relating to whether Petitioner is entitled to Penalties pursuant to Sections 19(k), !9(l) and Section 16 of the Illinois Workers' Compensation Act, 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 causal connection, temporary total disability, and medical, above, are incorporated herein.

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

Petitioner filed a petition seeking penalties (arbitrator Exhibit 3) for Respondent's terminating temporary total disability payments on March 5, 2020, arguing that said termination of temporary total disability and medical benefits was unreasonable, vexatious, and without good cause.

The medical in this case is lengthy, and complicated. Petitioner had symptoms which changed over time, and Petitioner's treating physicians did not agree whether he should be restricted from work or continue to get medical treatment. Respondent scheduled, and Petitioner attended, a Section 12 examination with Dr. Levin, which took place on March 4, 2020. Among the complaints made at that time, were cervical symptoms, and Dr. Levin reviewed MRI images of the cervical spine, as well as images of the right elbow. At arbitration Petitioner testified he was not claiming he had suffered cervical or right-hand injuries as a result of this accident. Dr. Levin's only diagnosis for Petitioner on March 4, 2020 was right distal brachialis muscle strain, which he opined should have resolved in four to six weeks following this accident. He did not believe Petitioner's complaints on March 4, 2020 were consistent with this diagnosis. He also did not believe any of the testing or treatment of the cervical spine was related to this accident, a finding Petitioner testified was correct at arbitration. He believed Petitioner could work without restrictions and had reached maximum medical improvement.

Respondent was aware of these opinions on March 5, 2020 when it terminated temporary total disability benefits. Prior to this date Petitioner's complaints had changed and were in new areas not complained of in the weeks or months following this accident. Physical therapists had noted finding inconsistencies in his examination in the month prior to Dr. Levin's examination, and they noted Petitioner's specific dysfunction, nature of his injury, weakness and pain were unclear.

Penalties under Section 19(l) of the Act are to be awarded for unreasonable or vexatious delay of payment or intentional underpayment of compensation, while Section 19(k) penalties are intended to address situations where the delay is deliberate or the result of bad faith or improper purpose on the part of the Respondent. Here Respondent had good cause to question liability based on causal connection as well as ability to work. Under the circumstances of this case, which is quite complicated in its medical facts, it was reasonable to rely upon the opinions of Dr. Levin. Its continued denial of benefits is further supported by the opinions of Dr. Li and the opinions of multiple treating medical providers who could not determine what, if anything was wrong with Petitioner and, in some cases, felt he was capable of working.

The Arbitrator finds that Petitioner is not entitled to penalties under Section 19(k), 19(l) or Section 16, as Respondent's conduct in the defense of this claim was neither unreasonable, vexatious, nor the result of bad faith or an improper purpose. This finding is based upon the medical records summarized above.

In support of the Arbitrator's decision relating to the nature and extent of the injury 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 causal connection, temporary total disability, medical, and penalties, above, are incorporated herein.

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

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a landscaper at Respondent's hospital at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner has been released to return to work with no restrictions and has for over a year been working as a conductor for a railroad. Because of Petitioner's ability to perform work without restrictions, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 38 years old at the time of the accident. Because of the large number of work years remaining for Petitioner, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner is as a conductor for the railroad making more money than he did as a landscaper for Respondent. Because of the lack of evidence of reduced earning capacity, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner had cubital tunnel surgery to release the ulnar nerve in his right elbow. He reported to Dr. Fletcher that his symptoms were markedly relieved following that surgery. Petitioner also was diagnosed with Complex Regional Pain Syndrome, but per Dr. Fletcher's testimony, the symptoms of that disorder had resolved, though he indicated it was always possible they could recur. When last examined in Dr. Fletcher's office on July 1, 2022, physical examination on that date showed 5/5 strength, no tenderness over the right shoulder, nearly normal range of motion of the right shoulder in all planes, with minor loss in internal rotation. His right elbow range of motion was also improved, with no tenderness in the right forearm. With the exception of the minor loss of motion Petitioner's examination was objectively normal. Dr. Fletcher gave Petitioner a full release to work, noting he had no restrictions. Dr. Fletcher testified at the arbitration hearing, and said he had performed a brief examination of Petitioner on the date of arbitration, and he found no evidence of Chronic Regional Pain Syndrome during that examination, and he felt Petitioner's prognosis for that was good. Because of the full duty work release and the minimal to no objective abnormalities seen at the July 1,

2022 examination and the date of arbitration examination, the Arbitrator therefore gives *lesser* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of the right arm as a result of the cubital tunnel syndrome with surgery pursuant to §8(e) of the Act, and 7 1/2% loss of use of the person as a whole as a result of Complex Regional Pain Disorder pursuant to §8(d)(2) of the Act, resulting in a permanent partial disability award of 75.45 weeks, payable at \$435.60 per week.

Petitioner reached maximum medical improvement on July 1, 2022.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC024873
Case Name	Chad Welch v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0362
Number of Pages of Decision	8
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 8/26/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHAD WELCH,

Petitioner,

vs.

NO. 24 WC 024873

STATE OF ILLINOIS – MENARD
 CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the final paragraph of the Conclusions of Law section of the Decision the Commission strikes everything after the first sentence, and the Commission replaces it with:

"Petitioner testified he is fearful of infecting his family with disease. Petitioner was advised to continue to follow-up for infectious disease testing."

The Commission otherwise agrees with the Arbitrator's analysis of the Section 8.1b(b) factors; however, we disagree with the level of disability awarded. As above, Petitioner remains fearful of infecting his family and was advised to continue follow-up for infectious disease testing as a consequence of the accident. Given the same, the Commission decreases the award of 2.5% loss of use of a person as a whole to 1% loss of use of a person as a whole.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 12, 2025, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner the sum of \$765.00/week for the period of 5 weeks because the injuries sustained caused the one percent (1%) loss of use of the person as a whole, as provided in Section 8(d)2 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.

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.

August 26, 2025

O: 07/29/25

AHS/ps

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC024873
Case Name	Chad Welch v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 3/12/2025

/s/William Gallagher, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 11, 2025 4.08%

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



March 12, 2025

/s/ Michele Kowalski
Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Chad Welch
 Employee/Petitioner

Case # 24 WC 24873

v.

Consolidated cases: n/a

State of IL/Menard C.C.
 Employer/Respondent

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 William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on February 13, 2025. By stipulation, the parties agree:

On the date of accident, August 31, 2024, 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 \$66,300.00; the average weekly wage was \$1,275.00.

At the time of injury, Petitioner was 34 years of age, married, with 1 dependent child(ren).

Necessary medical services and temporary compensation benefits have been provided by Respondent.

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.

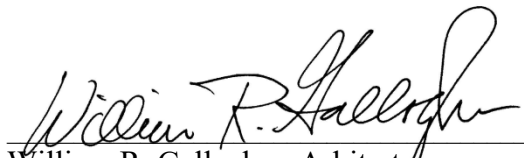
After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$765.00 per week for 12.5 weeks, because the injury sustained caused the two and one-half percent (2 1/2%) loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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



William R. Gallagher, Arbitrator

March 12, 2025

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on August 31, 2024. According to the Application, Petitioner was "Exposed to bodily fluids, feces & urine" and sustained an injury to his "Face, head, nose, neck, bilateral eyes, bilateral ears, torso, exposure to infectious disease/body as a whole" (Arbitrator's Exhibit 2). There was no dispute in respect to accident and the only disputed issue at trial was the nature and extent of disability (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Correctional Officer. On August 31, 2024, Petitioner had completed feeding inmates and observed a tray which had been tossed out of a cell. When Petitioner leaned over to pick up the tray, an inmate came up to Petitioner and threw the contents of a milk carton on the Petitioner's head and face. The contents of the milk carton consisted of feces, urine and other unknown substances. Petitioner testified the fluids went down his shirt, dripped below his utility belt, and down his pants to his boots. He also stated the fluids got under a tear duct in his eye.

Immediately after the accident, Petitioner went to the bathroom and decontaminated himself as best he could. Afterward, he was seen in the medical department of Respondent's facility.

Petitioner sought medical treatment at the ER of Chester Memorial Hospital on August 31, 2024. At that time, Petitioner described the accident and that while he was able to decontaminate at the facility, he had the exposure for approximately 30 minutes. Petitioner was tested for Hepatitis B, Hepatitis C, and HIV, all of which were negative. Petitioner was informed he would need to follow up for future testing pursuant to infectious disease protocols (Petitioner's Exhibit 3).

Petitioner was subsequently seen by Dr. Alex Workman at the Pinckneyville Community Hospital on September 3, 2024. At that time, Petitioner informed Dr. Workman of the accident of August 31, 2024. Dr. Workman opined it was reasonable for Petitioner to take post-exposure prophylactic medication given the potential of exposure to Hepatitis C and HIV. He ordered lab studies for Hepatitis B, Hepatitis C, HIV and syphilis. The tests were to be completed in six weeks. When Petitioner was questioned as to whether he was feeling down, depressed, and losing interest or pleasure in doing things, he responded "not at all" (Petitioner's Exhibit 4).

On October 15, 2024, Petitioner was again seen by Dr. Workman and the lab studies were performed. All of the studies were negative. However, it was noted Petitioner would need to undergo repeat lab studies in three months and six months. Petitioner was again questioned whether he felt depressed, down, hopeless and whether he had little interest or pleasure in doing things and Petitioner again responded "not at all" (Petitioner's Exhibits 4 and 5).

Petitioner has not received any medical treatment or undergone further testing since he was last seen by Dr. Workman. The Petitioner was able to return to work as a Correctional Officer; however, Petitioner presently works at the Shawnee Correctional Center. At trial, Petitioner testified it is difficult for him to do his job because he is fearful of another inmate attacking or assaulting him. Petitioner continues to experience difficulty sleeping and relations with his family

have been adversely impacted because he does not want to infect them with a disease. Petitioner stated he continues to feel "disgusting" after taking a shower.

Conclusion of Law

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of two and one-half percent (2 1/2%) loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes the following:

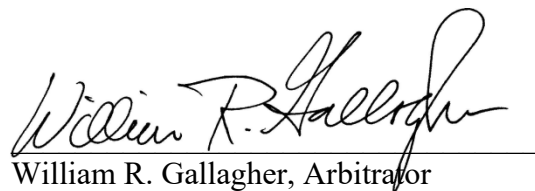
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner worked as a Correctional Officer at the time he sustained the accident and continues to work in that capacity, but at a different facility. Obviously, Petitioner continues to have contact with inmates and is fearful of sustaining another assault. The Arbitrator gives this factor significant weight.

At the time of the accident, Petitioner was 34 years old. He will have to live with the effects of the injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

The medical records confirmed Petitioner was exposed to potentially infectious bodily fluids for which he underwent tests and received medication. Even though Petitioner denied having any negative feelings when seen by Dr. Workman on September 3, 2024, and October 15, 2024, Petitioner testified at trial that he continues to experience mental health symptoms related to the accident. Accordingly, the Arbitrator concludes Petitioner's current complaints are consistent with the exposure to bodily fluids he sustained even though he subsequently denied so when seen by Dr. Workman on September 3, 2024, and October 15, 2024. The Arbitrator concludes Petitioner's mental health complaints are corroborated, in part, by the medical treatment records. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

March 12, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031873
Case Name	Robert Pruden v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0363
Number of Pages of Decision	21
Decision Issued By	Kathryn Doerries, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 8/27/2025

/s/Kathryn Doerries, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

21 WC

031873 Page 2

August 27, 2025

KAD/swj

O 7125

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/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Stephen J. Mathis

Stephen J. Mathis

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. I view the evidence differently and would find that Petitioner failed to prove he sustained a repetitive trauma arising out of and in the course of employment and failed to prove his bilateral carpal tunnel and cubital tunnel syndromes were causally related. I find the evidence insufficient in this case because Petitioner had non-occupational risk factors associated with compression neuropathy and the average cumulative time Petitioner used his hands throughout the day constituted a small percentage of his daily work shift. Additionally, Petitioner worked 19 years as a Correctional Officer and yet he had no symptoms during that period. Petitioner's symptoms started almost two years after he received a promotion to Correctional Sergeant, considered a supervisory position, and Petitioner worked in less demanding assignments during the 11-month period preceding the onset of symptoms. Furthermore, in repetitive trauma claims, physicians must have sufficient knowledge of the employment activities to form a credible causation opinion, and in this case Dr. Bradley possessed limited information regarding Petitioner's employment. Finally, I disagree with the Arbitrator's evidentiary ruling striking in part the testimony of Respondent's Section 12 IME physician, Dr. Stewart, whose narrative report fully disclosed his opinions but did not mention he personally toured the Graham Correctional Center. Based on the Appellate Court's decision in *Borst vs. Illinois Workers' Compensation Comm'n*, 2024 IL App (2d) 230124WC-U, I believe it was error to sustain Petitioner's objection to the testimony discussing the onsite inspection.

In repetitive trauma cases, the issues of accident and causation are intertwined with both issues resolved together. *Boettcher vs. Spectrum Property Group*, 99 IIC 0961; 1999 Ill. Wrk. Comp. LEXIS 409; *Simpson vs. State of Illinois Department of Human Services*, 18 IWCC 255; 2018 Ill. Wrk. Comp. LEXIS 108. The overarching question presented is whether the employment activity was "repeated sufficiently to cause the injury." *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773 (2005). A claimant seeking compensation under a repetitive trauma theory "must prove that his physical structure gave way under the repetitive stresses of his usual work tasks." *Darling vs. Industrial Comm'n*, 176 Ill. App. 3d 186, 192, 530 N.E.2d 1135 (1988). Claimants alleging injury based on repetitive trauma must still meet the same standard of proof as in claims involving a single traumatic accident. *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209, 614 N.E. 177 (1993). There must be a showing that the disabling injury or condition was related to the employment and not the result of a normal degenerative process. *Peoria County Bellwood Nursing Home vs. Industrial*

Commission, 115 Ill. 2d at 530 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209 (1993).

Petitioner began working for Respondent on September 27, 1999. (PX7) Petitioner testified he worked for 19 years as a Correctional Officer before receiving a promotion to the rank of sergeant, suggesting he began working as a Correctional Sergeant around September or October 2018. (T. 11) According to the Supervisor's injury report completed December 17, 2021, Petitioner held the rank of sergeant for three years, which was consistent with Petitioner having received his promotion sometime between September and December of 2018. (RX1 at 3) Petitioner testified he first began noticing symptoms prior to and during the Covid pandemic in 2020. (T. 20-21) Petitioner testified his job duties increased after the facility went into lockdown during the Covid pandemic and he later sought legal counsel when his symptoms worsened. (T. 16, 18-22) Petitioner then saw Dr. Bradley on October 18, 2021.

Dr. Bradley's initial documented history reflected Petitioner had been experiencing symptoms for "multiple months." (PX3 at 1) When Petitioner underwent an EMG test on November 8, 2021, he reported his symptoms started one year earlier, placing the initial onset of symptoms in November 2020, about two years after he received his promotion to sergeant. Petitioner was age 45 when he first presented to Dr. Bradley with a documented height of 5'7" and weight of 215 pounds. Petitioner also had a history for hypertension and smoking. Petitioner reported smoking a half-pack of cigarettes a day. Petitioner testified he quit smoking about a year prior to trial. (T. 28-29)

Petitioner testified his job duties as a Correctional Officer included "pat downs, shakedown, report writing, locking and unlocking doors, chuckholes, padlocks, handcuffs." (T. 13-14) Petitioner testified he completed a questionnaire captioned "Work History Timeline and Detailed Job Description" which accurately described his job duties. (T. 13; PX7) Petitioner reported he unlocked and locked cell doors "multiple times a day." Petitioner reported he twisted keys on padlocks, handcuffs and to open cell doors, ranging "1 to 200 times per day or more depending on the assignment." (PX7 at 4-5) He also opened and closed chuckholes while delivering food trays, though he gave no indication as to the number of meals the inmates received during a shift. (PX7) Petitioner testified he performed shakedowns for the cells which included lifting and searching the inmates' property boxes. Petitioner also cuffed and uncuffed inmates. (T. 16) Petitioner testified he occasionally performed bar rapping for the "handful" of bars on the shower doors in Segregation and receiving unit. (T. 17-18)

Petitioner testified the job of a Correctional Sergeant was just as hand intensive as the job of a Correctional Officer as more paperwork was required for sergeants. (T. 12) Petitioner explained that Correctional Sergeants perform report writing and "usually you are on the computer a lot." (T. 12) When asked if a conscientious correctional sergeant performs the same duties as a correctional officer, Petitioner replied "not particularly, not every day." (T. 11-12) The written job description for Correctional Sergeants described supervisory duties, which included inspections to verify security staff are in compliance with institutional procedures, instructing and directing officers, monitoring inmate movement, monitoring shift shakedowns, supervising offender counts, maintaining schedules for all movement of inmates, monitoring the entering and exiting of staff, conducting orientation and training of new officers, conducting supervisory

meetings, investigating unusual incidents and preparing reports, and serving as lead worker and assigning work. (RX4) Petitioner did not refute the accuracy of the job description.

As reflected in the Job Assignment History, Petitioner worked in the Gatehouse during the months of March through May 2020, after which Petitioner alternated assignments between the Gatehouse and Sally Port from June through December 2020. (RX3) Petitioner testified the gatehouse is the entrance to the facility where visitors and employees go through metal detectors and are subjected to pat downs, with the visitors' information entered into a computer. (T. 36) Petitioner used a key at the gatehouse since visitors were required to be taken to a room where their belongings were placed in lockers. The percentage of time spent keying the door for this room varied depending on the number of visitors. Additionally, the new intakes usually went through the gatehouse and they arrived in leg irons and waist chains which had to be removed along with the handcuffs. During the Covid pandemic, there were fewer visitors going through the Gatehouse (T. 40) Petitioner testified the Sally Port is where delivery trucks and vehicles enter the institution and go through inspection. (T. 37) Traffic at the Sally Port increased during the pandemic because they started doing intakes there after the pandemic started. (T. 41) Petitioner agreed he had primarily worked in both the Gatehouse and Sally Port when he sought treatment. (T. 39) Petitioner did not unlock and lock cells or perform shakedowns or deliver meals through the chuckholes while assigned to these positions.

Dr. Stewart performed a Section 12 examination on February 22, 2022. (RX6 at 1) Dr. Stewart noted Petitioner had hypertension, an elevated BMI over 30, and history for cigarette smoking, all of which placed Petitioner at an increased risk for compression neuropathies. (RX6 at 3) Petitioner reported his job assignments were mainly in the housing units, including the receiving ward. According to Dr. Stewart, Petitioner estimated it took approximately 2 seconds to open and 2 seconds to close the doors to the cells. (RX6 at 2) It was Dr. Stewart's impression that Petitioner spent an approximate 400 to 800 seconds keying locks at work for the cell doors and chuckholes on a typical workday. (RX6 at 8) Using the higher estimate of 800 seconds, Dr. Stewart noted Petitioner spent less than 15 minutes of his total workday keying locks. (RX6 at 8) Dr. Stewart indicated this was a crucial factor for causation purposes as Petitioner had a far greater period of time for recovery in comparison to the time Petitioner was exposed to repetitive activity. (RX6 at 8) Dr. Stewart further noted a limited degree of force was required. As mentioned, Dr. Stewart personally toured the facility but failed to mention his onsite inspection in his report.

Dr. Stewart later testified he was familiar with the Graham Correctional Center based on his having toured the facility and having personally keyed the locks. The Arbitrator sustained Petitioner's objection to Dr. Stewart's testimony regarding his onsite inspection. (RX8 at 23) Dr. Stewart opined Petitioner's employment did not cause, contribute to, or aggravate his upper extremity conditions. (RX8 at 33-34) Dr. Stewart based his opinion in part on his determination that the repetitive activities performed at the correctional center did not require any significant force. (RX9 at 34) Dr. Stewart also noted the activities in question did not involve prolonged hyperflexion of the elbow which would have been a causative factor for cubital tunnel syndrome. Dr. Stewart reiterated it was his impression that Petitioner likely spent 800 seconds keying locks during the course of a work shift with a cumulative total of 15 minutes. (RX8 at 34) Dr. Stewart noted that pathology in the setting of compression neuropathy occurs when the exposure to a given activity exceeds the ability of the body to recover from the exposure. (RX8 at 35) In the instant

case, Dr. Stewart found Petitioner had over seven hours of cumulative “recovery time” when he was not using his hands for keying. (RX8 at 35)

In response to Dr. Stewart’s IME report, Petitioner drafted a handwritten response providing additional information. This response was made part of the record as an exhibit during Dr. Stewart’s deposition. (Dep. Ex. #6) Petitioner corrected Dr. Stewart’s understanding of the number of inmates under this control. Although Dr. Stewart correctly observed Petitioner was responsible for 50 cells at the time of the IME, Petitioner pointed out there were two inmates per cell rather than one inmate. Petitioner further reported he also opened tool closets “multiple times” per shift, opened the dayrooms which required larger keys, and he was required to sign log books every 30 minutes which were padlocked. Petitioner further reported that when he was assigned to the segregation unit, the chuckholes were also used for passing items to the inmates in addition to delivering food trays. Petitioner also handcuffed inmates when they were let out of their cells and cuffed again when returned to their cells. Petitioner denied telling Dr. Stewart that opening a lock took two seconds. According to Petitioner, he advised Dr. Stewart he was “unsure” when asked how long it took to unlock a door, at which point it was Dr. Stewart who then suggested the two-second timeframe to open the average lock. Notably, while correcting the source of the estimated 2-second timeframe, Petitioner did not refute its accuracy or provide an alternative estimate.

It is firmly established there is no minimum legal requirement that a certain percentage of the workday be spent on repetitive tasks in order to establish the repetitive nature of a claimant’s job duties. *Edward Hines Precision Components v. Industrial Comm’n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773 (2005). That being said, while there is no minimum requirement, evidence of the frequency, force, duration, and percentage of the workday devoted to such tasks is certainly relevant. In an unpublished Rule 23 decision, the Appellate Court reaffirmed that quantitative evidence remains relevant in repetitive trauma claims. See *Fisher vs. Ill. Workers’ Comp. Comm’n*, 2017 IL App (4th) 160929WC-U, P20, where the Court indicated that while “[t]here is no requirement that a certain percentage of time be spent on a task in order for the duties to meet a legal definition of ‘repetitive’ . . . ‘claimant needed to present some evidence he engaged [in] repetitive activities.’” Making the point clear, the Court also raised the rhetorical question – “*How many times per day did these activities occur?*” (Emphasis added.) *Id.*

This Commission has previously considered the total cumulative amount of time spent keying locks at our State’s correctional facilities and denied claims where the evidence failed to show sufficient repetition. In *Dechene vs. State of Illinois, Pontiac Correctional Center*, 14 IWCC 436; 2013 Ill. Wrk. Comp. LEXIS 1192, the claimant worked in the protective custody unit where he keyed locks to let inmates out six times a day and estimated he turned 300 to 350 keys on non-shower days and turned around 500 keys on shower days. The claimant estimated it took about 5 seconds to key a door and 1-2 seconds to key a chuckhole. The Arbitrator noted that, “[b]ased on his 5 second estimation, Petitioner uses (sic) keys and doors for 25 to 30 minutes on non-shower days and about 42 minutes on shower days.” The claimant next worked in segregation and estimated he opened doors and food hatches about 225 to 250 times per day. The Arbitrator noted that “[b]ased on 5 seconds a use, Petitioner would use keys and doors for around 20 minutes each day in this position.” The claimant then worked “writ transportation” where he performed strip searches and applied restraints in order to transport inmates to their destinations. Similar to the Petitioner in the instant case, the claimant had non-occupational risk factors. The Commission

affirmed and adopted the Arbitrator's decision finding the claimant failed to establish a compensable repetitive trauma, based in large part on the evidence having showed the claimant's cumulative use of the hands throughout the day was a low percentage of the daily workday:

Petitioner testified that his duties varied based on where he was assigned. His complaints all stem from his using of keys and opening of doors. When asked to quantify his use of keys and opening of doors, Petitioner did so for only two gallery positions. His estimations of quantity and how long each use lasted equate to use of keys and doors for around **20 to 30 minutes per shift while occasionally rising past 40 minutes in a shift**, at one specific position. This length of use is very similar to or less than Petitioner's daily lunch break. The Arbitrator finds that Petitioner's key use and door opening for an average of minutes or less, out of a 7 1/2 hour shift of actual work, and spread out throughout the day, is not significantly repetitive. (Emphasis added.) *Dechene vs. State of Illinois, Pontiac Correctional Center*, 14 IWCC 436; 2013 Ill. Wrk. Comp. LEXIS 1192.

Likewise, the Commission considered the total cumulative amount of time spent keying locks in *Bildilli vs. State of Illinois, Department of Corrections*, 14 IWCC 701, 2014 Ill. Wrk. Comp. LEXIS 710. In that case, the claimant had been employed at the Danville Correctional Center where he worked as a correctional officer in varying assignments, some of which required per the claimant's estimate key-turning 200 times per shift if assigned to a shift with one wing and up to 400 times per shift if assigned to a shift with two wings. The doors were not easy to open and the claimant estimated that 15% to 20% of his daily shifts were spent keying the doors. Claimant first noticed carpal tunnel symptoms in 2009. He then transferred to food supervisor in April 2010, after which the amount of keying increased. The claimant estimated he would turn keys 350 to 375 times per shift. The claimant testified his symptoms worsened while working in the dietary position. He sought treatment in September 2010 and was diagnosed with mild bilateral carpal tunnel syndrome for which he ultimately underwent releases in February 2011. At trial, the claimant testified it took about a second to turn the key and a half a second to open the door. In affirming and adopting the Arbitrator's decision finding the claimant failed to prove a compensable repetitive trauma, the Commission noted that "even taking Petitioner's estimate for the time he was a Food Service Supervisor of 350 to 375 times a shift would amount to between 5.8 and 6.2 minutes a shift." The Decision further concluded that, "even accepting Petitioner's estimate of his job duties and using his own numbers, these duties are clearly not repetitive in nature . . ." *Bildilli vs. State of Illinois, Department of Corrections*, 14 IWCC 701, 2014 Ill. Wrk. Comp. LEXIS 710. The recovery or resting time element was also considered in a repetitive trauma claim brought by a machine operator where the operator's hands were afforded significant rest while the automated machines processed parts after the operator loaded the machines. See *Collins vs. Regal-Beloit Corp.*, 5 IWCC 1008, 2005 Ill. Wrk. Comp. LEXIS 1057, where the Commission affirmed the Arbitrator's decision finding the machine operator failed to prove a compensable repetitive trauma.

In the case at bar, Dr. Stewart assumed Petitioner keyed locks about 400 times a day and calculated Petitioner used his hands for a cumulative total of 15 minutes. Based on the additional information Petitioner provided in his response to the IME report, I believe Dr. Stewart likely underestimated the cumulative amount of time Petitioner used his hands. Nevertheless, even when taking this additional usage of the hands into consideration, Petitioner's overall cumulative use of

his hands constituted a low percentage of his daily work shift. If we triple Dr. Stewart's estimated amount of keying (to account for cell doors, handcuffing, tool closet door and log book), and assume Petitioner used his hands 1,200 times per shift at 4 seconds per lock, the cumulative total time spent using the hands would equal 4,800 seconds or 80 minutes spread out over the course of his work shift. It should be noted that Petitioner wrote in his Work History Timeline that he keyed locks for padlocks, handcuffs and cell doors, "ranging 1 to 200 times or more per day depending on the job assignment." (PX7 at 4-5) Thus, 1,200 times per day is a reasonable probable estimate when the other uses of the hands are taken into account. Dr. Stewart credibly testified that compressive nerve pathology occurs when the exposure to a given activity exceeds the body's ability recover from it, and a significant resting or recovery period has a mitigating protective effect. Accordingly, I would find Petitioner failed to prove his employment was sufficiently repetitive for causing or contributing to the development of Petitioner's conditions of ill-being.

Additionally, Petitioner had no symptoms during the 19 years he worked as a Correctional Officer and he had been working for almost two years as a Correctional Sergeant before his symptoms began. During the eleven months preceding the onset of symptoms, Petitioner worked in less demanding assignments at the Gatehouse and Sally Port. This raises the question; if the provocative work activities alleged to have caused or contributed to Petitioner's conditions were indeed a cause, then why did Petitioner's compressive neuropathies fail to manifest earlier? Why not after working five years, seven years, or ten years as a Correctional Officer? In order to satisfy the burden of proof required of all claimants alleging a repetitive trauma, Petitioner must show his disabling injury or condition was related to the employment and not the result of a normal degenerative process, and viewing the evidence in its entirety, I would find the late onset of Petitioner's condition was more consistent with a non-occupational etiology or an idiopathic condition. The medical-causation question in this case impliedly rests on the concept of a purported latency period, defined as the period between exposure and subsequent onset of symptoms. This would be termed the incubation period in the setting of an infection leading to illness. Under this theory, repetitive work can cause compression neuropathy without symptoms manifesting until long after the exposure. This Commission has consistently rejected lengthy latency periods when advocated in support of causation in repetitive trauma cases. See *Gibbons vs. State of Illinois, Shawnee Correctional Center*, 17 IWCC 636; 2017 Ill. Wrk. Comp. LEXIS 348 (noting "causation opinions are very often based on complaints that gradually occur during the performance of the alleged provocative activities.") See also, *Niepert v. State of Illinois, Menard Correctional Center*, 17 IWCC 61; 2017 Ill. Wrk. Comp. LEXIS 87; *Walker vs. State of Illinois, Menard Correctional Center*, 14 IWCC 519, 2014 Ill. Wrk. Comp. LEXIS 446; and *Hahs vs. State of Illinois, Big Muddy River Correctional Center*, 14 IWCC 100; 2014 Ill. Wrk. Comp. LEXIS 129.

Furthermore, physicians must have sufficient knowledge of the employment activities to form a credible causation opinion in repetitive trauma cases. "The Commission has determined that a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what the repetitive motions the petitioner engaged in and the frequency of the motions." See *Jones vs. State of Illinois, Menard Correctional Center*, 19 IWCC 521; 2019 Ill. Wrk. Comp. LEXIS 845; and *Rutherford vs. State of Illinois, Pinckneyville Correctional Center*, 15 IWCC 119; 2015 Ill. Wrk. Comp. LEXIS 118, both citing *Gambrel vs. Mulay Plastics*, 97 IIC 238. Petitioner's treating surgeon, Dr. Bradley, testified that the "biggest thing I think he attributed everything to was these keys and opening up these handcuffs

and these doors all day, every day.” (PX6 at 14) On cross-examination, Dr. Bradley agreed that the “keying” was the primary activity that led to Petitioner’s injury in his opinion. (PX6 at 54) However, Dr. Bradley did not know the number of cell doors Petitioner keyed on a daily basis and he did not know how many minutes a day Petitioner spent locking and unlocking cell doors. (PX6 at 49) Dr. Bradley did not know how often cell checks were done at Graham Correctional Center. (PX6 at 51) Dr. Bradley did not know the number of inmates that Petitioner had to cuff or uncuff per shift. (PX6 at 52) Dr. Bradley agreed that carpal tunnel syndrome and cubital tunnel syndrome can develop idiopathically. (PX6 at 55) Based on Dr. Bradley’s limited knowledge concerning Petitioner’s employment, I would find Dr. Stewart’s causation opinion more credible.

Finally, I would reverse the Arbitrator’s ruling sustaining Petitioner’s objection to the testimony of Respondent’s IME physician, Dr. Stewart, regarding his onsite inspection of the facility. In *Borst vs. Illinois Workers’ Comp. Comm’n*, the Appellate Court drew a distinction between non-disclosure of a medical expert’s opinion and non-disclosure of what it was the doctor reviewed to formulate and support the opinion. See *Borst vs. Illinois Workers’ Compensation Comm’n*, 2024 IL App (2d) 230124WC-U, P55. In *Borst*, the claimant challenged the admissibility of Respondent’s IME physician’s opinion testimony on the grounds that Respondent failed to produce a copy of a job video provided to its examining physician. The Court rejected the argument, writing “we do not find, and claimant does not direct us to, any language in section 12, *Ghere*, or any other authority that an examining or treating physician *must produce every item he or she reviewed at least 48 hours prior to the physician’s deposition testimony*.” (Emphasis added.) *Borst*, 2024 IL App (2d) 230124WC-U, P55. In adopting the Arbitrator’s decision in its entirety, the majority has declined to consider Dr. Stewart’s onsite inspection, which is certainly relevant to the determination of credibility while weighing the conflicting medical opinion testimony in the case at bar. Based on the Appellate Court’s decision in *Borst*, *supra*, I would overrule Petitioner’s objection and consider Dr. Stewart’s testimony regarding his onsite inspection.

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 he sustained an accident arising out of and in the course of his employment, and failed to prove his bilateral carpal tunnel and cubital tunnel syndromes were causally related to his employment.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

August 27, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC031873
Case Name	Robert Pruden v. State of Illinois/Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 3/7/2024

/s/ Adam Hinrichs, Arbitrator
Signature

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

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



March 7, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Robert Pruden
 Employee/Petitioner

Case # **21** WC **031873**

v.

Consolidated cases: _____

State of IL / Graham Correctional Center
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield, Illinois**, on **January 19, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/18/2021**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$79,989.52**; the average weekly wage was **\$1,538.26**.

On the date of accident, Petitioner was **45** years of age, *married* with **1** dependent child.

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

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

Respondent shall be given a credit of **\$8,204.96** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$8,204.96**.

Respondent is entitled to a credit of **\$any payments made** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,025.51/week for 6 5/7 weeks, commencing December 22, 2021 through February 7, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

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

Respondent shall pay Petitioner permanent partial disability benefits of **\$922.96/week** for **66.45** weeks, because the injuries sustained caused a 7.5% loss of use to Petitioner's right hand, a 7.5% loss of use to Petitioner's left hand, a 7.5% loss of use to Petitioner's right arm, and a 7.5% loss of use to Petitioner's left arm as provided in Section 8(e)9 and 8(e)10 of the Act. Respondent shall pay Petitioner compensation that has accrued from February 28, 2022 through January 19, 2024, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

March 7, 2024

FINDINGS OF FACT

Robert Pruden (“Petitioner”) is 47 years old, and has been employed by Graham Correctional Center (“Respondent”) for 24 years. In July 2023, he was promoted to the position of correctional supply supervisor. (T. 10-11) When Petitioner began his employment with Respondent, he was a correctional officer for the first 19 years, after which he was promoted to Sergeant and remained in that position for four years. (T. 11, 31)

Petitioner does not have a history of diabetes, gout, hypothyroidism or rheumatoid arthritis. (T. 19, 20) He has hypertension but takes medication to control it. (T. 29) He testified that he does not ride a motorcycle and does not engage in outside activities that involve the repetitive use of his hands or arms. (T. 20)

Petitioner testified that a conscientious correctional sergeant performs the same amount of hand-intensive work as a correctional officer, although there is more report writing and paperwork involved. (T. 12, 31, 32) He indicated that his assigned position during roll call does not always match his position on paper. (T. 19) He testified that a correctional officer uses their hands to perform pat downs, shakedown, report writing, and locking and unlocking doors, chuckholes, padlocks and handcuffs. (T. 14)

He stated that 90 to 95% of the time he spent working for Respondent, he has been spent working on a wing or gallery. (T. 14) He was mostly assigned to the housing unit, R & C or segregation. (T. 34) Over the course of his career, he has worked in segregation three to four years. (T. 14-15) In segregation, there are three locks instead of one, and to open the door you have to open at least two locks. (T. 15)

He testified that performing shakedowns involves going through a cell, pulling correspondence and property boxes and checking underneath beds and mattresses and in air vents and bedding. (T. 15) He stated that performing shakedowns as well as property box searches involves the use of the upper body. (T. 16) He also performs cuffing and uncuffing of inmates. (T. 16)

He testified that in the gatehouse, he performed pat downs of visitors and keying to open and close the shakedown room and opening 50-70 property lockers at the beginning of every shift. (T. 36-37)

In the sally port, vehicles, trucks and anyone coming in must be shaken down. (T. 37) This involves going through vehicles and checking under vehicle hoods, underneath vehicles and inside the cab and trailers of semi-trucks. (T. 37-38) Packages have to be taken and placed in another room. (T. 37-38) He testified that when the delivery trucks came back through, everything had to be done in reverse. (T. 37-38) During COVID, his activities in the sally port increased, as all individuals in custody coming from the county into the correctional facility came through the sally port and had to have their restraints removed and be strip-searched before entering the facility. (T. 37-38, 41) He also performed keying of leg irons, handcuffs, padlocks on wrist chains as well as keying of the shake down room each time he went in and out. (T. 38-39) In the sally port, he used larger keys that were approximately twice the size of a normal house key. (T. 42)

He testified that the facility was last on lockdown the day prior to this Arbitration hearing due to staff shortages. (T. 16-17) He testified that during COVID, the facility was on lockdown and his activities increased. (T. 16, 18) He stated that for individuals to be transported, taken to healthcare, or for the nurses to administer medications, he had to open and shut the doors and then repeat. (T. 18-19)

Over time, while working for Respondent, Petitioner began to notice symptoms of his hands falling asleep with numbness and tingling. (T. 21) He noticed that on days he used his hands more, he noticed more symptoms in the evening or at night. (T. 21-22) His symptoms worsened to the point where he sought medical treatment. (T. 22)

On October 18, 2021, Petitioner presented to the office of Dr. Matthew Bradley with symptoms of pain, numbness and burning in his bilateral hands. (PX3) He had noticed his symptoms months prior; however, he was previously able to resolve his symptoms with the shaking of his hands. *Id.* His symptoms were initially intermittent but had become chronic and were now affecting his ability to sleep as well as his grip strength. *Id.* He also had symptoms of a snapping sensation along the medial aspect of his left elbow followed by severe pain and burning along his ulnar

forearm and into his fourth and fifth fingers. *Id.* He reported a history of elbow dislocation and fracture many years prior that was treated non-operatively. *Id.*

Petitioner reported a history of working as a correctional sergeant and correctional officer over the past 22 years and he felt the repetitive use of hands and elbows during that time led to the development of his condition. *Id.* Dr. Bradley noted Petitioner's duties included unlocking and locking cell doors and housing units, multiple times per day. *Id.* Petitioner worked in the receiving unit where all doors are locked at all times and required the use of a key to open them. *Id.* His other duties included patting down inmates and visitors on a regular basis as well as cell shakedowns, lifting, carrying, and searching property and boxes within cells. *Id.*

Examination of the bilateral upper extremities showed numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, positive Phalen's, and positive Tinel's at the elbow and wrist. *Id.*

X-rays of the bilateral hands and wrists showed no acute fractures or significant degenerative disease. *Id.* The right elbow x-ray showed no acute fractures or significant degenerative changes and the left elbow x-ray showed some degenerative disease of the elbow joint and a chronic-appearing fracture of the radial neck. *Id.*

Dr. Bradley diagnosed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome with an unstable left ulnar nerve, and ordered an EMG and nerve conduction study to confirm same. *Id.* He opined that the chronic repetitive use of Petitioner's hands over the past 22 years contributed to the development of his bilateral carpal and cubital tunnel syndrome and need for further evaluation and treatment. *Id.*

On November 8, 2021, Petitioner presented to Dr. Daniel Phillips for an EMG and nerve conduction study testing. (PX4) Dr. Phillips noted that when Petitioner was six months old, he was in the hospital for meningitis and sustained a fractured dislocation of the left elbow, which did not heal correctly. *Id.* He noted that the nerve sat atop the medial epicondyle and that if Petitioner leaned on the elbow, he experienced pain and numbness. *Id.* Dr. Phillip's impression was significant moderate median neuropathy across the right carpal tunnel, mild median sensory neuropathy across the left carpal tunnel and moderate to severe sensory motor neuropathy across the left elbow. *Id.* He suggested Petitioner wear a left elbow pad. *Id.*

Petitioner returned to Dr. Bradley on November 15, 2021 and reported no change in his symptoms. (PX3) Dr. Bradley indicated that he reviewed the findings on Petitioner's recent MRI in comparison to his symptoms and exam. *Id.* Dr. Bradley recommended an open carpal tunnel release at the right wrist and ulnar neurolysis at the right elbow. *Id.*

On December 22, 2021, Petitioner underwent carpal and cubital tunnel releases on the right with Dr. Bradley. (PX5) Intraoperatively, the carpal tunnel ligament was very thickened and opened up approximately one centimeter upon release. *Id.* The nerve was extremely flattened as it transversed the carpal tunnel. *Id.* The cubital tunnel showed stricture proximally near the ligament and there were chronic inflammatory changes just posterior to the medial epicondyle. *Id.* Petitioner was kept off work until his follow up appointment of January 6, 2022. (PX3)

On January 6, 2022, Petitioner presented to Dr. Bradley and reported significant improvement in his right upper extremity symptoms; however, he continued to have significant symptoms in his left upper extremity. (PX3) Dr. Bradley recommended surgical intervention on same and Petitioner was kept off work. *Id.*

On January 12, 2022, Petitioner underwent an open left carpal tunnel release and a left elbow ulnar nerve transposition with neurolysis. (PX5) Intraoperatively, Petitioner had an unstable ulnar nerve that was translating over the medial epicondyle towards the interior position and back in full extension. *Id.* There was significant chronic inflammatory scar-type tissue around the area of instability. *Id.* The carpal tunnel showed flattening of the medial nerve. *Id.*

At Petitioner's postoperative visit on January 27, 2022, he reported that he had some stiffness and mild weakness with grip; however, his symptoms had significantly improved. (PX3) Dr. Bradley recommended a home exercise

program and ibuprofen as needed. *Id.* Petitioner was kept off work for 10 more days and was cleared to return full duty without restrictions on February 7, 2022. *Id.*

On February 28, 2022, Petitioner returned to Dr. Bradley and indicated that his symptoms had significantly improved and that he was working full duty. (PX3) He indicated that he still had some issues when cuffing individuals; however, same was not overly bothersome. *Id.* Dr. Bradley indicated that Petitioner should continue to use Tylenol and/or ibuprofen on an as-needed basis and that he should continue his daily home exercise program. *Id.* He noted Petitioner could work full duty without restriction and placed him at maximum medical improvement. *Id.*

Dr. Patrick Stewart, Respondent's Section 12 Examiner: Report and Testimony

On February 24, 2022, at Respondent's request, Petitioner submitted to a Section 12 examination with Dr. Patrick Stewart. (RX6) Dr. Stewart summarized a job description of a correctional officer that had been provided by Respondent. *Id.* Petitioner indicated to Dr. Stewart that he had primarily been assigned to the housing units, including the receiving ward. *Id.* Dr. Stewart noted that Petitioner had 50 prisoners to care for in his housing unit and that they were assisted with one meal per day. *Id.* He approximated that Petitioner would open doors 75 times in a given shift. *Id.* He indicated that in the receiving unit there are 420 inmates over four separate units and about 100 inmates per officer. *Id.* He indicated that they have a padlock and separate lock on them as well as a chuckhole lock. *Id.* He indicated the inmates were essentially fed there and that there was limited movement. *Id.*

Dr. Stewart noted that Petitioner had already undergone his surgeries and reported no numbness and tingling. *Id.* He noted that Petitioner's past medical history included hypertension and migraines, his medications were enalapril, metoprolol, venlafaxine and rizatriptan and he was a half-pack per day smoker. *Id.* Dr. Stewart noted Petitioner had been employed through the Department of Corrections as a correctional officer and had been employed for 22 years. *Id.*

On exam of the right upper extremity, Petitioner had well-healed incisions, some thickening of the scar in the interthenar crease and some discomfort with resisted abduction of his right thumb. *Id.* The left upper extremity showed two well-healed incisions on the medial aspect of the elbow and the carpal tunnel; his incision had a small scab with no sign of infection. *Id.*

Dr. Stewart's impression was status post bilateral carpal tunnel and cubital tunnel releases with subcutaneous transposition for nerve subluxation of the left elbow and severe left elbow arthritis. *Id.*

Dr. Stewart found the Petitioner to be considerate and appropriate throughout his evaluation and questioning. *Id.*

Regarding causation, Dr Stewart stated that there were multifactorial inputs as far as increased risk factors and causation for different compression neuropathies. *Id.* He opined that Petitioner's pre-existing left elbow condition caused his elbow to be in a more flexed position and that this placed him at an increased risk for subluxation of the nerve. *Id.* He did not feel Petitioner's job description was consistent with prolonged forceful grasping and maintained elbow flexion or repetitive elbow flexion and extension that would place him at an increased risk for developing cubital tunnel or subluxation of the nerve. *Id.* He indicated that Petitioner was being treated for hypertension, had an elevated BMI and was a smoker, and that these placed him at an increased risk for the development of compression neuropathy. *Id.* He opined that Petitioner's repetitive activities would have a greater period of recovery time than time of exposure to the repetitive activity, and that there was a limited degree of force required for his activities. *Id.* He did not find Petitioner's cubital tunnel syndrome to be caused by his job duties. *Id.*

Dr. Stewart indicated that he would have recommended conservative treatment for Petitioner's right cubital tunnel prior to surgery; however, he believed Petitioner's medical treatment had been reasonable and necessary. *Id.* He stated that Petitioner's prognosis was excellent, that he had no numbness and tingling, that his strength was improving and would continue to improve, and that Petitioner would be at maximum medical improvement in the upcoming weeks. *Id.*

Dr. Stewart authored an addendum report dated April 7, 2022, wherein he stated that he was asked to provide clarification on a causal relationship. (RX7) He again indicated that there was not a causal relationship for the development of Petitioner's cubital tunnel syndrome and restated the opinions contained in his prior report. *Id.*

Although his earlier report indicated that Petitioner's treatment had been reasonable and necessary, he was asked to provide clarification regarding same and stated in his addendum report that only the x-rays of Petitioner's left elbow were appropriate. *Id.* He also repeated his opinion that there was no conservative treatment for the right cubital tunnel; however, did not state that Petitioner's surgeries had been unreasonable or unnecessary. *Id.*

Dr. Stewart testified consistent with his reports on July 12, 2022, via evidence deposition. (RX8) He testified that Petitioner's EMG was significant for carpal tunnel on the right and cubital tunnel on the left. *Id.* at 15. He stated that the left carpal tunnel was diagnosed by a comparison of the other nerves and was indicative of a minimal carpal tunnel finding. *Id.* at 15.

Dr. Stewart agreed that Petitioner's right cubital tunnel intraoperative findings included chronic inflammatory changes with scarring and opined that this finding would cause "different symptoms" such as discomfort unless it put pressure on the nerve. *Id.* at 55. He testified that Petitioner's intraoperative bilateral carpal tunnel and left elbow findings could cause symptoms. *Id.* at 55-57.

Dr. Stewart testified that Petitioner was employed during the COVID lockdown and that this increased the workload of the officers. *Id.* at 61-63. He allowed that his report did not reference the lockdown and the increased activities of the officers because he believed that "repetition is nearly... inconsequential." *Id.* at 62-64.

Dr. Stewart opined that Petitioner's other risk factors were the cause of his carpal tunnel, and that his fracture as an infant was the cause of his left cubital tunnel. *Id.* at 68. He testified that Petitioner did not have outside activities or hobbies that would cause or contribute to his conditions. *Id.* at 74. He testified that he excluded Petitioner's 22-year history as a correctional as a cause of Petitioner's bilateral compression neuropathies. *Id.* at 75.

Dr. Stewart agreed that the percentages referenced in Respondent's job description from June 1, 2002 that he relied on in his first report did not apply to Petitioner, as he spent 85 to 90% of his time in housing and receiving. *Id.* at 58-59. He testified that the job description referenced in his report was not for Graham, but for a different correctional center. *Id.* at 59-60.

Dr. Stewart agreed that Petitioner indicated that one housing unit holds 100 inmates, that the units have to be keyed multiple times, the two closets have to be keyed, and four wing logbooks have to be unlocked and signed every 30 minutes per shift. *Id.* at 51. He testified that officers perform pat downs on inmates and carry their property boxes and that officers use their hands to perform shakedowns, cuffing and cuffing of inmates. *Id.* at 70-71. He testified that Petitioner's activities of cleaning, handling and qualifying with weapons did not appear anywhere in his reports. *Id.* at 73.

Dr. Stewart was questioned regarding Petitioner's job description and testified that he had no reason to doubt Petitioner's description of his job. *Id.* at 51. He stated that Petitioner was a credible historian and cooperative with his examination. *Id.* at 69.

Dr. Matthew Bradley Testimony

Dr. Bradley testified via evidence deposition on June 17, 2022. (PX6) Dr. Bradley is a board-certified orthopedic surgeon who regularly treats and operates on patients with carpal and cubital tunnel syndrome. *Id.* at 4, 7-8. He testified that occupational risk factors for the development of compression neuropathy included work activities that would result in repetitive microtrauma injury to a nerve. *Id.* at 10-11. He stated this was mostly a repetitive-type injury that developed over time from vibration or force to a particular area. *Id.* at 10-11.

Dr. Bradley testified that based on Petitioner's history, physical examination and review of his electrodiagnostic tests, his diagnosis was carpal and cubital tunnel in both hands and elbows. *Id.* at 16-17, 22-23.

Dr. Bradley testified that he performed x-rays of Petitioner's wrists and elbows because there are different diagnoses that can contribute to symptoms similar to Petitioner's and performing simple plain x-rays at the elbows and wrists is a very common practice. *Id.* at 18.

Dr. Bradley testified that Petitioner was treated non-operatively for his right elbow prior to surgery with anti-inflammatories and exercise; however, he has treated many patients with Petitioner's problems and even if he would have put Petitioner in an expensive elbow brace, he would have inevitably still needed surgery. *Id.* at 23, 41-42.

Dr. Bradley testified that Petitioner's right-sided intraoperative findings of inflammation, adhesions and scarring at the cubital tunnel and thickening of the nerve at the carpal tunnel, as well as his left-sided findings of scar tissue, adhesions, tethering and instability at the cubital tunnel and flattening at the carpal tunnel were expected and consistent with his preoperative symptoms. *Id.* at 27-32. He did not feel Petitioner would have improved without surgery given the severity of his symptoms. *Id.* at 34-35.

Dr. Bradley was aware that Petitioner had injured his elbow as a child and that the left elbow did not move as much and had significant arthritis. *Id.* at 16, 18. He disagreed with Dr. Stewart's opinion regarding Petitioner's left elbow. *Id.* at 37-38. Dr. Bradley did not feel that Petitioner's elbow lacking 20 or 30 degrees of flexion placed him at an increased risk, as no one keeps their arm straighter than 20 degrees all day, every day. *Id.* at 37-39. He stated that Petitioner never had symptoms growing up and that if deformity was the cause of his symptoms, he would have expected Petitioner's problem to have come about many years prior to when it did; and, his elbow was not a problem for him until the past year or so. *Id.* at 37-39. He believed that while Petitioner's elbow condition may have been contributory, his cubital tunnel was multi-factorial, that and one of those factors was Petitioner's job duties. *Id.* at 37-38.

Dr. Bradley testified that diabetes, thyroid disorder and being of the female sex over the age of 50 are the biggest non-occupational risk factors for the development of compression neuropathy. *Id.* at 10. He testified that more recent findings showed that having high blood pressure was actually a negative risk factor as opposed to a cause of compression neuropathy. *Id.* at 10. He testified that although Petitioner was a smoker, this was a secondary risk factor. *Id.* at 10, 24-25. He acknowledged that Petitioner's BMI was slightly elevated; however, for a male of his age, he did not feel Petitioner's BMI was in any way contributory to the development of his condition. *Id.* at 24-25. He indicated that smoking and having a BMI of 30 may make Petitioner slightly more susceptible; however, he did not feel that these would preclude his job as being a contributing factor. *Id.* at 25. Moreover, he stated that Petitioner did not have any outside hobbies that were significant to his condition. *Id.* at 56-57.

Dr. Bradley was asked if his causation opinion was based on Petitioner's account of his job duties he replied, "...I have been provided job descriptions of Graham Correctional Facility correctional officers in the past. But mostly I rely upon the patients telling me what exactly they do, because as I've learned, job descriptions and reality are not always -- they don't always correlate to each other." *Id.* at 55.

Dr. Bradley opined that although there was recovery time, there was injury to the area, which produces inflammation, which in turn produces scar tissue. *Id.* at 40-41. He stated that even if someone has a good recovery, it does not mean they will not have inflammation and scar tissue. *Id.* at 40-41. Additionally, he testified that correctional officers had an increase in the amount of key in during the COVID lockdown which reduced their recovery. *Id.* at 40-41. He further explained that if a person is punched and nobody touches them for a day, having a recovery period does not mean they would not develop inflammation and a bruise. *Id.* at 41.

Dr. Bradley reviewed Petitioner's work history timeline and discussed his work history with him, including the various different capacities in which he has worked. *Id.* at 13.

Dr. Bradley indicated that at the time he saw Petitioner, he was working as a sergeant; however, he had previously worked as a correctional officer. *Id.* at 13-14. Petitioner described the repetitive utilization of keys, which he had to place into heavy cell doors. *Id.* at 13-14. Petitioner indicated he had to push and wiggle the keys to lock and unlock the doors and then pull open the heavy doors. *Id.* at 13-14. Dr. Bradley stated that during the pandemic lockdown, Petitioner reported that the amount of keying and unlocking of handcuffs and doors significantly increased because it required him to lock and unlock more often throughout the day. *Id.* at 14. He stated that during shakedowns,

Petitioner had to take boxes out of cells, which involved significant lifting and carrying. *Id.* at 14. He had to pat down inmates and visitors as well. *Id.* at 14.

Finally, Dr. Bradley testified: “I certainly think that the 22 years doing what [Petitioner] did contributed to it. As Dr. Stewart points out in his IME, he did have this deformity to his elbow which left him more susceptible to developing a cubital tunnel, but something still has to kind of push him over the edge, and I think that his work was just that. I think this repetitive work over 22 years, he slowly developed these symptoms, and they just kept getting worse and worse. And eventually, it pushed him over the edge where he just couldn't get them to go away. And they were awakening him at night and he was getting some weakness in grip. So, I certainly think his work and what he described over the 22 years contributed to the development of both carpal and cubital tunnel.” *Id.* at 23-24.

Documentary Evidence

Respondent’s Exhibit 1 includes a notice of injury report completed by Petitioner on December 17, 2021 wherein he indicates an injury date of November 18, 2021. (RX1) Petitioner indicated that his injury affected his right and left hands and elbows and that the duties he was performing at the time of the injury were locking and unlocking security doors and performing shakedowns. *Id.* He indicated the injury occurred over time in the x-house, cell house and healthcare unit. *Id.* Respondent’s exhibit one also contained a supervisor’s report of injury, which was completed by Petitioner supervisor, John Drannon, on December 17, 2021. *Id.* Mr. Drannon indicated that Petitioner’s job title was that of a sergeant, and that he had held this position for three years. *Id.* He indicated his previous job title was that of a correctional officer, and that Petitioner held that job title for the previous 19 years. *Id.* He indicated that Petitioner’s job description and/or assigned duties were working at the armory, walk and healthcare unit, performing searches and pat downs of inmates, securing and un-securing cell doors and performing shakedowns. *Id.* He indicated pain and numbness to Petitioner’s right and left hands and elbows due to repetitive usage. *Id.*

Respondent’s Exhibit 3 is a listing of Petitioner’s job assignments. (RX3) The job assignments begin on March 1 and end December 31. *Id.* There is no year listed on the document to specify when the job assignments occurred, but Major Trevor Wright indicated that they began in March 2020. (T. 57) Petitioner was mostly assigned to the gatehouse and sallyport. (RX3)

Respondent’s Exhibit 4 contains a position description of a correctional sergeant, which provides a general statement of the essential functions of the position. (RX4) No position description for a correctional officer was offered.

Respondent’s Exhibit 5 consisted of Petitioner’s timesheets from 2019 through 2022. (RX5) No testimony was given regarding the explanation of the entries noted therein.

Petitioner’s Exhibit 7 is a work history timeline and job description prepared by Petitioner. (PX7) Petitioner indicated that he performs locking and unlocking cell doors and housing units multiple times per day and working in the receiving unit where all doors are locked at all times and require the use of a key to open. *Id.* During feeding, chuckholes are keyed twice. *Id.* He indicated he worked in the segregation unit, where each door had to be keyed twice. *Id.* He performed pat downs of inmates and visitors on a regular basis. *Id.* He also performed typing and writing reports. *Id.* He performed shakedowns of cells, which involved lifting, searching and carrying inmate property boxes that weighed from five to 50 pounds on a daily basis. *Id.* He performed pushing and pulling on heavy cell doors 100 to 200 times per day as well as pulling of property carts. *Id.* He indicated shakedowns involved searching for contraband below the bed, sinks and desks, and that top bunks on beds and ventilation shafts were also checked. *Id.* He stated he used his hands for grasping chains on handcuffs, twisting keys on padlocks and handcuffs, and opening cell doors from 100 to 200 times or more per day. *Id.*

Testimony of Trevor Wright, Major

Major Wright has been employed by Respondent for 18 years and was Petitioner’s supervisor prior to Petitioner’s promotion to supply supervisor. (T. 48, 51) He testified that Petitioner is a good employee. (T. 49) He heard Petitioner’s testimony and confirmed that Petitioner’s testimony was accurate. (T. 49) He testified that the duties of correctional officers, sergeants, lieutenants and majors increased during the pandemic lockdown. (T. 49) He agreed that conscientious sergeants and lieutenants have more paperwork but perform the same duties as correctional

officers. (T. 49-50) He testified that Respondent employs 477 individuals and is short-staffed by approximately 90 correctional officers. (T. 50)

He testified that the gatehouse assignment involves shakedowns, keying doors, shaking down visitors, shaking down the work area and property lockers and computer work. (T. 52) Keying is performed in the control room, closet and on the lockers. (T. 53)

The sally port assignment involves searching all individuals, contractors and drivers that come into the institution and searching any vehicle that comes in or goes out of the institution. (T. 53-54) A tool weighing approximately eight pounds is used to check the undercarriages of vehicles. (T. 54) He testified that activities in the sallyport increased when the facility began receiving intakes from the county, as they would all come through the sally port. (T. 55) He testified that the job assignments exhibit only goes back to March 2020. (T. 57)

Petitioner's Current Complaints and Presentation

Petitioner testified that from the time he sustained his initial elbow injury when he was six months old until the time of his employment with Respondent, he never sought treatment for his elbow. (T. 24) He testified that he played sports and passed a pre-employment fitness test that included push-ups and hand strength. (T. 24-25)

Prior to his surgeries, even normal activities would aggravate his symptoms and he was "starting to get miserable." (T. 23) He testified that the surgeries helped his condition. (T. 25) Despite the improvement from his surgeries, he testified that his hand strength is not what it used to be. (T. 26) He still experiences some soreness in his hands that is mostly brought about by his work activities. (T. 26-27)

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? & Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Major Wright, who served as Petitioner's supervisor, heard Petitioner's testimony that his job required the strenuous, repetitive use of his hands for the majority of his employment history for Respondent, and testified that Petitioner's testimony was accurate. (T. 48-49, 51) He confirmed Petitioner's testimony that conscientious sergeants perform the same duties as correctional officers. (T. 49-50) Major Wright also confirmed Petitioner's testimony of how his job duties increased during the facility's lock down. (T. 49) Respondent's Examiner, Dr. Stewart found the Petitioner to be a credible historian who was considerate, appropriate and cooperative throughout his examination. (RX6; RX8 p. 69) Further, the Arbitrator observed the Petitioner and found him to be consistent and credible.

Petitioner spent over 22 years as a correctional officer and sergeant for Respondent. (T. 10-11, 31) Petitioner was specific and detailed in outlining the frequent, intensive activities that he performed with his hands and arms during his employment with Respondent, all of which was confirmed by his supervisor. (T. 12-19, 36-42; PX7)

Dr. Stewart felt that Petitioner's childhood injury to the left arm, hypertension, smoking status and elevated BMI served as causation for his compression neuropathies, and excluded Petitioner's job activities as a contributing factor. (RX8, pp. 68, 75)

Dr. Bradley opined that while Petitioner's left elbow condition may have been contributory, his job duties were also a contributing factor. (PX6, pp. 37-39) The Arbitrator finds it noteworthy that although Petitioner's left elbow condition had been present since his infancy, there is no evidence that he had any problems with it prior to his employment with Respondent, and he passed a pre-employment physical prior to his employment with Respondent. (T. 24, 25) Further, Dr. Bradley indicated that recent information points to hypertension as being a negative risk factor; for which Petitioner takes medication. (PX6 p. 10, T. 29) Additionally, Dr. Bradley opined that while Petitioner's slightly elevated BMI and smoking status might make him slightly more susceptible, but his work activities could not be precluded as being a contributing factor to his diagnoses. (PX6, p. 25)

Dr. Bradley reviewed Petitioner's entire work history and opined that that Petitioner's 22-plus years of work in the Department of Corrections contributed to the development of both carpal and cubital tunnel syndrome. (PX6, pp. 13, 15-16, 23-24)

Dr. Stewart testified that he had no reason to doubt Petitioner's job description and admitted that Petitioner's duties increased during the pandemic lockdown, though he felt that there was nominal force involved in Petitioner's activities; however, this is inconsistent with Petitioner's credible testimony, which was confirmed by Major Wright. (RX6; T. 12-19, 36-42, 49; RX8, 61-64)

The Arbitrator finds the opinion of Petitioner's treating surgeon, Dr. Bradley, to be persuasive on the issue of causation as he had a more complete understanding of Petitioner's job duties, adequately considered those duties relevant risks, and was therefore in the best position to judge the cause of Petitioner's complaints.

Relying on the credible testimony of the Petitioner, the persuasive opinion of Dr. Bradley, and the record taken as a whole, the Arbitrator finds that the Petitioner has met his burden of proof in establishing that he sustained accidental repetitive injuries that arose out of and in the course of his employment with Respondent, manifesting on October 18, 2021, which is causally connected to his current condition of ill-being in his bilateral arms and hands/wrists.

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

Incorporating the above, the Arbitrator finds that all of medical services provided to Petitioner for the treatment of his bi-lateral arms and hands/wrists was reasonable and necessary. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care as outlined in Petitioner's Exhibit 1, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

The Respondent shall be given a full credit for payments made by its group health insurance carrier pursuant to Section 8(j).

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

Incorporating the above, the Arbitrator finds that Respondent is liable for the payment of temporary total disability benefits for a period of 6 and 5/7 weeks, commencing December 22, 2021 through February 7, 2022.

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

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

- i. **Level of Impairment:** No AMA impairment report/rating was submitted into the record. Therefore, the Arbitrator lends no weight to this factor.
- ii. **Occupation:** Petitioner continues to serve in a full duty capacity as a correctional supply supervisor. The Arbitrator has considered and places greater weight on this factor.
- iii. **Age:** Petitioner was 45 years of age at the time of his injury. The Arbitrator has considered and places moderate weight on this factor.

- iv. Earning Capacity:** There was no evidence of reduced earning capacity contained in the record. The Arbitrator has considered and places some weight on this factor.
- v. Evidence of disability corroborated by the treating medical:** As a result of his work duties, Petitioner developed bilateral carpal and cubital tunnel syndromes and underwent surgical intervention in the form of bilateral carpal releases, a right cubital tunnel release and a left ulnar nerve transposition with neurolysis. (PX5) Despite the improvement Petitioner gained from his surgeries, he testified that he still experiences decreased strength in his hands as well as soreness that is largely brought about by his work activities. (T. 26-27) In Dr. Bradley's MMI note for Petitioner, on February 28, 2022, he reports that Petitioner was working fully duty with no complications, though he still had some issues when cuffing inmates, but it was not overly bothersome. (PX3) The Arbitrator has considered and places greater weight on this factor.

Based upon the above factors and the record as a whole, the Arbitrator finds that Petitioner sustained injuries that resulted in the 7.5% loss of use of Petitioner's right hand, a 7.5% loss of use of Petitioner's left hand, a 7.5% loss of use of Petitioner's right arm, and a 7.5% loss of use of Petitioner's left arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032976
Case Name	Jeremiah Rhodes v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0364
Number of Pages of Decision	28
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 8/28/2025

/s/Kathryn Doerries, Commissioner

Signature

DISSENT

/s/Amylee Simonovich, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEREMIAH RHODES,

Petitioner,

vs.

NO: 21 WC 032976

STATE OF ILLINOIS/GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON CROSS REVIEW

Timely Petitions for Cross Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator on the issue of accident, 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, having considered the entire record, finds that Petitioner failed to prove that he sustained an accidental injury arising out of and in the course of his employment on November 18, 2021, and failed to prove a causal connection between his current condition of ill-being and his employment, rendering all other issues moot. Therefore, the Commission vacates the Arbitrator's award of temporary total disability benefits, medical expenses and permanent partial disability benefits for the reasons set forth below.

The Commission, while adopting the Arbitrator's Statement of Facts, views the evidence and the law differently than the Arbitrator. Therefore, the Commission strikes the Arbitrator's paragraphs under the Conclusions of Law section and substitutes the following:

In regard to disputed issues (C) Accident and (F) Causation, the Commission makes the following Conclusions of Law:

The Petitioner in this case is relying upon a repetitive trauma theory rather than one of

traumatic injury. “As the appellate court correctly stated, an employee who alleges injury based on repetitive trauma must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process.” *Peoria County Belwood Nursing Home v. Industrial Comm’n*, 505 N.E.2d 1026, (1987).

In repetitive-trauma cases, the claimant “generally relies on medical testimony establishing a causal connection between the work performed and claimant’s disability.” *Nunn v. Industrial Comm’n*, 157 Ill. App. 3d 470, 477 (1987) The causation of compression neuropathy due to repetitive trauma has been deemed to fall in the area requiring such expert testimony. *Johnson v. Industrial Comm’n*, 89 Ill. 2d 438 (1982). In a repetitive trauma claim, a claimant need not establish that work activities are the sole or even the primary cause of his condition. It must be proven, however that work activities are at least a cause of his condition.

Respondent entered into evidence Petitioner’s timesheets for the years 2019, 2020, and 2021. (RX3) These documents demonstrate Petitioner did not work approximately 154 full days in 2019; he did not work 165 full days in 2020; and he did not work 164 full days in 2021. This does not include any partial days or hours taken off. (RX 3).

Respondent also entered into evidence Petitioner’s medical records which detail Petitioner’s pre-accident medical conditions from May 16, 2020, through May 18, 2021. (RX7) On November 16, 2020, the Southern Illinois Hand Center records document Petitioner’s History and Physical Report and History of Present Illness included obstructive sleep apnea with onset 8 years prior, hypertension and Petitioner’s vitals noting his height of 71” and weight of 231 pounds with a body mass index (BMI) of 32.22 kg/m. (RX7, 2)

The records also noted treatment for a hand laceration on May 18, 2021. However, none of these records verify any complaints of compression neuropathy symptoms during the time period Petitioner testified that he had increasing symptoms. (T. 21) Further undermining Petitioner’s testimony that his symptoms increased during Covid is the fact that Petitioner was off work for almost one half of each of the years in 2019, 2020, and 2021.

Petitioner also testified that he has high blood pressure, and he takes medication for it. (T. 12-13) On cross examination, Petitioner testified that he has hypertension and has had sleep apnea for approximately 10 years requiring a CPAP machine. (T. 28-29)

Petitioner first sought treatment on November 18, 2021, with Dr. Matthew Bradley of Metro-East Orthopedics for complaints of “a many year history of left worse than right wrist pain and tingling,” and left elbow pain. (PX 3, 2) The history also notes Petitioner “reports numbness in his left and right 4th and 5th digits. The numbness and tingling in his fourth and fifth digit occur with prolonged elbow flexion.” *Id.* Petitioner also reported that, while his symptoms had become more severe and more prominent, he was still able to shake out his symptoms and had periods of time where he did not have significant symptoms.” *Id.*

Regarding Petitioner’s work, Dr. Bradley notes “Mr. Rhodes has worked for 18 years as a correctional officer,” noting that over the past year and a half the amount of repetitive use of his hand has significantly increased during the pandemic. *Id.* Dr. Bradley also notes that Petitioner

reported “his facility has been under lockdown which requires significantly more keying including unlocking and locking of cell doors as well as cuffs of inmates.” *Id.*

Petitioner denied hobbies or activities requiring the repetitive motion or use of his hands and elbows. *Id.* However, Petitioner did report “occasionally hitting a punching bag but states he always uses well padded (sic) gloves.” *Id.* Petitioner also denied history of diabetes, thyroid disease, or obesity. *Id.* Almost immediately below the history, Dr. Bradley’s “General Exam” notes recorded that Petitioner is 5’6” and weighs 230 pounds. *Id.*

Petitioner returned to Dr. Bradley on January 3, 2022, when Dr. Bradley recorded that Petitioner “tried and failed non-operative treatment including anti-inflammatories, home exercise program, and bracing.” (PX3, 7) The surgery was planned for left carpal and cubital tunnel releases with a plan to do the right 3 to 4 weeks after the left. *Id.*

The February 23, 2022, operative report identifies Dr. Matthew Bradley as the surgeon. (PX3, 10) The “Procedures” section confirms: 1) open left cubital tunnel ulnar nerve decompression and 2) open left carpal tunnel release. *Id.* The “Findings” section notes that “intraoperatively there was some scar tissue formation around the ulnar nerve just posterior to the medial epicondyle. There was no significant instability appreciated to the nerve. Distally, the carpal tunnel ligament was thickened causing some flattening of the median nerve without hourglass shaping.” The “Procedure in Detail” confirmed “[a] standard curvilinear incision was made just posterior to the medial epicondyle. Soft tissue dissection was carried down to the level of the nerve. Once the nerve was identified, it was de-tethered of any adhesions and chronic inflammatory tissue around the nerve. It was then traced all the way proximally till it entered into the ligament. The ligament was not at all tight and did not need to be released. The nerve was then traced all the way distally to where it entered into the fascia. It was slightly compressed and constricted at this point. The fascia was released approximately 5 mm in length.” *Id.*

Dr. Bradley testified on behalf of Petitioner as his treating physician. Dr. Bradley’s expertise is a general board-certified orthopedic surgeon, operating “on arms and legs.” (PX9, 4) Dr. Bradley holds medical licenses in Illinois and Missouri. *Id.* Dr. Bradley testified that half of his practice is spent seeing patients in his office or the clinical setting and the other half is, “spent seeing patients on the job or even in the operating -either at a hospital or surgery center.” (PX9, 5)

Dr. Bradley testified that some of the most common non-occupational risk factors in his experience and within medical literature include females “of increasing age, so 40 or 50 or older; thyroid disease; diabetes” and “sleep apnea is kind of a new one we’ve been getting more and more data about.” (PX9, 8) Dr. Bradley testified that in his opinion, to a reasonable degree of medical certainty, Petitioner, who has sleep apnea, uses a CPAP machine at night and is obese, has two kinds of medical conditions that predispose him to developing things, “i.e. they make it a lot easier for him to get carpal and cubital tunnel symptoms.” (PX9, 17-18) Dr. Bradley further testified that “18 years of working as a correctional officer contributed to these two medical conditions and combined—it’s multifactorial. These three things all combined and led to him not only developing carpal and cubital tunnel but developing symptoms that became severe enough that we had to operate on him.” (PX9, 18)

Dr. Bradley testified on cross examination that the only information regarding Petitioner's job duties in the intake form stated, "keying inmates in and out of their cells, opening locks on hatches, walking inmates to assignments and lunch, shaking down inmates in common areas." (PX9, 33)

Dr. Bradley further testified on cross examination that his practice is approximately "50% arms and 50% legs." (PX9, 34) Dr. Bradley estimated 15-25% of his practice are "kind of chronic repetitive stuff." (PX9, 34-35) Dr. Bradley verified he had no added qualification for upper extremity or hand surgery. (PX9, 35) Dr. Bradley testified that he did not "think any added qualification does anything to your expertise in the realm of carpal or cubital tunnel." *Id.* Dr. Bradley testified that his practice was initially more concentrated, "weighted" on the lower extremity, but in the more recent four or five years, he saw three to four carpal and cubital tunnel syndromes per week on average. (PX9, 36-37)

Dr. Bradley testified further on cross examination that he did not review Petitioner's detailed job description or work history timeline when he first formed his causation opinion. (PX9, 37) Dr. Bradley confirmed that he received the job description and work history timeline the night before the evidence deposition. *Id.* Dr. Bradley testified that he did not have any records, nor did Petitioner tell him of any previous treatment on his hands, wrists or arms, for the symptoms that Petitioner was complaining to him about. (PX9, 38) Petitioner could not tell Dr. Bradley when he first noted having symptoms, but reported it was for many, many years. Dr. Bradley testified that it was the year and a half prior to seeing him when the symptoms became more frustrating to him. Dr. Bradley, however, did not know when Petitioner's symptoms began, nor did he review any notices of injury in this case. *Id.*

Dr. Bradley did not know, or remember, if Petitioner ever mentioned that he did bar rapping. (PX9, 41-42) Dr. Bradley testified that he did not know how often or how many times bar rapping is required at a given shift at Graham. (PX9, 42) Dr. Bradley testified that Petitioner did not specifically say how many cell doors he had to lock and unlock in totality. *Id.* Dr. Bradley did not know if all staff assignments require locking and unlocking cell doors at Graham. (PX9, 43) Dr. Bradley testified that he did not know if Petitioner was right or left-handed. *Id.* Dr. Bradley testified that it seemed to him, "like there's multiple different keys that these guys all describe using," but he did not know what areas or doors required Folger Adam keys. (PX9, 44) Dr. Bradley testified that he did not know how often Petitioner would have to do cell checks. (PX9, 45) Dr. Bradley testified that he did not know the exact number of individuals that Petitioner would have to cuff or uncuff per shift or if that was limited to certain assignments. (PX9, 46) Dr. Bradley came across a notation that Petitioner bar rapped at least twice per shift on certain assignments, without specifying what those assignments were. *Id.*

Dr. Bradley testified that he did not know how often typing or computer work was done as part of Petitioner's job duties. (PX9, 47) Petitioner never described to Dr. Bradley what he was doing for typing or computer work. (PX9, 48). Dr. Bradley testified that Petitioner never described his computer workstation and never reported working overtime. *Id.* Dr. Bradley did not know the frequency of periods of lockdown at Graham Correctional Center during Covid. *Id.* Dr. Bradley could not recall discussing the ergonomics of Petitioner's workstation. *Id.* Dr. Bradley testified that he did not know what Petitioner's duties were in the 18 years at the Illinois Department of

Corrections, although they changed and varied over the years, depending on whether it was Covid or not. (PX9, 49) Dr. Bradley denied knowing on average what portion of Petitioner's day was spent doing any of his job duties. In his opinion, it was not one specific job duty that was an aggravating factor, but all of them together. *Id.* Dr. Bradley testified that like his sleep apnea and obesity that contributed to his condition, so did Petitioner's multiple job activities. *Id.*

Dr. Bradley testified that if Petitioner was off work for a significant amount of time in the years leading up to his treatment, that could potentially change his causation opinion in this case. (PX9, 51) Dr. Bradley testified he would want to review the lost time leading up to his treatment and "see" what Petitioner was "off work doing." *Id.* Dr. Bradley reiterated, yes, that could potentially affect his opinion. Dr. Bradley further testified that carpal and cubital tunnel syndrome could develop idiopathically. *Id.*

Dr. Bradley testified that he only documented Petitioner's height and weight but not his BMI, which is "just a calculation of a height and weight thing." (PX9, 52) In response to why sleep apnea is a risk factor for carpal and cubital tunnel, Dr. Bradley testified he did not have a great answer except for the fact that people who have sleep apnea have periods of decreased oxygen which would likely be experienced by the hands and feet, the parts of your body farthest away. These brief periods of decreased oxygen are very likely to contribute to the condition. *Id.* Dr. Bradley testified that he was certainly seeing reports coming out of patients with a higher percentage of carpal tunnel that had sleep apnea. *Id.* Dr. Bradley testified he did not recall Petitioner reporting his sleep apnea to him. He saw the sleep apnea condition in Dr. Stewart's report, but Petitioner did not list it on his intake form when he saw Dr. Bradley. (PX9, 53)

Dr. Bradley testified that for conservative treatment, he recommended braces, over-the-counter ibuprofen or Aleve, any kind of anti-inflammatory medication and that Petitioner was given a series of exercises to try to work on the symptoms of his carpal and cubital tunnel syndrome. (PX9, 50-51) Dr. Bradley did not do any injections to see if that would improve his symptoms. (PX9, 51)

Dr. Bradley testified the type of hobbies relevant to this type of injury would be anything that would involve repetitive trauma, or anything that can result in microtrauma to the hands. (PX9, 56) Dr. Bradley testified that there is no difference in the procedures he did on Petitioner's left and right elbows, releasing roughly 5 millimeters on the left and five to six millimeters on the right, a very minimal amount. (PX9, 57-58) Dr. Bradley could not recall if Petitioner indicated one way or another whether the locks were difficult or easy to operate. (PX9, 60-61) Any stories of inmates resisting handcuffs was a general story, not specific to what Petitioner told Dr. Bradley. (PX9, 61)

Dr. Patrick Stewart evaluated Petitioner on June 13, 2022, pursuant to Section 12 of the Illinois Workers' Compensation Act ("Act"). Dr. Stewart authored an opinion report on June 20, 2022, consisting of, in pertinent part, a review of Petitioner's medical records, notice of injury report and job descriptions, information related to his discussion with Petitioner related to his job and medical history, his physical examination of Petitioner, assessment and plan, and with answers to interrogatories posed to him. (RX5)

Regarding conservative treatment, Dr. Stewart noted that Petitioner reported not taking nonsteroidal anti-inflammatories, that he was not given a home exercise program, and that he was not given braces. (RX 5, p 3).

In answer to the question regarding his opinion regarding a causal relationship between Petitioner's objective findings and the reported accident, Dr. Stewart answered as follows:

Presuming this is in question to the diagnosis of bilateral carpal tunnel and cubital tunnel syndrome, again Officer Rhodes indicated that prior to COVID he was working and monitoring the inmates during their industry time or production. There was no specific alleged repetitive activities during this period, which was directly prior to COVID. He indicates that when that was placed on hold during the lockdown and pandemic that he was then utilized as a replacement or relief officer primarily in the cell houses. He did occasionally work in the tower. The cell house work does involve the opening of the inmates' doors as well as the logbook. These keys are a routine door lock key. They do not require any particular force for opening and neither do the cuffs that are utilized on the offenders. This takes approximately 1 second to 1.5 seconds to open a given door, so even in totality, if every door was opened on that particular officer's cell house there would be only minutes of repetitive activity in a total workday. This leaves far greater time for recovery from any "repetitive injury or microtrauma" that may have occurred with that activity in deference to the amount of time of recovery that was available from that activity.

Officer Rhodes obviously has a significantly elevated BMI, which does place individuals at an increased risk for developing compression neuropathies.

In deference to the cubital tunnel diagnoses, which currently on the left does not appear to be supported by the electrodiagnostics and EMG, he does not allege any particular activity at work where there was a prolonged forceful grip that was maintained or repetitive flexion and extension of the elbows or maintained elbow in a hyperflexed position. Therefore his work as a correctional officer for the State of Illinois did not serve as a causative nor aggravating factor for these symptoms for which he was treated. (RX5, 7)

Dr. Stewart also opined that Petitioner was at MMI, Petitioner need no further treatment, and his work capabilities were unrestricted.

Dr. Stewart testified that he is a hand and upper extremity surgeon holding medical licenses in Illinois, Ohio, and Florida, board certified through the American College of Surgeons with a certificate of added qualification, ("CAQ") in hand surgery. Dr. Stewart completed a hand surgery fellowship and subsequently began in private practice doing solely hand and upper extremity surgery evaluations and treatment for patients for 23 plus years. (RX6, 4-5) Dr. Stewart testified that his practice concentrates solely on issues essentially from the elbow down. The certification "can only be obtained after completing both an appropriate certified residency and receiving board certification under that nomenclature." (RX6, 6) An orthopedic, plastic or general surgeon must go to an accredited certified hand fellowship and then go out into practice and "more than 50

percent of your practice has to be hand and upper extremity over a period of at least three years.” (RX6, 6-7) It is only then that the surgeon is eligible to sit for the CAQ exam and pass it to attain the added qualification. (RX6, 7)

Dr. Stewart testified that “less than 1 percent” of his practice or patient volume is performing independent medical examinations, the other 99 plus percent is seeing, evaluating and treating patients. (RX6, 8) Dr. Stewart confirmed that the majority of Independent Medical Evaluations are at the request of the State of Illinois, and he had done approximately 30 from Graham Correctional Center in the previous year or so. *Id.*

Dr. Stewart testified consistent with his report. Further, in his report, Dr. Stewart went over the history, care, and treatment Petitioner received with Dr. Bradley, with Petitioner filling in gaps. (RX 6, 11) Most notably was that during the cubital tunnel procedures Petitioner “was under the impression that both his nerves had been transposed, meaning that they had been moved either subcutaneously over the medial epicondyle or submuscular place for protection, and I actually had to inform him that that actually had not occurred.” (RX 6, 11)

Dr. Stewart credibly testified that there are common risk factors or co-morbidities for developing bilateral carpal tunnel syndrome, noting that risk factors are similar for cubital tunnel syndrome. (RX 6, 19) These nonoccupational risk factors include an elevated BMI, above 30, hypertension, diabetes, rheumatoid or inflammatory arthritis, smoking, age, and sleep apnea. (RX6, 20-21) Dr. Stewart noted that Petitioner had a BMI of 37, hypertension, sleep apnea, and “psoriasis, which can result in inflammatory type arthritis and inflammatory conditions.” (RX6, 21) According to Dr. Stewart, those conditions put individuals at an increased risk for developing these compression neuropathies. *Id.*

Dr. Stewart testified that when it comes to activity, a forceful activity and a repetitive activity, must be combined, noting, “[i]f the two are not combined, then it’s not a risk factor.” (RX6, 21) Dr. Stewart emphasized that “there has to be both weight and repetition or force and repetition for carpal tunnel.” (RX6, 22) Other activity-based risk factors include “[v]ibratory exposure, running a palm sander, running pneumatic drivers, running a chain saw and cold exposure puts one at an increased risk.” *Id.* Regarding cubital tunnel, activity-based risk factors are “either a prolonged forceful grasp or maintained hyperflexion of the elbow...or going from extension to hyperflexion on a repetitive continuous basis puts you at increased risk.” *Id.*

Dr. Stewart thought it was significant that in Petitioner’s work history, he “was in the school, he did some bus transfers, and he was also in the industry.” (RX6, 23-24) During Covid, Petitioner worked in the cell house, but Dr. Stewart thought Petitioner also worked in the tower. So the variability of his employment was noticed because he was in different positions during his employment at Graham. *Id.*

Dr. Stewart testified that Petitioner indicated the increased keying that had to be done with locking and unlocking of doors and cuffs he felt was of concern to the development of his condition. (RX6, 24)

Dr. Stewart testified that he was familiar with Graham Correctional Center because he toured the facility in the spring of 2022. *Id.* Dr. Stewart spoke with the locksmith on staff who

confirmed their goal was to repair a broken or “sticking” lock during the same shift it was reported or by the following day. (RX6, 25) Dr. Stewart also testified that he had the opportunity to open and close a variety of locks. *Id.* So that included the locks for the chuck doors, the locks for the logbook and the cell doors. He had opened and closed eight to ten doors. He was not directed to a particular door. He was not prevented from opening or closing a particular lock. He would just ask for the keys, and they would provide so that he would be able to get an understanding of what force it took to open or close the locks and what it actually required specifically. (RX 6, 25-26)

None of the locks took a great amount of force to key, -they all operated “very smoothly and essentially were a normal size key that you would have for a padlock or for a door lock. They were not significantly oversized keys or something that was heavy or required force to turn.” (RX 6, 26)

In Dr. Stewart’s opinion regarding causation, Petitioner’s job duties at Graham did not cause, contribute to, aggravate, or accelerate his condition. (RX 6, 27) Dr. Stewart testified that he specifically looked at what was alleged as being concerning, which was the additional lock and unlocking, and that would take between one and one and a half seconds, and it did not require force. So even if somebody did that a few hundred times a day, that would be a mere matter of minutes of their total workday that they were doing this repetitive activity that did not require force. That does not put someone at increased risk for developing a compression neuropathy. *Id.*

Dr. Stewart testified that similarly, regarding the alleged cubital tunnel, there's no allegations of maintaining the elbow in a hyperflexed position or having the elbow go from full extension into hypertension or maintaining a prolonged forceful grasp. (RX6, 28) Those are the activities that put you at an increased risk regarding cubital tunnel, and those are not in any way part of the job description or the job activities that are completed by the prison guards at Graham. *Id.*

Regarding Petitioner’s non-operative treatment, Dr. Stewart testified that “it was indicated by Dr. Bradley that Petitioner was treated conservatively with an exercise program, as well as anti-inflammatories, as well as would-be provided splints. Mr. Rhodes shared with us that he never took any anti-inflammatories, he never received an exercise program, and he never received splints. So he never received any conservative treatment. That failure of conservative treatment is one of the items that Dr. Bradley relied upon to say that Mr. Rhodes needed surgery. So that treatment never occurred.” (RX 6, 28-29)

Regarding Petitioner’s surgery, “Mr. Rhodes thought his nerves had been transposed, it's still unclear to me as to how or why he thought that, but he became upset when I showed him that his nerves had not been transposed, both from the operative report as well as I could palpate his nerves in the cubital groove. They were still where they naturally are after just a simple release, not where they would be if the nerve had been transposed. Those things were a little concerning because that's a big misconception for a patient to have as far as their care and treatment, as well as the other areas I indicated.” (RX 6, 29) The cubital tunnel surgery Petitioner underwent, including a five-millimeter release, would not be adequate to address the condition and also noted that such a release would put an individual at “an increased risk for redevelopment of the problem, meaning by releasing all the possible areas, then you are giving that nerve the best chance of not having problems in the future.” (RX 6, 30-31)

On cross examination, Dr. Stewart testified that the job description he reviewed was from CMS. (RX6, 36) Dr. Stewart confirmed that it was a generalized description of the duties of various officers at Graham Correctional Center, revised in 10 of '94. (RX6, 37) Dr. Stewart testified that when he toured Graham, he did not open any cell doors to cells that had inmates in them. (RX6, 38) Dr. Stewart testified that he deferred to logic and common sense in that he imagined "that the doors that actually are housing inmates would function as well as they possibly could in deference to one that did not have an inmate because that denotes safety for the inmate, for the guards, for all the employees. And so the notion that the cell doors that had inmates in them somehow functioned less appropriately makes absolutely no sense." (RX6, 38-39)

Dr. Stewart testified that he did not know how many doors are in the entire prison. (RX6, 40) When asked if he knew whether any of the doors stick or catch at Graham, Dr. Stewart testified that "I only know that the doors that I walked through and the doors that I opened and closed, that none of those stuck or caught." *Id.* Dr. Stewart testified that he toured four or five different houses and would have opened one to two doors in each house. (RX6, 41)

Further, Dr. Stewart testified that he did not ask Petitioner about the specific types of locks he had to lock and unlock because those were the same locks Dr. Stewart had seen in the cell houses. Petitioner indicated he worked in the cell house and that is what the officers do in the cell houses. Dr. Stewart testified that if Petitioner's job in the cell house was different than what a normal housing officer would do, he believed that it was something that Petitioner would have shared. (RX6, 44-45) Dr. Stewart also testified that the only bars that are in Graham are on a shower door or shower, that cell door that closes, so those are the only bars that exist. When Dr. Stewart did the tour, the bars appeared to have not been rapped for quite some time by anybody. (R6, 46) When Dr. Stewart took the bar that was what they used to rap the bars, paint came off. So obviously it left the bars that had been painted on the shower cell and that was the only paint that was missing. The other paint was pristine, indicating they had not been rapped. (RX6, 45-46)

Dr. Stewart testified that an inmate who resists while a correctional officer is attempting to cuff them, would require force, but that activity was lacking repetition. Dr. Stewart went on to explain:

Unless they have on a daily, continuous basis where they are going from one disruptive inmate to the next, to the next, to the next, the next throughout the day, and then the next day and then the next day, like I said in my initial description as to what carpal and cubital tunnel are, lifting 100 lbs. five times does not put you at increased risk.

So detaining 1 prisoner that is acting up and having to use force to cuff them and to hold them and to keep them from hurting themselves or anyone else does not put you at increased risk because it's not something that's done on a consistent, repetitive basis. (RX6, 47-48)

Dr. Stewart testified he did not know whether or not Petitioner had to do any type of repetitive lifting or pushing while at Graham's. The activities that would require Petitioner to use his hands for gross manipulation, grasping, twisting and handling would not cause or aggravate carpal or cubital tunnel syndrome. Dr. Stewart opined, "[t]hat description is vague enough that no

one can say that. The devil is in the details, and it is how often, how repetitive, how much force. Saying gross manipulation is very vague, no one could say that with a medical degree of certainty that would cause a particular problem. Yes, I have said consistently that repetitive, forceful grasping, twisting, handling could cause or aggravate carpal or cubital tunnel syndrome. But when you say gross manipulation and are vague on how frequent, how much of course, then it requires details to be able to make a determination.” (RX6, 48-49)

Dr. Stewart testified that he noticed on his own intake sheet Petitioner indicated he had symptoms for five years, however, with Dr. Bradley he indicated that it was 10 years, “so there is a variability there.” (RX6, 51) Dr. Stewart noted the increase in symptoms had occurred directly prior to his presentation to Dr. Bradley in November of ‘21. Dr. Stewart reiterated the risk factors that Petitioner had for the onset of his increased symptoms for carpal and cubital tunnel syndrome including his BMI is 37, hypertension, sleep apnea and psoriasis. Dr. Stewart opined, “[s]o those all put him at an increased risk for developing it.” (RX6, 52) Dr. Stewart testified that, “as I testified before, approximately 50% of compression neuropathies do not have a smoking gun or something we can directly point to and say this is the reason the person developed the problem. So they are idiopathic, meaning regardless of what somebody was doing, they developed the problem.” (RX6, 52-53)

Dr. Stewart testified that psoriasis is a contributing factor because it is an “inflammatory autoimmune condition.” (RX6, 53) Dr. Stewart explained, “So rheumatoid---when I say inflammatory, inflammatory problems and that is what psoriasis is.” *Id.*

Dr. Stewart testified that he consistently finds the work of a correctional officer from Graham not to be a contributing factor to carpal or cubital tunnel syndrome, because “it would be unprofessional and illogical to say that this person doing the job it is related and this person doing the job it isn’t related. Either the job has intrinsic activities that place people at increased risk, or it does not, and in this case it does not.” (RX6, 54)

Petitioner’s Exhibit seven (“PX7”) is a job description. Petitioner described activities lifting property/correspondence boxes average 10 pounds empty to up to 100 pounds full, flats of trays daily/weekly, Approx. 50 lbs.-large trash bag filled with commissary flats of trays approximately 40-60 lbs.-large trash bags full of trash daily/weekly 30 to 50 lbs.-laundry bags combined into larger bag to pass out weekly 25-45 lbs.”

Petitioner further described pushing and pulling carts full of property weekly 200-300 lbs.-carts full of food trays to deliver daily/weekly Approx 250 lbs.-Trash cans (Large) for cleaning 30-70 pounds-Door & Gates, food parts, restraint part daily 4-100 lbs. Petitioner then described activities “Bending or Stooping” which included Multiple “Pat searches daily” cell search multiple daily-picking up boxes of property or correspondence multiple times daily/weekly-picking up laundry bags-weekly-conducting pat searches for transportation “Reaching above shoulder level” by placing property/correspondence boxes or loose property on shelving while working in property, segregation or mental health. Daily placing trash in dumpster or compactor daily/weekly and passing food through food port daily. Question 5 required Petitioner to describe the use of his hands for gross manipulation i.e. grasping, twisting, handling. Petitioner responded, “turning keys for doors/gates daily” and “turning keys for cuffs, leg irons, and padlock on gates.” “Feed multiple times daily turning key shower cells weekly-Turning keys of padlock of wing/gallery deck daily”

(plus one other illegible activity). For “Use of Hands for Fine Manipulation,” Petitioner described using restraints, turning keys, using combination lock daily, daily log books, tool books writing reports of tickets. Finally, Petitioner described “Loading and Unloading” property boxes up to 100 pounds, carrying food trays approximately 50 pounds up multiple flights and carrying trash and laundry.

Petitioner’s Exhibit 8, a work history timeline described varied activities from June 1, 2014, to the present such as using a house key for food ports every day and for small passes every day. Further, Petitioner described during Covid, inmates were locked in and every door “had to be keyed for meds, food, laundry, hall passes were allowed, commissary covid testing, temperature checks, same day room times and some phone use.” Every time an inmate moved or needed something, a door was keyed. He described that he was pulled from his assignment to walk nurses to “pass meds” or do temperature checks regularly. He was also assigned to passing out trays daily and loaded commissary in vehicles and brought them to all the houses and helped pass them which included keying doors to let inmates out, with approximately 50 doors in a house.

The Commission finds the descriptions in Petitioner’s Exhibit 7 and Petitioner’s Exhibit 8 document the varied nature of Petitioner’s job tasks. The Commission also relies upon Respondent’s Exhibit four describing the varied nature of Petitioner’s job duties. The multitude of assignments and duties performed by Petitioner is a compelling factor in assessing the repetitive nature of his duties for Respondent.

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.

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). Additionally, if the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. A finder of fact is not bound by an expert opinion on an ultimate issue and may look “behind” the opinion to examine the underlying facts. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80 (2003).

Petitioner testified that he prepared Exhibit seven, his job description. He further testified that he looked at Dr. Bradley’s deposition and that, “[y]es, as far as I can tell he has an accurate understanding of my job duties.” (T. 19-20) However, when Dr. Bradley testified, he admitted that when he first formed his causal connection opinion, that he did not have Petitioner’s job description or his work history. (PX9, 37) Dr. Bradley’s testimony did not persuade the Commission that he had discussed Petitioner’s specific duties or what Petitioner was doing during the extensive off work periods in the years, 2019, 2020 and 2021. The Commission finds that in rendering his causal connection opinion, Dr. Bradley testified that he initially relied solely on Petitioner’s description in his intake sheet, “keying inmates in and out of their cells, opening locks on hatches, walking inmates to assignments and lunch, shaking down inmates in common areas.” (PX9, 33) The Commission finds that the general and varied nature of those job activities Petitioner listed on his intake form undermine Dr. Bradley’s causal connection opinion. The Commission also notes that Dr. Bradley formed his opinions on causation, not on Petitioner’s actual job activities but based upon generalities,

testifying that he had a general idea of the job duties because he had 30 similar cases out of Graham. (PX9, 43-50, 60) The Commission bases this conclusion on Dr. Bradley's testimony during cross examination, including the following:

Q. And previously or earlier in this deposition, I believe you had referenced hearing multiple stories of locks being jammed or difficult to open. Did I catch that correctly?

A. Yes. I have had -- I mean, you stated, and I stated too, we've had probably 30 of these claims, and I have heard from the COs multiple, multiple times that locks will get jammed, they won't function right, they got to kind of wiggle the key around. Inmates have put paper balls in, feces, all kinds of stuff, I've heard, jammed into these locks. So I have heard more stories of them not being easy than stories of them being easy.

Q. And specifically to Mr. Rhodes, did he ever indicate one way or another his impression of whether or not the locks were, you know, difficult or easy to operate?

A. I can't recall exactly all these conversations with 30 of them, so I can't tell you if Mr. Rhodes -- if Mr. Rhodes in this particular case specifically said that or not. But it has certainly been a very common kind of story I have heard. So I'm not 100 percent sure if he himself told me that or not.

Q. Okay. And similarly, I believe you referenced stories of inmates resisting when they are trying to handcuff them. Was that also just a general story, or was that something that you recall Mr. Rhodes specifically noting to you?

A. Again, kind of a general story from these COs describing their kind of work activities and routines. (PX9, 60-61)

The Commission finds Dr. Bradley's admission that he would potentially change his causation opinion if Petitioner was off work for a significant amount of time in the years leading up to his treatment (PX9, 51) and the fact that Petitioner was off for a significant amount of time in the three years leading up to his treatment, (RX3) undermines Dr. Bradley's opinion.

Dr. Bradley testified that that it was the year and a half prior to seeing him when the symptoms became more frustrating to Petitioner. (PX9, 38) However, the medical records in Respondent's Exhibit seven (RX7) belie this history.

Although Dr. Bradley would not concede that a doctor who has a certificate of added qualification ("CAQ") of a hand specialist is better qualified to render a causal connection opinion regarding diagnosis, treatment, and recommendations for repetitive trauma injuries, the Commission disagrees. The Commission finds that Dr. Stewart, who completed a hand surgery fellowship and has a CAQ in hand surgery, is more qualified to render a causal connection opinion than Dr. Bradley. The Commission finds that Dr. Stewart also toured the Graham Correctional facility, and actually performed some of the duties of a correctional officer, i.e. he specifically turned keys and tried the locks in the Graham Correctional Center, opened and closed cell doors by using the key, and performed bar rapping, also making him better qualified to render a causal connection opinion than Dr. Bradley.

As noted above, Dr. Stewart testified that when it comes to activity, a forceful activity and a repetitive activity, must be combined, noting, “[I]f the two are not combined, then it’s not a risk factor.” (RX 6, 21) Dr. Stewart emphasized that “there has to be both weight and repetition or force and repetition for carpal tunnel.” (RX 6, 22) When asked how repetitive it would have to be for heavy lifting to contribute to carpal or cubital tunnel, Dr. Stewart opined that the period of time of heavy lifting or forceful grasping would have to exceed the period of time that they have for recovery. (RX6, 49) The Commission finds this definition goes to the issue of repetition. Regarding cubital tunnel, activity-based risk factors are “either a prolonged forceful grasp or maintained hyperflexion of the elbow...or going from extension to hyperflexion on a repetitive continuous basis puts you at increased risk.” (RX 6, 22)

At the time of hearing, Petitioner testified as to a number of activities performed in his various duties over the years working for various correction centers including for Respondent. (T.14-19, 21-22) Trevor Wright testified as to the quarantine of inmates and increase in staff duties at Graham during Covid. (T. 38) Neither, however, testified as to the force and repetition required in the performance of said duties, nor did Dr. Bradley describe the causation mechanism. There was no testimony or demonstration at the time of hearing as to the exact mechanism of the duties which would help to determine whether Petitioner’s job duties possessed the requisite force combined with repetitive motion that demonstrated the period of time of heavy lifting or forceful grasping exceeded the period of time that Petitioner had for recovery. There was no testimony or demonstration of the required flexion and extension of the wrist and arms that would put Petitioner at an increased risk for compression neuropathies that Dr. Stewart described are necessary to cause the carpal or cubital tunnel conditions.

Petitioner relied upon the causation opinions of Dr. Bradley to support his position of a repetitive injury caused by his work activities. The Commission is not persuaded by Dr. Bradley’s causation opinions, as he did not have the opportunity to experience the force required to perform the keying of doors, locks and chuckholes prior to rendering his opinions. Dr. Bradley’s opinions were based solely upon “stories” and his general understanding of Petitioner’s job duties, and his testimony did not demonstrate an understanding of the repetition, mechanism or force involved to perform said duties. Dr. Stewart’s knowledge of the Petitioner’s specific job duties as a CO at Graham are far more extensive than that of Dr. Bradley, given that he toured the facility, witnessed and performed the job activities Petitioner described.

Thus, the Commission finds the testimony and opinions of Dr. Stewart more persuasive than those of Dr. Bradley.

Therefore, based on the evidence and the record in its entirety, the Commission concludes that Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment or that his condition of ill-being, that of bilateral carpal tunnel and cubital tunnel syndrome, is causally related to his employment. Benefits are therefore denied.

Based upon the Commission’s Conclusions of Law reversing the Arbitrator’s Conclusions of Law regarding accident and causal connection, all other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator’s award of temporary total disability benefits, medical expenses and permanent partial disability benefits is

hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator regarding accident and causal connection is reversed, the Commission finding that Petitioner failed to prove he sustained an accidental injury arising out of and in the course of his employment with Respondent on November 18, 2021, and, further failed to prove that his current condition of ill-being is causally related to his employment, thus, his claim for compensation is hereby denied, rendering all other issues moot.

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).

August 28, 2025

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KAD/bsd
42

/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Stephen J. Mathis

Stephen J. Mathis

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the Decision of the Arbitrator. After carefully considering the totality of the evidence, I find that Petitioner has met his burden of proving he sustained a repetitive trauma of bilateral carpal and cubital tunnel as a result of his activities at work.

The long-established threshold for a compensable injury is that the work-related accident need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. (*Emphasis added*) *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205 (2003).

Further, it is axiomatic that employers take their employees as they find them. *Baggett v. Indus. Comm'n*, 201 Ill.2d 187, 199 (2002). "When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment." *General Electric Co. v. Indus. Comm'n*, 89 Ill.2d 432, 434 (1982). Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Indus. Comm'n*, 92 Ill.2d 30,

36 (1982); *Williams v. Indus. Comm'n*, 85 Ill.2d 117, 122 (1981); *County of Cook v. Indus. Comm'n*, 69 Ill.2d 10, 18 (1977); *Town of Cicero v. Indus. Comm'n*, 404 Ill. 487 (1949) (It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health).

Petitioner testified he started at Dwight Correctional Center on October 27, 2003. T.14. After approximately 9 years, he transferred to Pontiac Correctional Center. T.15. After approximately two years, he transferred to Graham Correctional Center. T.18. After 20 years, he was promoted to sergeant in September 2023. *Id.*

The caselaw supports a contemplation of the whole of Petitioner's job duties with Respondent when assessing whether a claimant has sustained a work-related repetitive trauma injury. See *PPG Indus. V. IL. Workers' Comp. Comm'n*, 2014 IL App (4th) 130698 WC, ¶ 19, *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill.App.3d 915, 917–18, 293 Ill.Dec. 313, 828 N.E.2d 283, 287 (2005) (over 30 years); *Oscar Mayer*, 176 Ill.App.3d at 608, 126 Ill.Dec. 41, 531 N.E.2d at 174–75 (15 years); *City of Springfield, Illinois v. Illinois Workers' Compensation Comm'n*, 388 Ill.App.3d 297, 300–01, 327 Ill.Dec. 333, 901 N.E.2d 1066, 1069–70 (2009) (approximately 8 years); *Peoria County*, 115 Ill.2d at 527, 106 Ill.Dec. 235, 505 N.E.2d at 1027 (6 years).

Petitioner credibly testified to hand intensive activities, including locking/unlocking doors and chuckholes, bar rapping, shakedown, property box searches, and cuffing/uncuffing at these facilities. T.15-17. Petitioner testified his work at Graham was more hands on than his work at Dwight and Pontiac Correctional Centers with regard to the contact with the inmates. T.15. During his first two years while working as an officer at Graham, he spent most of his time on the wing, gallery, or housing unit. T.17. He indicated he performed keying of doors, gates, waistbelts, padlocks, chuckholes and D leads. T.25, PX7. He utilized multiple keys as there were locks for every cabinet, property box, and entrance to a yard. T.32. Those keys included Folger Adams keys, six inches in length during his work at Dwight and Pontiac and four inches in length at Graham. T.33, 39. After performing his job duties, he would sometimes get soreness, achiness and numbness in his hands. T.21. He further testified that because of the lockdown mandated by the pandemic, his hand intensive activities increased "tremendously." T.22. He began to have to key every door and let every inmate in or out for showers, meals or to be seen by medical. T.21-23. His symptoms increased and he sought medical treatment with Dr. Bradley. Petitioner testified that Dr. Bradley had an accurate understanding of these job duties. T.20.

Petitioner's testimony regarding the increase in staff workload was corroborated by Respondent's own witness, Major Wright. He testified that normally most of the work in the prison was performed by the inmates, however, when the prison was on lockdown due to COVID, the staff had to do more of the job duties, such as feeding and cleaning. T.38. He did not find anything untrue in Petitioner's testimony regarding his job duties. *Id.*

Petitioner also completed a detailed questionnaire, wherein he described the type of job duties he performed which included lifting, pushing/pulling, bending/stooping, reaching above shoulder level, using his hands for gross and fine manipulation. PX7. He did not provide a

breakdown of exactly how often the tasks were performed, however, he is not required to do so. The Appellate Court in *Darling v. Indus. Comm'n* found that quantitative evidence of the exact nature of repetitive work duties was not required to establish a repetitive trauma injury. *Darling*, 176 Ill.App.3d 186 (1988). The Appellate Court refused to expand the proof necessary to include specific quantitative evidence of amount, time, duration, exposure or dosage. *Darling* at 196. Similarly, we should not require it in the present case.

This is particularly true, as the unique nature of Petitioner's job means that his duties would likely vary from day to day depending upon the number of inmates, the disposition of the inmates, and the staff at the prison on any given day. The quantity of Petitioner's performance of duties would have also changed drastically from the pre-pandemic schedule to the lockdown due to COVID. The variation in his day-to-day experiences would have made it almost impossible for Petitioner to accurately quantify his individual duties and the courts have frowned upon imposing this hurdle onto claimants. While the majority emphasizes the weeks "not worked" by Petitioner and alludes to a theoretical impact on Dr. Bradley's causation opinion, there is no evidence that Petitioner took excessive leave. Petitioner took vacation and sick days as allowed by his employment, leaving vacation and sick time unused in 2019, 2020 and 2021. PX3, p.2,4,6. Further, a review of the Petitioner's vacation schedule demonstrates much of his vacation time was taken in consecutive weeks, making the remainder, and majority of his work year a full forty hour per week schedule. PX3. Petitioner's work may be "varied", but still be "repetitive" pursuant to the findings in *City of Springfield v. Ill. Workers' Comp. Comm'n*, 388 Ill.App.3d 297, (2009). The Appellate Court goes on to say that "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.* While the frequency of Petitioner's duties may have varied in terms of numerical quantification, Petitioner was very clear as to the actual duties he performed, as detailed above and in Petitioner's Exhibit 7.

As a board-certified orthopedic surgeon and Petitioner's treating physician, I find Dr. Bradley was most familiar with Petitioner overall and the development of his conditions and is, therefore, best suited to provide a medical opinion as to the relation of Petitioner's compression neuropathies and his work duties. In addition, the above written job description was also reviewed by Dr. Bradley in forming his opinion. PX9, p.12. The combination of the Petitioner's oral and written description of his duties provides a solid basis for Dr. Bradley's opinion that Petitioner's job duties were a contributing factor in his development of compression neuropathies.

Overall, I agree with the Arbitrator and find Petitioner was successful in showing that his job duties were a contributing factor in the development of his condition of ill-being, and more than just a degenerative condition. Petitioner may have had other conditions that made him more prone to develop his compression neuropathies, but the existence of those conditions is irrelevant, as long as Petitioner's job duties is also a contributing factor. Petitioner provided credible testimony and a medical expert's opinion to show the repetitive nature of his activities and an increase of his symptoms following an increase in his activities due to the COVID lockdowns at Graham.

I would also note that since the COVID lockdowns at Graham there are a number of Commission decisions holding the correctional staff's duties of using their hands/arms to lock/unlock cells, open doors, perform inspections and complete reports at Graham Correctional Center aggravated or contributed to compression neuropathies, such as carpal tunnel and cubital tunnel syndromes. *See Brian Caver v. State of Illinois/Graham C.C.*, 24 I.W.C.C. 0222; *Michael Dunn v. State of Illinois/Graham C.C.*, 24 I.W.C.C. 0353; *Shane Walters v. State of Illinois/Graham C.C.*, 24 I.W.C.C. 0352.

Even prior to the pandemic the Commission has found compensable compression neuropathy injuries to have developed as a result of similar repetitive activities of a Correctional Officer at Graham Correctional Center. *See Scott Honnies v. State of Illinois/Graham C.C.*, 20 I.W.C.C. 0643; *Jerry Miller v. State of Illinois/Graham C.C.*, 20 I.W.C.C. 0279.

In *James Wines v. State of Illinois/Graham C.C.*, at Arbitration the Respondent even stipulated to accident and causation for bilateral carpal and cubital tunnel conditions based upon the claimant's duties of a Correctional Officer at Graham. *James Wines v. State of Illinois/Graham C.C.*, 23 I.W.C.C. 0180 (21 WC 019033).

To the extent the majority relies upon the opinion of Dr. Stewart in his finding that Petitioner's job did not cause or contribute to his carpal tunnel syndromes (RX6, P.25-27), I find Dr. Stewart's opinions to be lacking a sufficient basis. Dr. Stewart's report and testimony both support a narrow consideration of Petitioner's overall job duties.

Dr. Stewart fails to comprehend the increase of work for Petitioner during the months of COVID lockdowns. In his analysis of the COVID protocol for various positions within Graham, he repeatedly indicates inmates were allowed out of their cell to perform their usual and customary duties. RX6, p.9-22. This is in direct opposition to Respondent's own witness Major Wright, who was clear that due to quarantine, the staff had to do more of the duties that inmates usually would have performed, such as feeding and cleaning. T.38. Further, while Dr. Stewart heavily based his causation opinions on his personal experiences at the Respondent's work site, there was no evidence he had been given any information regarding which doors and/or locks *Petitioner* would have been manipulating. This is supported by his testimony that he could not definitively say the cells or cell houses he walked through were the ones to which Petitioner was assigned. T.38. Overall, I find Dr. Stewart did not have sufficient understanding of Petitioner's actual job duties or the frequency with which they were performed, and this negatively impacted his credibility.

For the foregoing reasons, I would affirm the Decision of the Arbitrator.

/s/ Amylee H. Simonovich
Amylee H. Simonovich

August 28, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032976
Case Name	Jeremiah Rhodes v. State of IL/Graham C.C.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 1/22/2024

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

/s/ William Gallagher, Arbitrator

Signature

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

January 22, 2024

*/s/ Michele Kowalski*

Michele Kowalski, Secretary
Illinois Workers' Compensation

STATE OF ILLINOIS)
)SS.
 COUNTY OF Sangamon)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION

Jeremiah Rhodes
 Employee/Petitioner

Case # 21 WC 32976

v.

Consolidated cases: _____

State of IL/Graham C.C.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on December 21, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

ICArbDec 2/10 69 W. Washington, 9th Floor, Chicago, IL 60602 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

Jeremiah Rhodes v. State of IL/Graham C.C.

21 WC 32976

FINDINGS

On November 18, 2021, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$68,473.34; the average weekly wage was \$1,316.80.

On the date of accident, Petitioner was 41 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of \$6,019.95 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$6,019.95.

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

ORDER

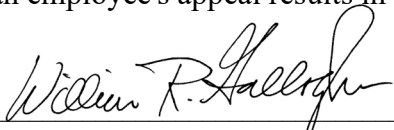
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, for medical services provided to Petitioner, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$877.87 per week for six and four-sevenths (6 4/7) weeks commencing February 23, 2022, through April 10, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$790.08 per week for 101.25 weeks because the injury sustained caused the 10% loss of use of the right hand; 10% loss of use of the left hand; 12.5% loss of use of the right arm; and 12.5% loss of use of the left arm, as provided in Section 8(e) of the Act.

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

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



William R. Gallagher, Arbitrator

ICArbDec p. 2

JANUARY 22, 2024

Evidentiary Ruling

One of the Exhibits tendered by Petitioner was a series of e-mails regarding a request by Dr. Matthew Bradley (Petitioner's primary treating physician) to tour the Graham Correctional Center (Petitioner's Exhibit 10). Respondent objected to the admission into evidence of Petitioner's Exhibit 10 on the basis of relevance and incompleteness. Petitioner claimed the evidence was relevant because Dr. Bradley had asked to tour the Graham Correctional Center, but had been denied the opportunity to do so.

As noted herein, Petitioner is claiming to have sustained an injury to his hands/elbows as a result of repetitive trauma. Dr. Bradley was Petitioner's primary treating physician and he testified regarding the etiology of Petitioner's hand/elbow condition and its relationship to Petitioner's work activities. The Arbitrator finds Dr. Bradley's attempt to learn more about Petitioner's work activities and environment to be relevant. Accordingly, Respondent's objection to the admission of Petitioner's Exhibit 10 is overruled in Petitioner's Exhibit 10 is received into evidence.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Application alleged a date of accident (manifestation) of November 18, 2021, and that as a result of "Repetitive duties", Petitioner sustained an injury to "Bi-lateral elbows/bi-lateral wrists/bi-lateral hands/bi-lateral arms" (Arbitrator's Exhibit 2). Petitioner sought an order for payment of medical bills as well as temporary total disability and permanent partial disability benefits. Respondent disputed liability on the basis of accident and causal relationship. In respect to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of six and four-sevenths (6 4/7) weeks, commencing February 23, 2022, through April 10, 2022. Respondent stipulated Petitioner was disabled during the aforesaid period of time, but disputed liability for same (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in 2003 as a Correctional Officer. Prior to working for Respondent, Petitioner was employed by a landscaping company, a brake parts company and WalMart. All of these jobs required the active use of both hands; however, Petitioner did not experience any hands symptoms during his prior employment.

When hired by Respondent in 2003 as a Correctional Officer, Petitioner worked at the Dwight Correctional Center, a maximum security facility. Petitioner testified he repetitively used his hands/arms on a daily basis locking/unlocking doors with a variety of keys including Folger Adams keys; bar rapping; cuffing/uncuffing inmates; shakedown; and property box searches. Petitioner worked at Dwight Correctional Center for nine years. At that time, Petitioner was transferred to the Pontiac Correctional Center.

Pontiac Correctional Center is also a maximum security facility and Petitioner continued to work there as a Correctional Officer. Petitioner testified his job duties at Pontiac were similar to those he had performed at Dwight Correctional Center, but he described them as being more hand intensive. Petitioner had to cuff/uncuff inmates and move them and there was also more keying of locks. Petitioner continued to perform bar rapping, shakedown, and property box searches.

When Petitioner worked at both Dwight Correctional Center and Pontiac Correctional Center, he spent most of his workdays in segregation. Many of the duties Petitioner performed required locking/unlocking of chuckholes. Petitioner worked at Pontiac Correctional Center for two years at which time he was transferred to the Graham Correctional Center.

Petitioner worked at Graham Correctional Center as a Correctional Officer until September, 2023, when he was promoted to Correctional Sergeant. Petitioner prepared a description of his job duties while employed at Graham Correctional Center which was received into evidence at trial. According to this Exhibit, Petitioner was required to lift/move property boxes, push/pull carts, use keys to lock/unlock doors/padlocks, type reports and bar rapping (Petitioner's Exhibit 7).

Petitioner testified that, because of the pandemic, there was a significant increase of his job duties. Specifically, there was more locking/unlocking of cell doors to permit an inmate to move, deliver food, have the inmate seen by the medical personnel, etc.

Petitioner testified that he used a variety of keys at Graham Correctional Center which he also used at the two other facilities. He used Folger Adams keys, normal house type keys and keys for various padlocks. The Folger Adams keys at Graham Correctional Center were approximately four inches long, while the Folger Adams keys at Pontiac Correctional Center were approximately six inches long.

Major Trevor Wright was Respondent's representative and heard Petitioner's testimony in its entirety. Major Wright was called as a witness by Petitioner and he testified that Petitioner's testimony in respect to his job duties was truthful and that Petitioner was a good employee. He also confirmed that Petitioner's job duties increased during the pandemic and that the Folger Adams keys used at Graham Correctional Center were approximately four inches long.

Petitioner testified that he began to experience symptoms of soreness, achiness and numbness in his hands which he associated with the repetitive use of his hands at work. Petitioner stated the onset of the symptoms occurred prior to the pandemic; however, afterward, Petitioner's hand symptoms worsened.

Petitioner initially sought medical treatment on November 18, 2021 (the alleged date of manifestation) from Dr. Matthew Bradley, an orthopedic surgeon. At that time, Petitioner complained of a history of many years of left and right wrist pain/tingling, left worse than right, as well as numbness in his left and right fourth and fifth fingers associated with prolonged elbow flexion. Petitioner informed Dr. Bradley he had worked as a Correctional Officer for 18 years and, during the past year, the repetitive use of his hands had significantly increased because of the pandemic. Petitioner also informed Dr. Bradley he did not have a history of diabetes, thyroid disease or obesity. Dr. Bradley ordered x-rays of both hands, wrists and elbows, all of which were found to be negative for fractures. Dr. Bradley ordered EMG/nerve conduction studies of both upper extremities (Petitioner's Exhibit 3).

On November 18, 2021, Petitioner was evaluated by Dr. Ravi Yadavi, a neurologist. Dr. Yadavi performed EMG/nerve conduction studies of both of Petitioner's upper extremities. He opined the

diagnostic studies were positive for bilateral carpal tunnel syndrome, moderate on the left and mild on the right; and bilateral cubital tunnel syndrome, mild on both the left and right (Petitioner's Exhibit 4).

Dr. Bradley diagnosed Petitioner with bilateral carpal tunnel and cubital tunnel syndrome conditions based upon the findings on examination and the EMG/nerve conduction studies. Dr. Bradley noted Petitioner had attempted taking medication, doing home exercises and bracing but without success. He recommended Petitioner proceed with left carpal and left cubital tunnel surgery to be followed by performing the same procedure on the right three to four weeks afterward (Petitioner's Exhibit 3).

Dr. Bradley performed an open left carpal tunnel surgical release procedure and an open left cubital tunnel ulnar nerve decompression procedure on February 23, 2022. At the carpal tunnel, Dr. Bradley noted some thickening which caused flattening of the median nerve. At the ulnar nerve, Dr. Bradley observed there was scar tissue formation around the ulnar nerve (Petitioner's Exhibit 5).

Dr. Bradley saw Petitioner on March 10, 2022. At that time, Petitioner advised his left sided symptoms had improved, but he continued to experience symptoms on the right side (Petitioner's Exhibit 3).

Dr. Bradley performed open right carpal tunnel and right cubital tunnel release surgeries on March 16, 2022. At the carpal tunnel, Dr. Bradley noted the transverse carpal ligament was thickened. At the cubital tunnel, Dr. Bradley observed a significant amount of scar tissue posterior to the medial epicondyle (Petitioner's Exhibit 5).

Dr. Bradley saw Petitioner on March 31, 2022. At that time, Petitioner advised the symptoms of pain, numbness and tingling had significantly improved. Petitioner continued to have some weakness of grip strength on the right, but Dr. Bradley directed Petitioner to continue home exercises and to take medication as needed. He authorized Petitioner to return to work effective April 11, 2022, and opined Petitioner was at MMI (Petitioner's Exhibit 3). This was the last time Petitioner was seen by Dr. Bradley.

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, an orthopedic surgeon, on June 13, 2022. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records and information regarding Petitioner's job which was provided to him by Respondent. In respect to the diagnoses made by Dr. Bradley, Dr. Stewart opined the diagnosis of left cubital tunnel syndrome was not supported by the EMG/nerve conduction studies. Further, Dr. Stewart opined the x-rays obtained by Dr. Bradley of Petitioner's upper extremities were not medically reasonable and necessary and he also noted there had been no attempt by Dr. Bradley at conservative treatment prior to proceeding to surgery. In regard to causality, Dr. Stewart opined there was not a causal relationship between Petitioner's work activities and the diagnosis of bilateral carpal tunnel syndrome and cubital tunnel syndrome because Petitioner did not engage in sufficient repetitive activities while at work. Specifically, Dr. Stewart noted Petitioner only used a routine door lock key for opening of doors (Respondent's Exhibit 5).

Dr. Bradley was deposed on May 31, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Bradley's testimony regarding his diagnosis and treatment of

Petitioner's upper extremity conditions was consistent with his medical records and he reaffirmed the opinions contained therein. Based upon his findings on examination and the EMG/nerve conduction studies, Dr. Bradley diagnosed Petitioner with bilateral carpal tunnel and cubital tunnel syndrome conditions (Petitioner's Exhibit 9; p 16).

In regard to causality, Dr. Bradley testified the most common non-occupational risk factors for compression neuropathy are being female of increased age, which he defined as 40/50 or older, thyroid disease, diabetes, sleep apnea and patients who have undergone chemotherapy or been exposed to radiation. In respect to occupational factors, Dr. Bradley stated any kind of repetitive activity can cause microtrauma to either the carpal or cubital tunnel (Petitioner's Exhibit 9; pp 8-9).

Dr. Bradley testified that Petitioner informed him he had worked as a Correctional Officer for 18 years and Petitioner described multiple repetitive activities he had performed which included repetitive keying, lifting property boxes, pushing/pulling carts, passing out food trays and other activities which required the use of hands and elbows throughout the day. Dr. Bradley acknowledged Petitioner had sleep apnea and was obese, both of which he stated made it easier for Petitioner to develop carpal and cubital tunnel syndrome. However, Dr. Bradley testified the cause of the condition was "multifactorial" and Petitioner's work activities over a period of 18 years contributed to the development of the carpal and cubital tunnel syndrome conditions (Petitioner's Exhibit 9; pp 11-12, 17-19).

When Dr. Bradley last saw Petitioner on March 31, 2022, he noted Petitioner was doing great and his symptoms had "...almost completely resolved" and Petitioner only had a little bit of tenderness around the incisions. Dr. Bradley also testified Petitioner's condition would not have improved without surgery (Petitioner's Exhibit 9; pp 23-24).

Dr. Stewart was deposed on August 29, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Stewart's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. In respect to risk factors for the development of carpal tunnel and cubital tunnel syndrome conditions, Dr. Stewart testified they were being a woman, especially perimenopausal or postmenopausal, a BMI over 30, hypertension, diabetes, thyroid dysfunction, rheumatoid arthritis, smoking, and sleep apnea (Respondent's Exhibit 6; pp 18-19).

In respect to Petitioner, Dr. Stewart testified Petitioner had a BMI of 37, as well as both hypertension and sleep apnea. In regard to Petitioner's activities at work, specifically the keying of doors, Dr. Stewart testified he had toured the facility in the spring of 2022 and opened/closed a variety of locks. He stated all of the locks operated very smoothly and only required a normal sized key which would be used for a lock or door. Dr. Stewart testified Petitioner's work did not require sufficient repetitive force to put Petitioner at risk for developing a compression neuropathy (Respondent's Exhibit 6; pp 20-28).

On cross-examination, Dr. Stewart testified he opened eight to 10 locks at the time of his tour of the facility. In regard to carpal tunnel and cubital tunnel syndrome conditions, he agreed they could be cumulative conditions which develop over time (Respondent's Exhibit 6; pp 38, 42).

At trial, Petitioner testified he was able to return to work at full duty and was later promoted to Correctional Sergeant. Petitioner agreed his symptoms significantly improved following the surgeries; however, Petitioner stated that after performing a lot of repetitive activities at work, he still experiences hand symptoms, primarily loss of grip strength and what he described as "hand fatigue." Petitioner acknowledged he had hypertension which was controlled with medication and that he also had sleep apnea and had used a machine for 10 years.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained a repetitive trauma injury to both of his hands/arms arising out of and in the course of his employment by Respondent which manifested itself on November 18, 2021, and his current condition of ill-being is causally related to his work activities.

In support of this conclusion the Arbitrator notes the following:

Petitioner worked for Respondent for approximately 18 years and, during that time, Petitioner repetitively used both of his hands/arms, locking/unlocking doors with a variety of keys including Folger Adams keys, bar rapping, cuffing/uncuffing inmates, shakedown, and property box searches.

Prior to working at the Graham Correctional Center as a Correctional Officer, Petitioner worked at both Dwight Correctional Center and Pontiac Correctional Center as a Correctional Officer.

The Petitioner prepared a job description which was received into evidence at trial and testified regarding the repetitive nature of his job duties. Petitioner stated that, because of the pandemic, there was a significant increase of his job duties.

Petitioner testified that while at Graham Correctional Center, he used a variety of keys which included Folger Adams keys and normal house keys. He estimated the length of the Folger Adams keys used at Graham Correctional Center to be four inches.

Major Trevor Wright, Respondent's representative, was present during Petitioner's testimony and he testified that it was truthful in respect to Petitioner's job duties. He confirmed Petitioner used Folger Adams keys which were approximately four inches long.

Dr. Matthew Bradley was Petitioner's primary treating physician and he diagnosed Petitioner with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. This was based on his findings on examination as well as the EMG/nerve conduction studies which he reviewed and opined were positive for both bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

Dr. Ravi Yadavi, the neurologist who performed the EMG/nerve conduction studies, also opined they were positive for bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

Dr. Patrick Stewart, Respondent's Section 12 examiner, opined the EMG/nerve conduction studies were not positive for left cubital tunnel syndrome, disagreeing with interpretation of both Dr. Bradley and Dr. Yadavi.

Dr. Bradley opined Petitioner's repetitive work duties contributed to the development of the bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, the cause of which he noted was "multifactorial." Dr. Bradley agreed Petitioner had other risk factors for the development of carpal tunnel syndrome and cubital tunnel syndrome, specifically, obesity and sleep apnea which he opined both contributed to the development of the upper extremity conditions.

Dr. Stewart opined Petitioner's carpal tunnel syndrome and cubital tunnel syndrome conditions were not related to Petitioner's work activities because Petitioner's activities did not require sufficient repetitive force and Petitioner only used normal household keys. This was contrary to Petitioner's testimony, in particular, Petitioner's use of Folger Adams keys at Graham Correctional Center, testimony which was corroborated by Major Trevor Wright.

Based on the preceding, the Arbitrator finds the opinion of Dr. Bradley to be more persuasive than that of Dr. Stewart in respect to causality.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

As noted herein, Dr. Stewart's opinion that the EMG/nerve conduction studies were negative for left cubital tunnel syndrome was contrary to both those of Dr. Bradley and Dr. Yadavi.

The Arbitrator was not persuaded by Dr. Stewart's opinion that the x-rays of the upper extremity obtained by Dr. Bradley were not medically reasonable and necessary.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of six and four-sevenths (6 4/7) weeks, commencing February 23, 2022, through April 10, 2022.

In support of this conclusion the Arbitrator notes following:

There was no dispute Petitioner was temporarily totally disabled during the aforesated period of time.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 10% loss of use of the right hand; 10% loss of use of the left hand; 12 1/2% loss of use of the right arm; and 12 1/2% loss of use of the left arm.

In support of this conclusion the Arbitrator notes the following:

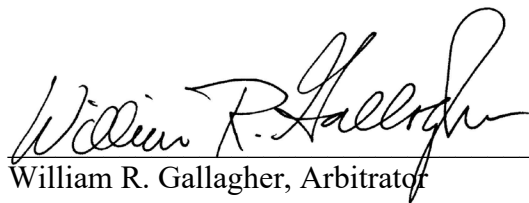
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

At the time of the accident, Petitioner worked for Respondent as a Correctional Officer and was subsequently promoted to Correctional Sergeant. The job duties of both positions required the active and repetitive use of both hands/arms. The Arbitrator gives this factor moderate weight.

At the time of the accident, Petitioner was 41 years of age. He has over 25 years before he will reach normal retirement age. Petitioner will have to live with the effects of the injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

Petitioner sustained an injury to both hands and elbows which caused bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, which required surgery. Petitioner had a good surgical result and was able to return to work to his regular job. However, Petitioner has continued to experience some symptoms, especially with repetitive use of his upper extremities, consistent with the injury he sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator